



## **FINANCIAL SERVICES AUTHORITY**

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## **RESPONSES ON COMMENTS BY THE INDUSTRY ON CODE FOR COMPLIANCE FUNCTION**

## 1. Introduction

Further to the comments received from members of the Industry, this paper serves to respond and/or discuss the position of Financial Services Authority (FSA). Henceforth, this paper would be segregated into different points.

## 2. Members of the Industry who submitted their comments

Intercontinental Trust
Falcon Insurance
African Risk Transfer (Seychelles)
Uniwide
Abacus
MITCO LIMITED
Deneo
Plus500
Vistra
A.C.T Offshore
EToro

### A. FSA's raison d'être for making Code for Compliance Function.

The emergence of compliance function is a relatively new initiative that aims to ensure that entities are conforming to rules, policies, standards and laws in order to act responsibly within the regulatory and legal frameworks of the jurisdiction within which they have been licenced.

As a concept, a strong compliance function allows an entity to operate its business to meet its objectives whilst ensuring that the entity is run consistently, legally and safely. It also ensures the stability of that entity's growth and prevents any reputational damages.

The points raised and feedback provided are detailed below;

- **Comment 1**

Include definition for "Licensed Auditor".

The members of the industry commented on the need to define and give more details on what is meant by a licensed auditor.

#### **FSA Response:**

The FSA is in agreement with the need to maintain requirements and agreed to the proposed definition, which has been modified and proposed below to be inserted in the proposed code.

Definition of "Licensed Auditor"

*"an auditor which would include maintaining and preparation of accounts, financial analysis, providing accounting and financial advice through examination of documents, accounting records and review of methods and*

*procedures for the issue of an opinion as to the correctness or fairness of the document to be examined, operational procedures are adhered to rules and regulations, and administrative processes are reviewed to ensure compliance.”*

- **Comment 2**

“No provision for an alternative compliance officer”

**FSA Response:**

There is no need to include Alternate Compliance Officer in the code. Section 15 in the code includes temporary absence of Compliance officer this includes a specified timeframe of 3 months whereby if the absence continues then a new CO has to be appointed.

Moreover, as this code stems from the provision of the FSA Act, which legislate only “compliance officer”.

- **Comment 3**

1. **Section 8(3) – Appointment of Compliance Officer** – This clause mentions sole traders however it goes on to refer to Directors of a company. Is it the intention that this clause will only apply to a Company that has a natural person as an owner and this person is also the sole Director?

We would request that the Authority extends this provision to apply all Companies with the same provision i.e. where a Company appoints a Director as Compliance Officer then these licensees would be required to submit an independent compliance audit report.

2. **Section 8(5) – Appointment of Compliance Officer** – Does this note mean that only licensees who are licensed the Securities Act and Mutual Hedge Fund Act are allowed to outsource the compliance function?
3. **Section 9(1) – Exemption from the requirement to appoint a Compliance Officer** – Would licensees be allowed to submit an application for exemption to the Authority?
4. **Section 10 – Compliance Officer appointed under the AML/CFT** – If an individual is already appointed as the AML/CFT compliance officer, would this individual automatically be appointed as the Compliance Officer. If not, could application be made for this same individual to be appointed as the Compliance Officer?

**FSA Response:**

1. The FSA will be rewording section 8(3) to align it with the AML/CFT Regulations, 2020.
2. Yes, this is correct only licensees under the Securities Act and Mutual Hedge Fund Act are allowed to outsource their compliance function.
3. There is no need to submit an application for exemption of Compliance Officer for specific licensees.

4. Yes, licensees would need to apply to be the Compliance Officer for compliance matters in relation to FSA.

- **Comment 4:**

1. **Section 8(3) – Appointment of Compliance Officer** – This section is detailed under “Appointment of CO”, however the above is an important introduction to an annual reporting obligation for which special attention should be given and more details should have been provided.

The Guideline as a whole is said to be in accordance with FSA Act, for which section 23 (1) of the Act introduces the AML/CFT Act. We note that the above section (7.3) introduces a new requirement that does not seem to appear in the FSA Act, AML/CFT Act or AML/CFT Regulation and related amendments.

We note that the exclusion of a director being appointed CO, should be introduced as an exemption for small licensees in point 8 where there is a restriction imposed on the CO not to have an operational role in the Company. Of course the exemption should introduce conditions of maintaining independence in the performance of these two roles.

