

# **MINIMUM GUIDELINES FOR THE ROLE AND APPOINTMENT OF COMPLIANCE AND REPORTING OFFICERS PURSUANT TO THE FINANCIAL SERVICES REGULATORY COMMISSION ACT, AND OTHER RELEVANT LEGISLATION**

## **1. Introduction**

In accordance with regulation 12 of the Anti-Money Laundering Regulations (“AMLR”), No. 46 of 2011, regulation 12 of the Anti-Terrorism (Prevention of Terrorist Financing) Regulations (“ATR”), No. 47 of 2011 and paragraph 28 of the Financial Services (Implementation of Industry Standards) Regulations (“FSR”), No 51 of 2011, a regulated entity is required to appoint a fit and proper individual approved by the Financial Services Regulatory Commission (“FSRC”) as its Compliance Officer (“CO”).

Depending on the size, nature and complexity of the regulated entity, the CO may also be appointed under regulations 10(6) and 12(2)(f) of both the AMLR and ATR to perform the role of CO and Reporting Officer (“RO”), subject to the approval of the FSRC. In a small regulated entity, the CO may also perform a business function in the regulated entity. The FSRC will consider approving an individual who performs the CO function for a group of companies of which the regulated entity is a member.

The FSRC may also direct the removal of a CO/RO, in which case it is the responsibility of the regulated entity to identify another suitably qualified individual for approval and subsequent appointment as the CO/RO.

## **2. Duties and Responsibilities of the Compliance Officer**

The main responsibility of a CO is to put in place systems and controls (including clear lines of accountability) to ensure compliance with applicable laws and the internal policies of the regulated entity by its employees, agents, and other contractors.

The CO should also ensure that compliance risk is understood and managed, and that the regulated entity’s compliance systems are part of its business operations. The term “compliance risk” means uncertainty giving rise to the possibilities of legal or regulatory sanctions, material financial loss, or loss to reputation as a result of an entity’s failure to comply with laws, generally accepted industry standards, and/or internal policies.

The CO aims to promote a culture of compliance within the regulated entity and is the first point of contact for the FSRC. He or she should have the trust and confidence of the regulated entity’s Board, senior management and employees and is sufficiently independent to perform his or her duties objectively.

As stipulated in regulation 12 of both the AMLR and the ATR, a CO shall:

- be a senior officer with relevant qualifications and sufficient experience to enable him or her to respond appropriately to enquiries relating to the regulated entity and the conduct of its business;
- be responsible for establishing and maintaining such manual of compliance procedures in relation to the business of the regulated entity as the Regulator may require;
- be responsible for ensuring compliance by staff of the regulated entity with the following:
  - i) the provisions of the AMLR and ATR and any other law relating to money laundering, the proceeds of crime or terrorist financing;
  - ii) the provisions of any manual of compliance procedures; and
  - iii) the internal reporting procedures established under regulation 8 of both the AMLR and ATR;
- act as a liaison between the regulated entity and the Regulator in matters relating to compliance with the provisions of the AMLR and ATR and any other law or directive with respect to money laundering, the proceeds of crime or terrorist financing;

- conduct ongoing staff training programs, make the necessary arrangements for updating and refreshing staff at regular intervals in order that staff of the regulated entity remain familiar with new developments, trends and techniques of money laundering and terrorist financing in relation to their job descriptions and responsibilities; and
- prepare and submit to the Regulator written reports on the regulated entity's compliance with the provisions of the AMLR and ATR and any other law or directive relating to money laundering, the proceeds of crime or terrorist financing. The reports shall be prepared in such form and submitted at such time as the Regulator may determine.

### **3. Role of the Board and Senior Management**

The regulated entity's Board and senior management should administer and monitor the ongoing competence and efficiency of the CO and the compliance function, including a reporting system so that employees can report misconduct and compliance failures without fear of reprisal.

The CO's duties, responsibilities and reporting lines should be clearly documented. Senior management and the Board should provide the CO with all appropriate support, including access to all relevant information and shall not engage in any activity that threatens the independence of the CO. The CO shall have unrestricted access to senior management, executive and non-executive directors and auditors of the regulated entity. The CO should report to the Board on matters such as:

- an assessment of the key compliance risks the regulated entity faces and the steps being taken to address them;
- an assessment of how the various parts of the regulated entity (e.g., divisions or units, product areas, subsidiaries) are performing against compliance standards and goals;
- any compliance issues involving senior management and the status of any associated investigations or other actions being taken;
- material compliance violations or concerns involving any other person, division or unit of the regulated entity and the status of any associated investigations or other actions being taken; and
- any enforcement or other actions being taken by the FSRC or other Authority.

