

## INVESTMENT SERVICES RULES FOR RECOGNISED PERSONS

### Part B.I: ON-GOING REQUIREMENTS FOR RECOGNISED FUND ADMINISTRATORS

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#### 1. General Requirements

1.1 The Recognised Fund Administrator shall commence the provision of Fund Administration Services within twelve months of the date of issue of the Recognition Certificate by MFSA.

If, for any reason the Recognised Fund Administrator is not in a position to comply with this requirement, it shall notify the MFSA in writing setting out the reason/s for such a delay together with an updated business plan indicating the proposed date of commencement of business. On the basis of the information provided and the circumstances of the case, the MFSA may decide to suspend or cancel the Recognition Certificate.

1.2 The Recognised Fund Administrator shall co-operate in an open and honest manner with the MFSA and inform it promptly of any relevant information. The Recognised Fund Administrator shall supply the MFSA with such information as the MFSA requires.

1.3 Where a requirement demands that the Recognised Fund Administrator notifies the MFSA of an event, such notification shall be made to the MFSA formally, in a durable medium. The request to notify the MFSA of an event shall not be satisfied merely by the fact that the information which ought to be notified to the MFSA is included in a standard regulatory return.

1.4 The provision of Fund Administration Services by the Recognised Fund Administrator shall be effectively directed or managed by at least two individuals in satisfaction of the “dual control” principle. Such persons shall be of sufficiently good repute and sufficiently experienced so as to ensure the sound and prudent management of the Recognised Fund Administrator.

Moreover, the Recognised Fund Administrator shall take reasonable steps to ensure continuity and regularity in the performance of its Fund Administration Services. To this end, the Recognised Fund Administrator shall employ appropriate and proportionate systems, resources and procedures.

1.5 The Recognised Fund Administrator shall notify the MFSA in writing of:

i. a change in the Recognised Fund Administrator’s name or business name (if

different) at least one month in advance of the change being made;

- ii. a change of address, at least one month in advance;
  - iii. the departure of a Director or Senior Manager: within 14 days of the departure. The Recognised Fund Administrator shall also request the Director or Senior Manager to confirm to MFSA that their departure had no regulatory implications or to provide relevant details, as appropriate. A copy of such request shall be provided to MFSA together with the Recognised Fund Administrator's notification of departure;
  - iv. any proposed change to the ultimate beneficial ownership of any party directly or indirectly controlling 10 per cent or more of the Fund Administrator's share capital on becoming aware of the situation. Any new Qualifying Shareholder in the Recognised Fund Administrator shall require MFSA's approval;
  - v. any proposed material change to its business ( irrespective of whether that business would require a licence or a recognition under the Act or not), at least one month before the change is to take effect;
  - vi. any evidence of fraud or dishonesty by a member of the Recognised Fund Administrator's staff immediately upon becoming aware of the matter;
  - vii. any actual or intended legal proceedings of a material nature by or against the Recognised Fund Administrator immediately the decision has been taken or on becoming aware of the matter;
  - viii. any other material information concerning the Recognised Fund Administrator, its business or its staff in Malta or abroad immediately upon becoming aware of the matter.
- 1.6 The Recognised Fund Administrator shall obtain the written consent of the MFSA before:
- i. making any change to its authorized or issued share capital or the rights of its shareholders;
  - ii. establishing a branch in Malta or abroad;
  - iii. taking any steps to cease providing Fund Administration Services;
  - iv. agreeing to sell or merge the whole or any part of its undertaking;
  - v. the appointment of a Director or a Senior Manager responsible for the business of the Recognised Fund Administrator (including the Compliance Officer and

Money Laundering Reporting Officer), in advance. The request for consent of the appointment of any of the above shall be accompanied by a Personal Questionnaire (“PQ”), in the form set out in Schedule II of Part A.I of these Rules – duly completed by the person proposed.

- 1.7 The Recognised Fund Administrator shall maintain sufficient records to be able to demonstrate compliance with these requirements.
- 1.8 The Recognised Fund Administrator shall co-operate fully with any inspection or other enquiry, or compliance testing carried out by the MFSA, or an inspector acting on its behalf.
- 1.9 The Recognised Fund Administrator shall pay promptly all amounts due to the MFSA. In particular, the Supervisory Fee shall be payable by the Recognised Fund Administrator on the day the Recognition Certificate is first issued, and thereafter annually within one week from the anniversary of that date.
- 1.10 The Recognised Fund Administrator shall notify the MFSA of any breach of these requirements as soon as the Recognised Fund Administrator becomes aware of the breach.
- 1.11 If so required by the MFSA, the Recognised Fund Administrator shall do all in its power to delay the cessation of the provision of Fund Administration Services , or the winding-up of such business so as to comply with conditions imposed by the MFSA.
- 1.12 The Recognised Fund Administrator shall notify the MFSA of any material valuation errors (>0.5% of Net Asset Value) relating to a Scheme in respect of which it acts as Recognised Fund Administrator on becoming aware of such error.
- 1.13 The MFSA may, whenever it deems it necessary or expedient, undertake compliance visits to the premises from which the administrative services are rendered. For this purpose, the Recognised Fund Administrator shall ensure that proper accounting and other records are at all times retained at its premises to show and explain the transactions it carries out and the nature of its services and to make such records available to the MFSA.

