|  |
| --- |
| **GUIDANCE NOTES** |

**2019.09 COMPLIANCE CHARTER (v.3)**

* The Compliance Charter contains guidelines to assist the organisation with defining and specifying the role of the compliance function within the organisation.
* The responsibilities set out in this Charter are mandatory and must be enforced in order to ensure the effectiveness of the organisation’s compliance function.
* The compliance structure as set out in this document, is provided as a guideline only, and the organisation must tailor the structure according to the management arrangement of the organisation.
* The contents and format of this document are provided as an example only. It is the responsibility of the user to customise the document to the user’s specific needs, circumstances and applicable legislation.
* **Disclaimer:** This document is of a generic nature and was compiled taking relevant statutory requirements into consideration. This document is provided as a guideline only and any reliance the user places on this document will be at the user’s own risk. Moonstone accepts no liability for any damages suffered or losses incurred arising from the use of this document.

**COMPLIANCE CHARTER**

|  |  |
| --- | --- |
| Version |  |
| Publishing Date |  |
| Last Review Date |  |
| Frequency of Review |  |
| Next Review Date |  |
| Policy Owner |  |
| Responsible Business Unit |  |

**TABLE OF CONTENTS**

[1. Introduction 4](#_Toc18418974)

[2. Definitions 4](#_Toc18418975)

[2.1 Compliance Charter 4](#_Toc18418976)

[2.2 Compliance Function 4](#_Toc18418977)

[2.3 Compliance Philosophy 4](#_Toc18418978)

[2.4 Compliance Risk 4](#_Toc18418979)

[2.5 Governing Body 4](#_Toc18418980)

[2.6 Top Management 4](#_Toc18418981)

[2.7 Chief Compliance Specialist And Manager 4](#_Toc18418982)

[2.8 Compliance Officer 4](#_Toc18418983)

[2.9 Regulatory Requirements 4](#_Toc18418984)

[3. Compliance Philosophy 5](#_Toc18418985)

[4. The Compliance Structure 5](#_Toc18418986)

[5. The Compliance Function 6](#_Toc18418987)

[5.1 Authority 6](#_Toc18418988)

[5.2 Rights And Duties Of The Chief Compliance Specialist And Manager / Compliance Officer 6](#_Toc18418989)

[5.3 Duties Of The Compliance Function 7](#_Toc18418990)

[6. Governance 8](#_Toc18418991)

[6.1 Top Management’s Responsibilities 8](#_Toc18418992)

[6.2 The Ceo’s Responsibilities 8](#_Toc18418993)

[6.3 The Audit Committee’s Responsibilities 8](#_Toc18418994)

[6.4 The Risk Committee’s Responsibilities 9](#_Toc18418995)

[6.5 The Compliance Function & Chief Compliance Specialist And Manager’s / Compliance Officer’s Responsibilities 9](#_Toc18418996)

[6.6 The Employees’ Responsibilities 9](#_Toc18418997)

[7. Implementation 9](#_Toc18418998)

[8. Revision Of The Compliance Charter 9](#_Toc18418999)

# INTRODUCTION

This document serves as the organisation’s Compliance Charter (‘the Charter’).

The purpose of the Charter is to ensure that the compliance team is appropriately mandated and empowered to perform its function without interference. The Charter furthermore confirms the authority of the Compliance Function, as well as management’s support thereof, and intends to strengthen the effectiveness of compliance within the organisation as a whole.

The Charter describes the governance, roles and operation of the organisation’s compliance function and communicates the organisation’s commitment to embedding a compliance culture within the organisation.

The Charter applies to all employees, management, representatives and/or intermediaries. As a result, relevant stakeholders will be kept abreast of any regulatory developments that may have an impact on daily job tasks and other activities.

Non-compliance with this document may lead to disciplinary action in terms of the organisation’s Disciplinary Code.

# DEFINITIONS

## Compliance Charter

Compliance Charter refers to a document which establishes the compliance function and compliance culture of the organisation, and sets the direction for how the compliance function is to managed and / or established.

## Compliance Function

The function and / or body within the organisation that is responsible for the effective management of the compliance of the organisation with reference to regulatory requirements, standards, procedures and best practice guidelines.

## Compliance Philosophy

The approach which the organisation has adopted with reference to the effective implementation of the compliance function as a whole, which implementation incorporates ethical values such as accountability and transparency.