If the matters addressed above remain as is, it will introduce inefficiency in the compliance function as well as additional cost burden on small licensees. We would appreciate that the Section 7.3 of the Guideline is revised to align with the requirements that are stipulated in the Act & Regulation and provide more structure as to the expected form and content of the obligation set out in the Act.

These two particular sections of the Act appear to cater to small licensees, and provides the flexibility of submitting a self-assessment report upon request and possibility to submit a compliance report. It is important to note that it will be a common practice for the small licensees that face human resource and budgetary constraint to employ a CO that is also a director of the company. As such, the provision of self-assessment compliance report to the respective supervisory authority should apply for Section 7.3 of the Guideline instead of a complete new requirement of an independent compliance audit report.

Following through from the above argument, the independent compliance audit report imposes an additional audit cost constraint on the small licensees. It therefore defeats the purpose of introducing the option for small licensees to appoint the director as the CO with the aim to reduce cost constraint on these licensees. Special regulation of compliance (especially for small licensees) should not be stricter than AML/CFT rules.

It seems that this provision of the Guideline worsens the status of small companies (less than 5 employees) because it imposes an additional obligation of reporting obligation. In this case, it seems reasonable to offer an alternative obligation for such officers (self-assessment report or annual report, but not both of them). This measure will also maintain fewer costs for the reporting.

If the Authority chooses to proceed with the independent compliance audit report, then are these small licensees (which are most likely also the one with a director as the CO) expected to do a self-assessment report upon request, compliance report and an independent

compliance audit report? This seems to be a huge impractical burden placed on small licensees.

Additionally, the section specifically denotes that the requirement of the independent report is applicable in small licensees (where director is a CO), so will large licensees (>5 staff) that also have a director as a CO not have the same obligation? If so, it is not a fair imposition on small licensees.

The proposed independent compliance audit report as per Section 7.3 of the guideline also denotes that the submission is made as part of the licensees' annual report. Can the Authority clarify whether by annual report they mean the Annual Audited Financial Statement or the Annual Compliance Form? If the latter is implied, then this will also pose a contradictory statement. This is because licensees' Annual Compliance Form are submitted by 31.01 of each year, whereas audited financial statements (which require time engagement of the licensed auditor) are due by 30.06. The shortage of existing licensed auditors and their limitation on their availability, it will imply that the auditor will have to conduct two visits at the licensee to perform the Independent Compliance Audit and Independent Financial Audit to meet the obligations.

#### **FSA Responses:**

1. The FSA will be moving completely away from its position which requires an independent compliance audit report. \

- **Comment 5:**

1. There is a severe shortage of Compliance officers on the market.
2. Compliance officers who have the knowledge to put in a compliance framework required is even rarer; it requires a multitude of skills – understanding of laws, ability to read regulations, guidelines, understand and analyse the impact, ability to design processes, understand software and see how to adapt the process in the software, design reporting, etc., A large part of Compliance is now IT driven and automated; even digital verification, etc.

The skills are rare as many people can follow a process or framework but to put one in requires additional skill. Many of the current compliance officers in Seychelles are under-skilled and due to the limited supply worth their price in gold. The practice is that compliance just checks documents, if they are certified, doing world check, etc. This was an approach 10 years ago but the industry has now evolved. Risk factors like geography, product, etc. we're not taken into account.

The compliance officer now puts in the framework to assess risk, trains the staff on compliance, monitors the processes, reports on deviations, etc. Day to day compliance is handled by operations, who are the first line of defence. Based on risk, matters are escalated. Given these constraints, we propose that the FSA create a code which will ensure a massive and continuous training of competent compliance persons in the industry to protect the jurisdiction. This has been detailed below:

- Whilst writing exams helps with educational qualifications there needs to be on the job training. The FSA may consider trainee compliance officers with minimum qualifications / experience with a stipulation of a timeline, monitoring, et. This will help increase the pool and create Compliance officers of quality over a period of time.
  - Therefore, the FSA may consider experienced or qualified professionals being trained as a compliance officer with timelines / plan working under the aegis of a competent Director / Group Compliance officer (overseas) who is determined fit and proper. The progress can be monitored by the FSA.
  - Further, the Compliance officer reports to the Board. It is rare that a Compliance person reports to Regulator. It is the duty of the Board to then inform the Regulator. The only situation where a compliance officer may file directly is a STR.
3. As per the Employment law, the Compliance officer is entitled to leaves – annual and sick. To notify FSA of every sick leave day or annual leave would be difficult. Being a responsible person, it would be their job along with the Directors to ensure continuity during their absence, make a plan of work and its execution.
  4. Given the shortage of Compliance officers in Seychelles, 3 months may not be adequate for a replacement. Therefore, if the FSA may have to consider a trainee if there are no other options.

