

COMPLIANCE

The Finance (Miscellaneous Provisions) Act 2023 has brought a number of amendments to the Financial Services Act and in this Axis Finance Act Series 2023 video, I'll be taking you through two important changes. Firstly, the introduction of the definition of AML/CFT legislation and secondly the powers which have been given to the FSC and the Chief Executive of the FSC.

Impact of the AML/CFT definition

The introduction of the definition of the AML/CFT legislation means that it is now clear that the Commission will look at compliance or rather non-compliance with not only the Financial Intelligence and Anti-Money Laundering Act but also the United Nations (Financial Prohibitions Arms Embargo Travel Ban) Sanctions Act and any regulations or guidelines issued under it or under the FIAMLA. So, a few sections have been amended to reflect the above.

01

Section 7 (1) enables the Commission to give directions to any person to ensure compliance with a relevant Act which were provided in the FSA and now also includes compliance with the AML/CFT legislation.

02

Section 42 which is under the part VII of the Act about Powers of the Commission and more specifically concerns request for information has been amended such that information, records or documents required by the Chief Executive shall also include those required in connection with the discharge by the Commission of its functions under the AML/CFT legislation.

03

As per section 44 (1) The Chief Executive may also order that an investigation be conducted into the business or any part of the business of the licensee or its associate where the Chief Executive has reasonable cause to believe that a licensee has failed or is failing to take such measures as are required pursuant to the AML/CFT legislation. This section was previously limited to obligations under FIAMLA only. A new sub section has also been added to give powers to the Chief Executive to authorise an investigator to issue such directions to ensure the smooth running of the investigation.

04

Section 46 regarding powers to give directions now allows the Chief Executive to give direction to a licensee where the latter has contravened or is likely to contravene the AML/CFT legislation.

05

But it is not only about giving directions because with the amendments, section 53 regarding Disciplinary proceedings, where the Chief Executive has reasonable cause to believe that a licensee has contravened any relevant Act, direction or order issued under a relevant Act or any condition of his licence including the AML/CFT legislation, he may refer the matter to the Enforcement Committee for such action as the Enforcement Committee may deem appropriate.

Amendments regarding powers of the Commission

Section 7 (4) has been amended to provide for situation where the Commission may, at the request of the foreign supervisory institution, where it considers appropriate, exercise its powers under sections 42, 44, 46, 49, 50 and 75 for the purpose of assisting the foreign supervisory institution in its regulatory functions. Under the same subsection, the Commission may also now where it considers appropriate, request for any information, document or take any statement from a licensee or past licensee, an officer or past officer of a licensee. A new section has been added to provide that request made under section 7 (4) shall be complied within the time delay specified in the request.

Powers given to the Chief Executive in relation to Administrative Penalties

Section 22A has been added to provide that where a licensee fails to pay administrative penalties, the Chief Executive may, after giving notice of not less than 90 days to the licensee, terminate the licence subject to such terms and conditions as he deems appropriate in the circumstances.

It should be noted that section 53A has also been amended so that the Chief Executive no longer be part of the Settlement Committee.

Other amendments

Apart from the above, some new sections have been added to the Financial Services Act regarding various areas.



Compliance Report

As per 51B, licensees are required to submit an independent compliance report on such terms and conditions as may be determined by the Commission.



Management Licence

Section 77 (4) a management company shall comply with any obligations and requirements with respect to its functions of administrator or registered agent of a Global Business Company or Authorised Company, as may be specified in FSC Rules.



Filing

A new section has been added at 87B regarding filing. Any documents required to be filed or submitted to the Commission shall be filed or submitted in such form and manner as the Commission may determine.

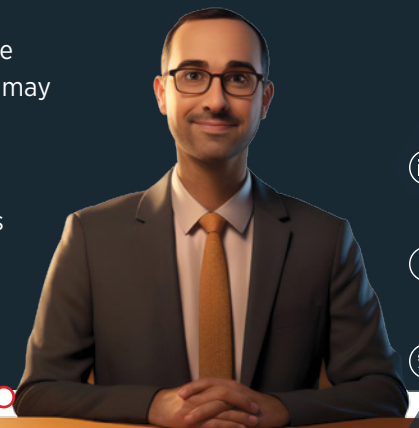


No limitation for recovery

As per 89B, no law relating to the limitation of action or prescription shall bar or affect any action of the Commission for recovery of annual fees and charges referred to in section 22 (section 22 is about licence fees).

A new subsection has been added at 93 (2) (AA) to provide that any FSC Rules made by the Commission under the relevant Acts shall not require the prior approval of the Minister and may now also provide for the imposition of obligations and responsibilities of holders of a Management licence.

Protecting your business from evolving financial risks and regulatory compliance challenges is critical in today's landscape. Don't let non-compliance threaten your business's future. Contact us on info@axis.mu to learn how our compliance solutions can help your business stay ahead of the curve.



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