## Compliance Risk

The risk which arises when the organisation does not adhere to regulatory requirements, and has no procedures in place in order to mitigate any instances of regulatory non-compliance.

## Governing Body

The Governing Body of the organisation refers to a person or group of people that governs the organisation, set directions and hold Top Management to account. This specifically refers to the Executive Committee and the Audit Committee.

## Top Management

Top Management refers to a person or group of people who direct and control an organisation at the highest level.

## Chief Compliance Specialist and Manager

The Chief Compliance Specialist and Manager refers to the head of the compliance function who reports directly to the Top Management and assist by advising on regulatory compliance matters, ensuring the compliance function is operating as it should.

## Compliance Officer

The Compliance Officer refers to the person reporting directly to the Chief Compliance Specialist and Manager, and assists with the compliance functions of the organisation.

## Regulatory Requirements

Regulatory requirements mean the statutory and regulatory requirements, standards and best practice guidelines.

# COMPLIANCE PHILOSOPHY

The organisation’s compliance philosophy is to rethink the way in which the organisation operates, taking into consideration the organisation’s mission, vision and values which are built into the day-to-day operations of the organisation.

Our core values are based on:

* Building exceptional relationships and providing outstanding services;
* Recruiting and maintaining a highly qualified team with a sound knowledge and understanding of the markets and industries in which we operate;
* Ensuring our interactions with partners, employees and the market, are based on sincerity, loyalty, honesty and integrity;
* Striving to build sound long term one-on-one relationships with our brokers, partners, clients and associates; and
* Our continuous commitment to treating our customers fairly.

# THE COMPLIANCE STRUCTURE

A formal compliance reporting structure is imperative for establishing a culture of compliance throughout the organisation.

Top Management assumes responsibility for directing how compliance should be approached and addressed throughout the organisation.

To this end, Top Management confirms that it will take ultimate responsibility for the organisation’s compliance with statutory and regulatory requirements. Where necessary, the responsibility for the implementation and execution of effective compliance management will be delegated to the members of the Governing Body.

The compliance function, which in this section refers to the Chief Compliance Specialist and Manager and the Compliance Officer, shall ensure that Top Management and the Governing Body are advised on the regulatory compliance risks to which the organisation and its business units are exposed. The reporting structure enables the compliance function to perform its duties independently and effectively.

The compliance function forms part of the legal department of the organisation. The head of the compliance function is the Chief Compliance Specialist and Manager, who may directly report to the Top Management. This emphasises the view that Top Management is ultimately responsible for the compliance of the organisation. The compliance function also consists of a Compliance Officer, who reports directly to the Chief Compliance Specialist and Manager and who is also responsible for assisting Top Management in ensuring that the compliance function is operating as it should. The following diagram illustrates the compliance structure.

Top Management

Audit & Risk Committee

Chief Compliance Specialist and Manager

Executive

Committee

Compliance Officer

The underlying principles of the compliance structure are as follows:

* Accessibility to the executive committee, the Top Management and Audit Committee, and any other relevant stakeholders;
* Adequate resources to ensure the proper facilitation of the compliance function;
* The timeous identification and reporting of any issues of non-compliance; and
* The communication of any amendments to legislation and regulatory requirements that may have an impact on the organisation’s business operations.

Each respective member of Top Management bears the onus in ensuring that they familiarise themselves with the compliance documents stemming from:

* Regulatory requirements (i.e. legislation);
* Policies; and
* Standard, Procedures & Best Practice documents.

# THE COMPLIANCE FUNCTION

Our business dealings as a financial services provider have prompted us to establish and maintain a compliance function within our organisation. The compliance function, which includes the Chief Compliance Specialist and Manager / Compliance Officer, is responsible for assisting Top Management in ensuring compliance with all applicable regulatory requirements.

## 5.1 AUTHORITY

The compliance function operates independently and objectively whilst at all times remaining transparent.

The compliance function will have:

* Direct access and support from Top Management.
* All compliance reports are submitted to the Executive Committee and functionally thereafter to Top Management.
* Unrestricted access to information including all disclosures which are deemed to be confidential;
* Access to information from all departments, which include human resources and the accounting/audit department;
* Access to all minutes of meetings, including the executive committee, audit and risk committee and board meetings;
* The authority to arrange compliance meetings; and
* The authority to require assistance from all departments of the organisation.