**FSA Responses:**

1. The FSA have already committed through their strategic plan 2021 -2025 in developing the NBFS labour market in order to build the capacity of Compliance officers in the industry through scholarships of training.
2. Furthermore, in the review for the code for fit and proper there will be a provision for trainee compliance officers. This will address the major shortages of highly qualified compliance officers in the industry.
3. Make reference to Section 15 of the Code.
4. The FSA believes that 3 months is adequate time for a replacement of a CO.

• **Comment 6:**

1. It is noted that the code does not make any reference to Managed Service Providers (MSP) though it is understood that the function of the Compliance Officer and Alternate Compliance Officer under the AML/CFT Act should form part of the human resources being provided by the MSP.
2. On page 4 in the interpretation for “relevant working experience”, please check the word “filed” as it appears it is a typo and should be “field”.

## **FSA Responses:**

1. In relation to the MSP there are policy work that the authority is envisioning in doing to address this situation. This point will be taken up in the next Fiduciary Working Group Committee and thereafter to the whole industry.
  2. The typo is duly noted and has been reflected in the paper.
- **Comment 7:**
    1. **Section 1 – “Independent Compliance Audit”** – This is not an industry practice therefore we recommend to remove. If you decide to apply, then it should be applicable only at the FSA’s request. You should also define who is eligible to perform such an audit. You should also define who is eligible to perform such an audit.
    2. **Section 5(1) – General information about the compliance function** – Amending as per track changes as the common departments/units of a firm.
    3. **Section 5(3) – Operational risk and compliance risk – “This assessment must be documented and subject to periodic amendments”** – More clarifications will be needed on this assessment and how often should be conducted. We understand that this can also be part of the annual report represented to the Board of Director.
    4. **Section 6 – Responsibility of licensees** – by adding the two points up below:
      - (j) give the relevant authority power to the compliance function so that can perform their proper monitoring i.e. request information from different departments or have access to licensee’s systems to perform their duties.
      - (k) provide relevant economic and technological resources for the training of employees on compliance and AML matters.
    5. **Section 10 – “Undertake the role of Compliance officer under the AML/CFT Act”** – We also understand this is applicable to the OCO as the latter falls under the definition of the Compliance Officer approved by the Authority under the FSA Act.
    6. **Section 11 – Role of the Compliance Officer** – In the note consider inputting a timeframe.
    7. **Section 12 – Delegation of Duties – “Delegation of duties is not permissible for outsourced service providers”** – We suggest to delete this and have the Outsourced Compliance Officer (OCO) to have same delegations as the Compliance Officer for the following reason(s):
      - OCO may receive support from the Group’s compliance function or generic support from their office personnel / colleagues to assist them on communication with the licensees, collect documents, perform reviews, etc.

- We should indicate though that the ultimate responsibility for the delegated duties should be with the OCO.
- In general, in this section we should not differentiate between the Compliance Officer and OCO as the OCO falls under the definition of the Compliance Officer.

**FSA Responses:**

1. The FSA are moving away from its position on undertaking “independent compliance audit”.
2. Already implemented in the paper.
3. Already integrated in the paper.
4. The FSA is not in agreement for the inclusion of point J. However, we are in agreement to include point K.
5. The same rules and obligations apply for Outsourced Compliance Officer (OCO).
6. This has been duly noted by the authority.
7. Not considered by the FSA.

