



**FINANCIAL
SERVICES
COMMISSION**

BULLETIN FOR:
COMPLIANCE – Best Practices

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COMPLIANCE

LEGISLATIVE REFERENCES:	The Pensions (Superannuation Funds and Retirement Schemes) Act, 2004 (the "Pensions Act") Section 11
	The Pensions (Superannuation Funds and Retirement Schemes) (Governance) Regulations ("Governance Regulations") Regulation 9
	The Pensions (Superannuation Funds and Retirement Schemes) (Registration, Licensing and Reporting) Regulations ("RLR Regulations") Regulations 14 - 16

1.0 BACKGROUND

- 1.01 The main objective of compliance in the pension industry is to ensure a fair, transparent, effective and efficient operating environment. Compliance goes beyond simply adhering to the codes, rules and regulations pursuant to the pension legislation and any guidelines or circulars issued by the Financial Services Commission ("FSC"). Compliance is also concerned with meeting the needs and protecting the rights of stakeholders as well as supporting consumer confidence¹.
- 1.02 The Basel Committee on Banking Supervision ("BASEL") defines the compliance function as "an independent function that identifies, assesses, advises on, monitors and reports on a financial institution's compliance risk, that is the risk of legal or regulatory sanctions, material financial loss, or loss to reputation a bank may suffer as a result of its failure to comply with laws, regulations, rules, related self-regulatory organization standards and applicable codes of conduct (together "laws, rules and standards)". Although this definition references the banking sector, it is universally applicable to the regulation of other financial institutions, such as those operating within the framework of the pension industry.
- 1.03 The OECD Guidelines for Pension Fund Governance (2009)² recommends that regulated entities should have mechanisms to assess compliance with the law. Inherent in this provision is the assignment of an officer who is responsible for the implementation of the organization's compliance regime. Further to this

¹ Section 6 of the Financial Services Commission Act identifies this as a core function of the FSC.

² Guidelines for Pension Fund Governance (OECD Secretariat), 2009 accessed on August 17, 2017 at www.oecd.org/pensions/private-pensions/34799965.pdf.

appointment, it is necessary for the appointee to be given the authority and resources for the effective discharge of the responsibilities imposed.

2.0 OBJECTIVE

2.01 The purpose of this bulletin is to:

- Outline the FSC's expectations for licensees and corporate registrants under the Pensions Act and its Regulations;
- Engender a compliance culture within the pension industry; and
- Provide guidance with a view to ensuring that the compliance framework is suitable for the size, nature and complexity of the business models of the licensees and corporate registrants that have oversight of funds and schemes falling within the remit of the FSC.

3.0 LEGISLATIVE REQUIREMENTS

3.01 Section 11 of the Pensions Act requires the administrators, investment managers and corporate trustees of an approved superannuation fund ("fund") or approved retirement scheme ("scheme") to appoint an officer of the company to the position of Responsible Officer. A person so appointed must be registered by the FSC and in the absence of any person, the managing director of the company, or the person who carries out these duties, shall be registered by the FSC to perform this function.

3.02 Section 11(2)(d) of the Pensions Act stipulates that the Responsible Officer is answerable for reporting to the FSC matters relating to compliance at periods to be determined by the FSC. The Responsible Officer is required in the case of an administrator to be responsible for the general administration of all funds and schemes in its portfolio. In the case of an investment manager, responsibility for the assets of the fund or scheme under their management forms the basis of their duty.

3.03 Regulation 9 of the Governance Regulations stipulates the duties and responsibilities to be carried out by the administrator and investment manager of a fund or scheme.

3.04 Responsible Officers in fulfilling their duties must be mindful of the stipulations as set out in Regulations 14, 15 and 16 of the RLR Regulations which articulate the reporting requirements for administrators, investment managers and corporate trustees.

4.0 COMPLIANCE MODEL FRAMEWORK

4.01 The International Compliance Association ("ICA") breaks down the role of a compliance officer into two levels of responsibility:

- Compliance with the external rules that are imposed upon an organization; and
- Compliance with internal systems of control that are imposed to achieve compliance with the externally imposed rules.

Further, ICA notes that there are five key areas of a compliance function. These are:

1. to identify the risks that an organisation faces and advise on them (identification);
2. to design and implement controls to protect an organisation from those risks (prevention);
3. to monitor and report on the effectiveness of those controls in the management of an organisation exposure to risks (monitoring and detection);
4. to resolve compliance difficulties as they occur (resolution); and
5. to advise the business on rules and controls (advisory).

