Financial Services Commission
Mauritius

CIRCULAR LETTER – CL280313

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

28 March 2013

Dear Sir/Madam,

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

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

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

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

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

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

1. **Qualification and experience**

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

2. **Independence of mind**

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

3. **Judgment**

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

4. **Time Commitment**

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

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

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

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

Self

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

Company

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

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

Yours faithfully,

Clairette Ah-Hen
Chief Executive

Financial Services Commission
Mauritius

FREQUENTLY ASKED QUESTIONS (FAQs)

(FAQ280313)

Company Directorship

1. Number of directorships

Q. What would be considered as a reasonable number of directorships

A. FSC have procedures in place for considering whether the current directors or proposed directors have the capacity and are/will be able to perform their duties in accordance with the law and regulatory requirements. These procedures are followed upon the receipt of an application for a new licence, on the renewal of an existing licence or on approval/ notification of appointments of new directors.

When a director serves on multiple boards, it is important that the director ensures that sufficient time and attention is given to the affairs of each board he/she serves on. The FSC considers the different categories of companies (nature and complexity of the business the company operates in, whether the company is part of a group) on which the director is serving, whether the director serves in a non-executive or executive capacity, whether he/she is a member of board committees as well as whether he / she has the support of suitably qualified and experienced support staff to assist him / her in the performance of his / her duties.

Based on the present business environment, records and statistics available, the number of directorship considered reasonable should not exceed a total number of 200 companies.

2. Demonstration of Time Commitment

Q. The circular mentions that "when a director serves on multiple boards, he/she is expected ensure that sufficient time and attention is given to the affairs of each board he/she serves on and that the director must to be able to demonstrate that he / she is will be able to devote sufficient time", how does the director demonstrate that his / her time commitment?

A. There are various ways to go about demonstrating time commitment. The FSC will give due consideration to matters raised by directors, licensees and reporting issuers on a case by case basis.

A logical approach could be to first consider the number of working days in a year (say, on average 220 days) and number of working hours available per day (say, on average 8 hours per working day). Thus:

- a professional director (assuming he also has to devote time to personal commitment and other activities) can spend around 4 hours per day, on average, on his duties as director (this gives a total of 880 (220x4) hours per annum)
- a director in full time employment (assuming he devotes 40 hours per week to his work as a full-time employee) can spend 2 hours a day on his duties as director (this gives a total of 440 (220x2) hours per annum.)

Different categories of companies, depending on the nature and complexity of the business the company operates in, will impose different time requirement on Directors. Therefore the number of board meetings, board committees and time to prepare these meetings will vary.

Examples of such companies are: investment holding companies, actively trading companies, fund management companies or companies which meet the criteria of reporting issuer as per the Securities Act.

As example, Table 1 gives an indication of the number of hours a director is required to spend on these tasks.

Table 1

Category of company	Average No. of Board meetings per company per year	Time required for Preparation and Board meetings	Expected Total hours per year per company
Investment Holding	3	4 hours	12
Active Trading or Funds or Reporting Issuers	10	5 hours	50

Based on the above assumptions and information in table 1, the number of companies a person may serve as director can be calculated.

Table 2 below provides an indication of the number of companies on which a director may serve:

Table 2

Category of Company	Professional Director		Director in full time employment	
		No. of companies		No. of companies
Investment Holding	880/12=	**73**	440/12=	**37**
Active Trading or Funds or Reporting Issuers	880/50=	**18**	440/50=	**9**

It is to be noted that should a person spends most of his time working, let's say 330 days per year and 12 hours per day instead of 8 (one and a half times the number of days in the example), then the number of companies on which a director may serve will increase. The FSC will give due consideration to such matters, if raised, by directors, licensees and reporting issuers on a case by case basis.

3. Number of Directorship for Different Categories of Companies

Q. Other than the available time to prepare and attend meetings, what are the other factors which the director may consider in order to determine whether he is performing his functions properly and is sufficiently involved in the control and management of the companies.

A. One approach would be to consider the different types / categories of companies on which the person is serving as a Director. Issues that may be considered in this case are:

- size, nature and complexity of business of the company, such as whether the company is an investment holding company or is an active trading company or a services related company or an active fund; and
- other factors such as whether the company is part of a group, i.e. how the group is structured, policy issues considered and types of decisions made at board level.

Furthermore, another important factor which may be considered is the availability of suitably qualified and experienced support staff to perform the preparatory work that would assist the director in the performance of his duties. Thus, in case of availability of support staff, the number of companies on which a director may serve will increase and even double, as assumed and shown Table 3 below:

Table 3

Category of Company	Professional Director		Director in full time employment	
		No. of companies		No. of companies
Investment Holding	73 x 2=	**146**	37 x 2=	**74**
Active Trading or Funds or Reporting Issuers	18 x 2=	**36**	9 x 2=	**18**

The Financial Services Commission (FSC) is the independent regulator of financial services other than banking and Global Business in Mauritius. The FSC's regulatory mandate is to license, monitor, and supervise the conduct of business activities in line with the internationally recognised principles and standards under the legal framework of the Financial Services Act 2007.