### **4. Duties and Responsibilities of the Reporting Officer**

As stipulated in Regulation 10(2) of both the AMLR and the ATR, an RO shall, among other things:

- receive reports from any person obligated to make reports to the RO or who may wish to do so, of any information or other matter that comes to the attention of that person which gives rise to knowledge, suspicion or reasonable grounds for knowledge or suspicion that another person is engaged in money laundering or is in receipt of the proceeds of criminal activity;
- consider the reports that have been forwarded to him or her in light of all other relevant information, for the purpose of determining whether the information or other matter gives rise knowledge, suspicion or reasonable grounds for knowledge or suspicion that another person is engaged in money laundering or is in receipt of the proceeds of criminal activity;
- disclose in writing to the FIU within twenty four (24) hours all relevant information that comes to his or her knowledge or is in his or her possession, after it is determined that the information or other matter reported to him or her gives rise to a knowledge or suspicion that a person is engaged in money laundering or is in receipt of the proceeds of criminal activity;
- maintain a register of all reports made to him or her that includes details of the dates on which reports were made, the person who made the reports and information sufficient to identify the relevant documents.

## 5. Qualifications, Education and Fit and Proper Requirements

Before granting approval of an application for a CO/RO, the FSRC must be satisfied that the proposed CO/RO is fit and proper. Each case will be considered on its own merits and the FSRC may have regard to current, past and prospective matters. Due regard will be given to his or her:

- honesty, integrity and reputation;
- competence and soundness of judgment;
- capability and qualification;
- record of compliance; and
- financial soundness;
- time dedicated to carry on functions of a CO/RO.

A CO/RO should be able to demonstrate at a minimum that he or she:

- has had recent and relevant work experience in a compliance-related role or in a supportive function for a minimum of at least two (2) years. Favourable consideration will be given to administrative and managerial skills, performance at work, ability to make objective and independent assessments, timely response to requests for information and other related matters.
- has a specific financial services industry, compliance, or anti-money laundering related certificate, diploma or degree recognized by the FSRC as being appropriate for this purpose. Specific qualifications may include an International Compliance Association (ICA) International Diploma in Anti-Money Laundering or Compliance; International Risk Manager Designation; Certified Anti-Money Laundering Specialist (CAMS); Certified Compliance & Ethics Professional; Certified Risk and Compliance Management Professional (CRMP); or other certificates, diploma or degree in the field of finance, banking, accounting, and/or other financial services. This list is not exhaustive as the FSRC reserves the right to recognize any other related qualification that it deems acceptable. In circumstances where the FSRC considers a qualification as inadequate, it may request that the regulated entity arrange for the applicant to undertake additional training within 6 months of the appointment in order to be better prepared for the role of CO/RO.
- has a good understanding of the laws of St. Kitts and Nevis and the written policies and guidelines that may issued by the FSRC, especially as they relate to financial services regulation and their relevant industry of operation;
- is able to demonstrate sound judgment;
- understands the nature of the business within which he/she operates;
- has the ability to read, write and understand the English language.

It is the responsibility of the regulated entity to satisfy the FSRC that the proposed CO has the relevant qualities, experience, and skills to perform his/her duties. Compliance with the “fit and proper” standard is both an initial test applied on the application for approval and a continuing test applied to the ongoing performance of a CO/RO.

## **6. Submitting an Application for Approval of a Compliance/Reporting Officer**

The regulated entity should apply for approval using the prescribed application form published on the websites of the FSRC Branch Offices in the island of St. Kitts and the island of Nevis:- [www.fsrc.kn](http://www.fsrc.kn) and [www.nevisfsrc.com](http://www.nevisfsrc.com), respectively. Along with the prescribed application form and fee of EC\$150.00, the regulated entity should submit on behalf of the proposed CO/RO, the following:

- a resume or curriculum vitae
  - i) outlining the relevant qualifications and experience of the proposed CO; and
  - ii) including the names, addresses and telephone numbers of previous employers;
- a police certificate or sworn affidavit (where a certificate is not issued) as to the non-criminal record of the applicant for the past five (5) years;
- two original letters of reference (one of which must be from a financial institution);
- two notarized copies of identification (one such copy to be of the identification page of the proposed applicant's passport);
- notarized copies of professional and educational qualifications; and
- an organizational chart showing direct access to the regulated entity's Board and to whom the CO will report.

Where a proposed CO will serve in a dual capacity, this should be made clear and explained. Where the application is submitted by a prospective regulated entity not yet licensed, the FSRC may consider the approval of a CO at the same time. An approval of a CO for a regulated entity does not constitute approval for that individual to act as CO for another regulated entity. If the CO function is proposed to be outsourced, the FSRC will assess the relevant individual in a similar way, but will also ask for a copy of the contract for the CO's services. The FSRC may require additional information from the regulated entity.

The Regulated Entity will be required to apply to the FSRC annually for the renewal of the appointment of the CO/RO using the prescribed form. A renewal fee of EC\$100.00 will also be applicable.