## **2. General Organisational Requirements**

- 2.1 The Recognised Fund Administrator shall:
  - a. establish, implement and maintain decision-making procedures and organizational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;

- b. ensure that its relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities;
- c. establish, implement and maintain adequate internal control mechanism designed to secure compliance with decisions and procedures at all levels of the Recognised Fund Administrator;
- d. employ personnel with the skills, knowledge and expertise necessary for the discharge of responsibilities allocated to them;
- e. establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the Recognised Fund Administrator;
- f. maintain adequate and orderly records of its business and internal organization;
- g. ensure that the performance of multiple functions by its relevant persons does not and is not likely to prevent those persons from discharging any particular function soundly, honestly and professionally.

***For these purposes, the Recognised Fund Administrator shall take into account the nature, scale and complexity of its business, and the nature and range of Fund Administration Services undertaken in the course of that business.***

- 2.2 The Recognised Fund Administrator shall establish, implement and maintain:
- a. systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question; and
  - b. an adequate business continuity policy aimed at ensuring, in the case of an interruption to its systems and procedures, the preservation of essential data and functions and the maintenance of its Fund Administration Services and activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of its Fund Administration Services and related activities;
- 2.3 The Recognised Fund Administrator shall monitor and, on a regular basis evaluate, the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with Rules 2.1 and 2.2 above and take appropriate measures to address any deficiencies.

## *Compliance*

- 2.4 Responsibility for the compliance obligations of the Recognised Fund Administrator

rests with the Board of Directors of the Recognised Fund Administrator.

- 2.5 The Recognised Fund Administrator shall at all times have a Compliance Officer with responsibility for all aspects of compliance and for acting as the Recognised Fund Administrator's main point of contact with the MFSA.
- 2.6 The Recognised Fund Administrator shall obtain the written consent of the MFSA before the appointment or replacement of a Compliance Officer in advance. The request for consent of the appointment or replacement of a Compliance Officer shall be accompanied by a Personal Questionnaire ("PQ"), in the form set out in Schedule II to Part A.I of these Rules – duly completed by the person proposed. The MFSA reserves the right to object to the proposed appointment or replacement and to require such additional information it considers appropriate.
- 2.7 The Recognised Fund Administrator shall notify the MFSA of the resignation or removal of its Compliance Officer upon becoming aware of the proposed resignation or removal. The Scheme shall also request the Compliance Officer to confirm to the MFSA that his departure had no regulatory implications or to provide relevant details, as appropriate. A copy of such request shall be provided to MFSA together with the Recognised Fund Administrator's notification of departure.

### *Prevention of Money Laundering*

- 2.8 Responsibility for the Recognised Fund Administrator's compliance with its prevention of Money Laundering obligations rests with the Board of Directors of the Recognised Fund Administrator.
- 2.9 The Recognised Fund Administrator shall at all times have a Money Laundering Reporting Officer ('MLRO').
- 2.10 The Recognised Fund Administrator shall obtain the written consent of the MFSA before the appointment of one of its officers to act as MLRO or of the replacement thereof at least twenty one business days in advance. The request for consent of the appointment or replacement of a MLRO shall be accompanied by a Personal Questionnaire ('PQ'), in the form set out in Schedule II to Part AI of these Rules, - duly completed by the person proposed. The MFSA reserves the right to object to the proposed appointment or replacement and to require such additional information it considers appropriate.
- 2.11 The Recognised Fund Administrator shall notify the MFSA of the resignation or removal of its MLRO upon becoming aware of the proposed resignation or removal. The Recognised Fund Administrator shall also request the MLRO to confirm to the MFSA that his departure had no regulatory implications or to provide relevant details, as appropriate. A copy of such request shall be provided to MFSA together with the Recognised Fund Administrator's notification of departure.