• **Comment 8:**

1. **Section 1 – “independent compliance audit”** – We take note that the definition provided here pertains to an audit report rather than the actual compliance audit. Also, we propose to define “licensed auditor”, to indicate clearly who can be categorized as such. It should be noted that locally there are very few licensed audit firms or possibly none that undertakes compliance audits.
2. **Section 2 – “reputational damage”** – Change wording to “compliance risk”.
3. **Section 5 – Compliance Function** – We take note that nowhere is any mention of risk based compliance approach to be undertaken, which is the recommended approach per international best practices.
4. **Section 15(2) – Temporary absence of Compliance Officer** – This statement is unclear and doesn’t sound right. Further below we have stated that the Compliance Function reports directly to the Board, however the way this section is worded, it implies that the Compliance Function may report directly to senior management instead, and reporting to the Board may be secondary. We propose the below example as an alternative:

“Dependent on the organizational structure of a Company, the Compliance Function may to some degree execute certain reporting to Senior Management, ideally the CEO of the of the Company. However, ultimately and foremost, the Compliance Function



should always report directly to the Board, as and when required, and at least twice annually.”

5. Would this also apply in cases where there are other staff/subordinates within the Compliance Department which are able to undertake and assist in fulfilling the compliance duties? Wouldn't it be more practical and make more sense to instead inform of any absence that exceeds the temporary absence period? Or alternatively, if this provision is to be maintained for licensees to notify the Authority of any temporary absence of the Compliance Officer, perhaps negate the definition of “temporary absence” to mean “a period of absence which is more than twenty-eight (28) consecutive calendar days or a total of eighty-four (84) calendar days in a consecutive twelve (12) month period.”

**FSA Responses:**

1. Section 5 noted change working to risk based.
2. The suggestion has been integrated in the paper.
3. No comment or response from the FSA.
4. The FSA is in agreement to rephrase section 12 paragraph 1 to better capture and clarify the intent.

• **Comment 9:**

1. **Section 1 – “Compliance Officer” / “Temporary absence”** – Noted there is no mention / definition of the Alternate Compliance Officer (ACO) which is a regulated post. Recommendation to have this included in this included in this document as well.
2. **Section 7 – Board of Directors** – May have to be reviewed to provide clarity. Should typically be 12 consecutive weeks (or equivalent in calendar days) per calendar year.
3. **Section 15(3) Temporary Absence of the Compliance Officer** – The BOD does not have responsibility for the Compliance Function. The Compliance Function reports to the Board. These are two distinct functions / departments.
4. **Section 16(4) – Compliance Manual** – Is that not already captured in the AML/CFT Act under the ACO role, hence our comments to have this included in this document? Secondly, isn't this already part of the licence renewal process under the ICSP Act? Furthermore, what will be the procedure when there are no updates made to a manual during that period of time? Will declaration of no updates / changes suffice?

**FSA Responses:**

1. There are no Alternate Compliance Officer under the FSA Act.
2. The recommendation / suggestion is duly noted.

3. The FSA firmly believes that the Board of Directors do have a vital role to play in the Compliance Function. Therefore, the Authority maintains its current position.

- **Comment 10:**

1. When we appointed a compliance officer it was with the intention of covering both Acts (FSA Act, AML-CFT Act). Do we have to do anything additional?
2. Can we have more information or guidance on the register of compliance breaches?
3. It may not always be possible to comply with 16.4, particularly when there are many changes like in 2021, and it takes time to adapt. On many points we are still waiting for guidance to be able to update procedures.

**FSA Responses:**

1. The existing compliance officer can perform both duties that cover the ambit of FSA Act and AML/CFT Act.
2. It is encouraged that a register for compliance breaches become an internal process for the company.
3. Comment has been duly noted.

- **Comment 11:**

1. **Section 4 – Legal Obligation** – Please check as there may be some contradictions with the statement above on applying compliance standard on a risk based approach unless the phrase in the above sentence is added which speaks to minimum standards.
2. **Section 7 – Board of Directors** – Proposed changes as the Board would then normally delegate that responsibility to the compliance function.
3. **Section 11 – Role of the Compliance Officer** – Propose an addition to say ensure that all applicable requirements that are relevant to the entities are complied with. E.g. Data privacy requirements in the EU which have extra-territorial applicability if the entity holds EU clients on its portfolio.

**FSA Responses:**

1. The FSA does not understand the statement.
2. The FSA is not in agreement. Although the Board of Directors does not have the function but they have the responsibility to oversee the compliance function given that compliance officer reports to them.
3. The FSA is in agreement with your comment and suggestion.

⟨ END ⟩