## 5.2 RIGHTS AND DUTIES OF THE CHIEF COMPLIANCE SPECIALIST AND MANAGER / COMPLIANCE OFFICER

The Compliance Officer/s primary role is to facilitate the effective management of the organisation’s regulatory compliance risk.

In light of the above, the duties of the Chief Compliance Specialist and Manager consist of the following (which may be delegated to the Compliance Officer):

* Obtaining the required assistance from relevant employees where compliance controls should be reviewed and/or monitored;
* Acquiring specialised services within or from outside the organisation;
* Ensuring that all compliance policies are adhered to by employees and representative as well as intermediaries of the organisation;
* Unlimited access to all departments and/or units within the organisation and its activities, records, property, staff members and meetings to ensure diligent performance of the compliance function;
* Investigating compliance and due diligence issues within the organisation which may be necessary and not limited to statutory and regulatory breaches and complaints;
* Consulting and providing advice with regard to any proposed business and product developments as well as any relevant documentations which may have compliance implications;
* Setting standards for compliance with relevant legislation, regulations and supervisory requirements;
* Developing, approving, maintaining and facilitating a Regulatory Risk Control Framework and Policies to support the Principle Risk Management Framework;
* Drafting a compliance manual to ensure external departments have access to sufficient and necessary reference material relating to relevant operational controls, compliance controls, procedures, policies and operating manuals;
* Establishing and maintaining a culture of compliance within management which makes provision for the overall objective of risk management;
* Establishing and maintaining working relationships with relevant stakeholders and relevant regulators;
* Monitoring and following up on any recommendations undertaken by management to ensure compliance with recommendations to mitigate risks;
* Identifying the compliance universe of the organisation.

The Chief Compliance Specialist and Manager / Compliance Officer must have the necessary qualifications, experience and professional and personal skills to enable him or her to carry out his or her responsibilities effectively. The Chief Compliance Specialist and Manager / Compliance Officer must have an overall understanding of the organisation’s operation and must understand the obligations, legislation and standards that impact the organisation.

Although the duties as specified above refer to the Chief Compliance Specialist and Manager / Compliance Officer, it remains the responsibility of Top Management to ensure that the compliance function meet its obligations as Top Management will always be liable for any form of non-compliance with regulatory regulations.

The effectiveness of the abovementioned duties is, however, dependent upon the co-operation of all employees of the organisation, in light of the fact that the services which the organisation provides are executed by its employees. This means that compliance must be seen to be done by all employees, with the guidance of the organisation’s Chief Compliance Specialist and Manager / Compliance Officer.

## DUTIES OF THE COMPLIANCE FUNCTION

The primary role of the compliance function is to assist, facilitate and monitor the compliance risks of the organisation. This includes, but is not limited to, the following activities:

* Identify, assess, advise on, monitor and report on the regulatory compliance risk which emanates from the following legislation:
* **Financial Advisory and Intermediary Services Act 37 of 2002**: The Act provides for the registration of financial services providers and regulates the provision of financial services to clients.
* **Financial Sector Regulation Act 9 of 2017**: The Act establishes a system of financial regulation by establishing the Prudential Authority and the Financial Sector Conduct Authority and regulates and supervises financial product providers and financial services providers.
* **Financial Intelligence Centre Act 38 of 2001:** The Act imposes certain duties on institutions and other persons who might be used for money laundering purposes and the financing of terrorist and related activities.
* **Protection of Personal Information Act 4 of 2013:** The Act seeks to promote the protection of personal information processed by public and private bodies; to introduce certain conditions so as to establish minimum requirements for the processing of personal information; and to provide for the rights of persons regarding unsolicited electronic communications and automated decision making.
* **Short-Term Insurance Act 53 of 1998:** The Act provides for the registration of short-term insurers and the regulation of certain activities of short-term insurers.
* **Long-Term Insurance Act 52 of 1998:** The Act provides for the registration of long-term insurers and the regulation of certain activities of short-term insurers.
* **Insurance Act 18 of 2017:** The Act will aims to provide a legal framework for the prudential regulation and supervision of insurance business within South Africa, and introduce a legal framework for microinsurance to promote financial inclusion.
* **Occupational Health & Safety Act 85 of 1993:** The Act provides for the health and safety of persons in their work environment. The Act furthermore imposes certain rights on employees, and duties on employers.
* Promoting a compliance culture with the assistance of Top Management in order to be instrumental in achieving the overall objectives of effective risk management within the organisation;
* Establishing long-term and short-term compliance objectives;
* Design and implement compliance objectives within the overall risk management framework;
* Setting compliance standards;
* Compiling compliance policies and manuals;
* Providing advice on all compliance related matters;
* Continuously monitoring the level and standard of compliance with applicable laws;
* Establish and maintain working relationships with relevant stakeholders;
* Providing the necessary assistance to minimise reputational damage should any material transgressions occur;
* Reporting to the Top Management, Audit and Risk Committees if and when required;
* Attending to recommendations or requests from the Top Management, Audit and Risk Committees; and
* Facilitate and maintain a complaints register in accordance with regulatory requirements.

