

INVESTMENT SERVICES RULES FOR RECOGNISED PERSONS

PART BIII: ONGOING RECOGNITION REQUIREMENTS FOR RECOGNISED INCORPORATED CELL COMPANIES

1. General Requirements

- 1.1 In addition to the requirements of article 6 of the Companies Act, a RICC shall also indicate in a suitable manner in all of its business letters and forms that it is a Recognised Incorporated Cell Company or ('RICC').
- 1.2 The RICC shall commence the provision of administrative services to its incorporated cells within six months of the date of issue of the Recognition Certificate by MFSA.
- 1.3 If, for any reason the RICC 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.
- 1.4 The RICC shall co-operate in an open and honest manner with the MFSA and inform it promptly of any relevant information. The RICC shall supply the MFSA with such information as the MFSA requires.
- 1.5 Where a requirement demands that the RICC 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.
- 1.6 The provision of administrative services by the RICC 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 RICC.
- 1.7 Moreover, the RICC shall take reasonable steps to ensure continuity and regularity in the performance of the administrative services it provided to its incorporated cells. To this end, the RICC shall employ appropriate and proportionate systems, resources and procedures.
- 1.8 The RICC shall notify the MFSA in writing of:

- i. a change in the RICC'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 RICC 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 RICC'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 RICC's share capital on becoming aware of the situation. Any new Qualifying Shareholder in the RICC 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 RICC's staff immediately upon becoming aware of the matter;
- vii. any actual or intended legal proceedings of a material nature by or against the RICC immediately the decision has been taken or on becoming aware of the matter;
- viii. any other material information concerning the RICC, its business or its staff in Malta or abroad immediately upon becoming aware of the matter;
- ix. any departure by any Incorporated Cell ('IC') of the RICC from the original business model of the RICC, any change in the standard model agreement and other documents adopted by the RICC;
- x. any planned changes in service providers already proposed by the RICC and approved by the MFSA, and any other material change in circumstances or in the relationship between the RICC and any of its incorporated cells which may have a bearing on the grounds on which the RICC has been originally recognised

1.9 The RICC 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 administrative services to its incorporated cells;
 - 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 RICC (including the Sponsoring Agent), 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 of these Rules – duly completed by the person proposed.
- 1.10 The RICC shall maintain sufficient records to be able to demonstrate compliance with these requirements.
- 1.11 The RICC 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.
- 1.12 The RICC shall pay promptly all amounts due to the MFSA. In particular, the Supervisory Fee shall be payable by the RICC on the day the Recognition Certificate is first issued, and thereafter annually within one week from the anniversary of that date.
- 1.13 The RICC shall notify the MFSA of any breach of these requirements as soon as the RICC becomes aware of the breach.
- 1.14 If so required by the MFSA, the RICC shall do all in its power to delay the cessation of the provision of administrative services, to its incorporated cells or the winding-up of such business so as to comply with conditions imposed by the MFSA.
- 1.15 The MFSA may, whenever it deems it necessary or expedient, undertake compliance visits to the premises from which the administrative services to the incorporated cells are rendered. For this purpose, the RICC shall ensure that proper accounting and other records are at all times retained at its premises to show and explain the nature of its services and to make such records available to the MFSA.

2. General Organisational Requirements

2.1 The RICC shall:

- i. 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;

- ii. ensure that its relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities;
- iii. establish, implement and maintain adequate internal control mechanism designed to secure compliance with decisions and procedures at all levels of the RICC;
- iv. employ personnel with the skills, knowledge and expertise necessary for the discharge of responsibilities allocated to them;
- v. establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the RICC;
- vi. maintain adequate and orderly records of its business and internal organization;
- vii. 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 RICC shall take into account the nature, scale and complexity of its incorporated cells, and the nature of the administrative services provided to them.

2.2 The RICC shall establish, implement and maintain:

- i. 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
- ii. 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 administrative services to its incorporated cells and activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of its administrative services and related activities;

2.3 The RICC 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.

3. *Conduct of Business Rules*

- 3.1 A RICC shall conduct its business relating to its ICs by means of a written agreement which shall set out the basis on which its services are to be provided. The agreement shall be written in clear and plain language.
- 3.2 An agreement with an IC shall provide for:
- (i) whether the service providers to be appointed by the IC shall be those identified by the RICC for its ICs and for any departures from the standard model agreements adopted by the RICC and approved by the Competent Authority;
 - (ii) the nature of the services to be provided by the RICC;
 - (iii) in respect of any charges payable by the IC to the RICC:-
 - the basis of calculation.
 - the basis of payment.
 - the frequency of payment.
 - (iv) the fact that the RICC is recognized by the MFSA in terms of the Investment Services Act.
 - (v) arrangements for bringing the agreement to an end.
- 3.3 The RICC 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 IC(s) in respect of which it acts as RICC.

4. *Compliance*

- 4.1 Responsibility for the compliance obligations of the RICC rests with the Board of Directors of the RICC.
- 4.2 The RICC shall at all times have a Sponsoring Agent with responsibility for all aspects of compliance and for acting as the RICC's main point of contact with the MFSA.
- 4.3 The RICC shall obtain the written consent of the MFSA before the appointment or replacement of the Sponsoring Agent in advance. The request for consent of the appointment or replacement of a Sponsoring Agent, shall be accompanied by a

Personal Questionnaire (“PQ”), in the form set out in Schedule II to Part A 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.

- 4.4 The RICC shall notify the MFSA of the resignation or removal of its Sponsoring Agent upon becoming aware of the proposed resignation or removal. The RICC shall also request the Sponsoring Agent 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 RICC’s notification of departure.

5. Outsourcing by RICCs

- 5.1 The RICC 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 its incorporated cells and the provision of its administrative services 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 RICCs compliance with all obligations.

- 5.2 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 5.1 above:

- i. the provision to the RICC of advisory services, and other services which do not form part of the core administrative services provided by the RICC, including the provision of legal advice to the RICC, the training of the RICC’s personnel, billing services and the security of the RICC’s premises and personnel;
- ii. the purchase of standardised services, including market information services.

- 5.3 The respective rights and obligations of the RICC and of the service provider must be clearly allocated and set out in a written agreement.

- 5.4 Where the RICC and the service provider are members of the same group, the RICC may, for the purposes of complying with this Section, take into account the extent to which the RICC controls the service provider or has the ability to influence its actions.

- 5.5 The RICC shall retain ultimate responsibility for any services it provides to ICs and which it outsources to third parties.

6. Financial Reporting and Audit Requirement

- 6.1 The RICC shall appoint an auditor to audit its annual financial statements. The RICC shall notify the MFSA immediately if it becomes aware that the auditor intends to qualify its audit report.
- 6.2 The RICC 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.
- 6.3 The RICC 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.
- 6.4 The Annual Report shall be accompanied by :
- i. a letter from the Board of Directors of the RICC listing the names and domiciles of the incorporated cells it provided Administrative Services to 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 RICC were, during the relevant accounting period, restricted to administrative services and did not involve licensable activity in terms of the Act.

7. Variation, Cancellation or Suspension of a Recognition Certificate by the MFSA

- 7.1 The MFSA has the right, from time to time and following advanced notification to the RICC, to vary or revoke any condition of its Recognition or to impose any new conditions. The MFSA may by notice in writing, cancel or suspend the recognition certificate issued to the RICC:
- i. if it considers that the RICC 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 RICC has failed to comply with any of these Rules; or
- iii. if it considers that the RICC has given information which is false, misleading or inaccurate; or
- iv. if it considers that the RICC 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 RICC; or
- vii. if the RICC 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.