## 3. Conduct of Business Rules

- 3.1 A Recognised Fund Administrator shall conduct its business relating to a Scheme by means of a written agreement which shall set out the basis on which its services are to be provided. Such an agreement may be entered into either with the Scheme or alternatively with the Manager of such a Scheme. The agreement shall be written in clear and plain language.
- 3.2 An agreement with a Scheme or its Manager shall include statements on:
- i. whether the Recognised Fund Administrator is appointed by the Scheme or its Manager;
  - ii. the nature of the services to be provided by the Recognised Fund Administrator;
  - iii. in respect of any charges payable by the customer to the Recognised Fund Administrator:-
    - the basis of calculation.
    - the basis of payment.
    - the frequency of payment.
  - iv. the fact that the Recognised Fund Administrator is recognized by the MFSA in terms of the Investment Services Act.
  - v. arrangements for bringing the agreement to an end.
- 3.3 Nothing in Rules 3.1 and 3.2 above shall preclude the provision of Fund Administration Services by a Recognised Fund Administrator acting as a delegate of another Recognised Fund Administrator, pursuant to an outsourcing agreement entered into between the parties.
- 3.4 The Recognised Fund Administrator shall organise and control its affairs in a responsible manner and shall have adequate operational, administrative and financial procedures and controls in respect of its own business and the affairs of the Scheme(s) in respect of which it acts as Recognised Fund Administrator.
- 3.5 Any subscription or redemption instructions received by a Recognised Fund Administrator in respect of a Scheme in relation to which it acts as Fund Administrator shall be addressed directly to the Scheme and under no circumstances shall such instructions be addressed directly to the Recognised Fund Administrator, unless the latter is also appropriately licensed under the Investment Services Act,

1994.

- 3.6 The Recognised Fund Administrator shall determine the Net Asset Value of a Scheme in respect of which it acts as Recognised Fund Administrator in accordance with the Constitutional Documents or Prospectus of such Scheme.

## 4. Outsourcing by Recognised Fund Administrators

### *General*

- 4.1 The Recognised Fund Administrator shall ensure, when relying on a third party for the performance of operational functions which are critical for the provision of continuous and satisfactory service to clients and the performance of its Fund Administration business on a continuous and satisfactory basis, that it takes reasonable steps to avoid undue additional operational risk. Outsourcing of important operational functions may not be undertaken in such a way as to impair materially the quality of its internal control and the ability of the MFSA to monitor the Fund Administrator's compliance with all its obligations.
- 4.2 An operational function of a Recognised Fund Administrator shall be regarded as critical or important if a defect or failure in its performance would materially impair the continuing compliance of a Recognised Fund Administrator with the conditions and obligations of its recognition or its other obligations under these Rules, or its financial performance, or the soundness or the continuity of its Fund Administration business.
- 4.3 Without prejudice to the status of any other function, the following functions shall not be considered as critical or important for the purposes of Rule 4.2 above:
- a. the provision to the Recognised Fund Administrator of advisory services, and other services which do not form part of the core fund administration services provided by the Recognised Fund Administrator, including the provision of legal advice to the Recognised Fund Administrator, the training of the Recognised Fund Administrator's personnel, billing services and the security of the Recognised Fund Administrator's premises and personnel;
  - b. the purchase of standardised services, including market information services.

### *Conditions for Outsourcing Critical or Important Operational Functions or Fund Administration Business.*

- 4.4 When the Recognised Fund Administrator outsources critical or important operational functions or any Fund Administration business, the Recognised Fund Administrator remains fully responsible for discharging all of its obligations under these Rules and is required to comply, in particular with the following conditions:

- a. the outsourcing must not result in the delegation by senior management of its responsibility;
- b. the relationship and obligations of the Recognised Fund Administrator towards its clients under these Rules must not be altered;
- c. the compliance by the Recognised Fund Administrator with these Rules must not be undermined;
- d. none of the other conditions subject to which the Recognised Fund Administrator was granted a recognition in terms of article 9A of the Act must be removed or modified.

4.5 The Recognised Fund Administrator shall exercise due skill, care and diligence when entering into, managing or terminating any arrangement for the outsourcing to a service provider of critical or important operational functions or of any Fund Administration Business.

The Recognised Fund Administrator shall in particular take the necessary steps to ensure that the following conditions are satisfied:

- a. the service provider must have the ability, capacity and any authorisation required by law to perform the outsourced functions, services or activities reliably and professionally;
- b. the service provider must carry out the outsourced services effectively, and to this end the Recognised Fund Administrator must establish methods for assessing the standard of performance of the service provider;
- c. the service provider must properly supervise the carrying out of the outsourced functions, and adequately manage the risks associated with the outsourcing;
- d. appropriate action must be taken if it appears that the service provider may not be carrying out the functions effectively and in compliance with applicable laws and regulatory requirements;
- e. the Recognised Fund Administrator must retain the necessary expertise to supervise the outsourced functions effectively and manage the risks associated with the outsourcing and must supervise those functions and manage those risks;
- f. the service provider must disclose to the Recognised Fund Administrator any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable laws and



regulatory requirements;