Any other regulatory requirements which fall outside of the scope of the above legislation will be monitored by the designated functional areas within the business.

# GOVERNANCE

## TOP MANAGEMENT’S RESPONSIBILITIES

Top Management remains responsible for the organisation’s compliance with applicable legislation and regulations, including endorsing the Compliance Charter. Top Management is responsible for the effective governance and risk management of the organisation, as well as for engendering a culture of compliance within the organisation. In so doing, Top Management shall adopt, implement and document an effective governance framework that provides for the prudent management and oversight of the organisation. It is further noted that any exceptions and/or variations to the Charter must be approved by the Top Management team, before it can be deemed valid.

## THE CEO’S RESPONSIBILITIES

The organisation’s CEO remains accountable to Top Management. The responsibility of the CEO is to ensure that all relevant and necessary resources are available and to provide for the effective design, development, implementation, maintenance and improvement of the overall compliance risk and risk management of the organisation. These resources as specified include both financial and human resources, external advice, specialised skills, organisational infrastructure, internal professional development and technology.

## THE AUDIT COMMITTEE’S RESPONSIBILITIES

The audit committee forms a crucial component of the risk management process. The responsibility of the audit committee is to oversee integrated reporting, provide combined assurance, review the finance function within the business, and to oversee the internal and external auditors. The audit committee must oversee financial reporting risks, internal financial controls, and possible fraud risks as it relates to financial reporting, as well as IT risks as it relates to financial reporting.

## THE RISK COMMITTEE’S RESPONSIBILITIES

The Risk Committee is constituted as a committee of the organisation. The risk committee’s responsibility is to oversee and monitor the organisation’s risk and risk management functions. This includes reviewing risk management activities and progress, as well as the disclosure thereof, while at the same time obtaining recommendations to safeguard and address key risk areas.

## THE COMPLIANCE FUNCTION & CHIEF COMPLIANCE SPECIALIST AND MANAGER’S / COMPLIANCE OFFICER’S RESPONSIBILITIES

The main objective of the Compliance Function and the various Compliance Officer(s) is to assist the organisation with the implementation of the necessary compliance controls which will ensure that the organisation adheres to the applicable regulatory requirements in order to limit its compliance risk. The aforementioned will be done through the list of obligations of the Chief Compliance Specialist and Manager, which as indicated, may be delegated to the Compliance Officer, as specified in this Charter in section 5 above.

## THE EMPLOYEES’ RESPONSIBILITIES

Compliance with the relevant regulatory requirements is a duty which all employees must adhere to. Each employee is responsible for complying with the relevant regulatory requirements which is applicable to their area of activity. Each employee must therefore familiarise themselves with the compliance documentation and guidelines as implemented throughout the organisation. Each employee must also follow instructions as issued by the Chief Compliance Specialist and Manager / Compliance Officer. If an employee identifies a problem with regard to the execution of the compliance function, he or she must immediately report and escalate such a complaint or issue of non-compliance.

# IMPLEMENTATION

The organisation regards compliance as a fundamental instrument which allows the organisation to achieve the highest level of competency. Compliance ensures that the organisation is operating in a transparent and ethical manner, and also ensures that its key stakeholders’ interests are protected.

In light of the above, Top Management, with the guidance of the Compliance Function, confirms that it shall ensure that the organisation at all times complies with the regulatory requirements that are applicable to it and furthermore, that the obligations as set out in this Charter shall be complied with.

Failure to do so may result in disciplinary action in accordance with the organisation’s disciplinary code.

# REVISION OF THE COMPLIANCE CHARTER

The Charter is to be reviewed on an annual basis. However, the Audit and Risk Committee may revise the Charter at an earlier stage where requested to do so by Top Management.