In crafting its compliance framework, administrators, investment managers and corporate trustees should exercise care in ensuring the above elements are incorporated.

4.02 Compliance Policies, Standards and Procedures

4.02.1 An effective compliance regime includes policies and procedures and indicates the entity's commitment to detect, prevent and address non-compliance. How detailed these policies and procedures are will depend on the complexity of the entity. Policies and procedures are usually regarded as roadmaps for the entity to follow. Therefore it is imperative that they are communicated and understood by the entire organization.

4.03 Management Oversight

4.03.1 The Board of Directors of a corporate entity is responsible for defining, implementing and improving its risk management strategy and systems, and for establishing a high ethical standard throughout the entity. In setting up the compliance framework, there is need for management to ensure that the system implemented is working on an on-going basis.

4.03.2 Further, it is of great necessity to communicate the importance of compliance to the entity as a whole and to highlight the repercussions of non-compliance. The entity must monitor, audit and respond quickly to allegations of misconduct. Monitoring should incorporate real time review of operating practices and detection of compliance problems.

4.04 Training

4.04.1 Compliance training aids in broadening employees' understanding of the legal, ethical and corporate policy boundaries within which an entity operates. It is therefore necessary to educate employees on the relevant laws and regulations, codes of conduct and standard operation policies and procedures pertaining to the entity to enhance the relationship between employees and the relevant stakeholders. It is important that the method and frequency of training is effective in imparting information and communicating the compliance culture.

4.04.2 The implementation of a formal education and training programme clearly serves to ensure that employees are fully cognizant of policies and procedures. It also furthers employees' understanding of their respective roles in adopting and following the guidelines, and ensures that they operate within established regulatory parameters.

5.0 THE FSC'S EXPECTATIONS REGARDING COMPLIANCE

5.01 While the Pensions Act and the attendant Regulations address the responsibilities and duties of a Responsible Officer, the legislation does not specify the criteria for good governance of corporate entities. The Board of Directors has the ultimate responsibility for the establishment of a compliance framework appropriate for the nature, scale and complexity of the business of the regulated entity. The FSC, among other things, evaluates the contents of compliance reports to ascertain whether they are sufficient to keep Board and senior management adequately apprised.

5.02 Licensees and corporate registrants should assess the extent to which risk management activities are disclosed in reports provided to trustees. Such breadth of analysis requires regulated entities to have a good compliance regime in place. Consequently, at a minimum, the FSC recommends that the corporate entity does the following:

- Establish a corporate compliance function to monitor the entity's compliance with relevant laws, regulations and guidelines.³ Where the operations of the regulated entity are complex the compliance personnel who is tasked with creating a compliance framework and culture within the organization and who supports the Responsible Officer should be appointed. This compliance personnel should have direct access to the Board and Chief Executive Officer.
- Establish a monitoring process to ensure real time detection and prevention of breaches.
- Establish an audit function to review business practices; conduct risk assessments and recommend and test controls.
- Ensure on-going compliance training of all staff.
- Ensure standard operating policies and procedures are in keeping with compliance requirements and are kept up-to-date.
- Regularly review the entity's control environment.
- Ensure that the compliance function is adequately resourced and that the operatives possess the qualifications necessary to appropriately carry out its mandate.
- Develop and issue periodic compliance reports to the Boards of Trustees and Directors.

6.0 FSC'S ENFORCEMENT POWERS

- 6.01 The FSC may apply an array of enforcement powers where it is aware that corporate entities, registrants or licences, are non-compliant with reporting, governance and other requirements applicable under the existing legislation. This can *inter alia* involve warnings, issuance of directions, suspension of licenses, cancellation of licences, cease and desist orders, prosecutions, arrests, seizures, court injunctions/orders, assessment of fixed penalties, and court prosecution options.

Questions regarding this bulletin may be directed to:

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³ Guidelines are published on the Financial Services Commission Website (<http://www.fscjamaica.org>).

References:

1. Regulations for Compliance Officers RR/P&R/09/03 accessed on August 17, 2017 at https://www.pencom.gov.ng/docs/Regulations_on_Compliance_Officers.pdf
2. Basel Committee on Banking Supervision (1998), 'Framework for Internal Control Systems in Banking Organisations' accessed on August 17, 2017 at <http://www.bis.org/publ/bcbs40.pdf?noframes=1>
3. AER Compliance Procedures and Guidelines – National Energy Retail Law, Retail Rules and Regulations, Version 3, September 2014