- g. the Recognised Fund Administrator must be able to terminate the arrangement for outsourcing where necessary without detriment to the continuity and quality of its provision of services to clients;
  - h. the service provider must cooperate with the MFSA in connection with the outsourced activities;
  - i. the Recognised Fund Administrator, its auditors and the MFSA must have effective access to data related to the outsourced activities, as well as to the business premises of the service provider; and the MFSA must be able to exercise those rights of access;
  - j. the service provider must protect any confidential information relating to the Recognised Fund Administrator and its clients;
  - k. the Recognised Fund Administrator and the service provider must establish, implement and maintain a contingency plan for disaster recovery and periodic testing of backup facilities, where that is necessary having regard to the function, service or activity that has been outsourced.
- 4.6 The respective rights and obligations of the Recognised Fund Administrator and of the service provider must be clearly allocated and set out in a written agreement.
- 4.7 Where the Recognised Fund Administrator and the service provider are members of the same group, the Recognised Fund Administrator may, for the purposes of complying with this Section, take into account the extent to which the Recognised Fund Administrator controls the service provider or has the ability to influence its actions.
- 4.8 The Recognised Fund Administrator shall make available to the MFSA, on request, all information necessary to enable the MFSA to supervise the compliance of the performance of the outsourced activities with the requirements of these Rules.

## 5. Financial Reporting and Audit Requirement

- 5.1 The Recognised Fund Administrator shall appoint an auditor to audit its annual financial statements. The Recognised Fund Administrator shall notify the MFSA immediately if it becomes aware that the auditor intends to qualify its audit report. The Recognised Fund Administrator shall submit its annual audited financial statements to the MFSA and such other information, returns and reports as the MFSA may from time to time request. The auditor's report, including any qualifications thereto shall be reproduced in full in the annual report. The annual Audited Financial Statements shall be published and submitted to the MFSA within six months of the end of the period concerned.
- 5.2 The Recognised Fund Administrator shall submit its annual audited financial statements to the MFSA and such other information, returns and reports as the MFSA may from time to time request. The auditor's report, including any qualifications thereto shall be reproduced in full in the Annual Report. The annual Audited Financial Statements shall be published and submitted to the MFSA within six months of the end of the period concerned.

The Annual Report shall be accompanied by :

- i. a letter from the Board of Directors of the Recognised Fund Administrator listing the names and domiciles of the Schemes it provided Fund Administration Services to (either by appointment by the Schemes directly or by the Schemes' Manager) during the relevant financial period; and
  - ii. a report from the auditor to the MFSA, confirming whether in its opinion and further to the information available to it during the course of its audit, the activities of the Recognised Fund Administrator were, during the relevant accounting period, restricted to fund administration and did not involve licensable activity in terms of the Act. Provided that this report shall not be required where Recognised Fund Administrator is also an Investment Services Licence Holder.
- 5.3 In respect of each annual accounting period, the Recognised Fund Administrator shall require its auditor to prepare a management letter in accordance with International Standards on Auditing.
- 5.4 Recognised Fund Administrators in receipt of a management letter from their auditor which contains recommendations to remedy any weaknesses identified during the course of the audit, are required to submit to the MFSA by not later than nine months from the end of the financial period to which the management letter relates, a statement setting out in detail the manner in which the auditor's recommendations have been/ are being implemented. In the instance where

Recognised Fund Administrators have not taken / are not taking any action in respect of any one or more recommendations in the auditor's management letter, the reasons are to be included.

## **6. Variation, Cancellation or Suspension of a Recognition Certificate by the MFSA**

6.1 The MFSA has the right, from time to time and following advanced notification to the Recognised Fund Administrator, to vary or revoke any condition of its Recognition or to impose any new conditions.

6.2 The MFSA may by notice in writing, cancel or suspend the recognition certificate issued to the Recognised Fund Administrator:

- i. if it considers that the Recognised Fund Administrator does not fulfill the requirements of any of the provisions of the Act, relevant Regulations and these Rules; or
- ii. if it considers that the Recognised Fund Administrator has failed to comply with any of these Rules; or
- iii. if it considers that the Recognised Fund Administrator has given information which is false, misleading or inaccurate; or
- iv. if it considers that the Recognised Fund Administrator or any persons connected thereto, in particular its Directors and Qualifying Shareholders, are not fit and proper persons; or
- v. if it considers it desirable to cancel or suspend recognition for the protection of investors and the general public and the reputation of Malta, taking into account Malta's international commitments; or
- vi. at the request of the Recognised Fund Administrator; or
- vii. if the Recognised Fund Administrator has not commenced the activities which it was recognized to carry on within the time provided for in these rules or has ceased to carry on such activities.