

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 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 Compliance Officer and Money Laundering Reporting Officer), at least twenty one business days 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 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 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 Compliance Officer 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 a Compliance Officer at least twenty one business days 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 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 Compliance Officer upon becoming aware of the proposed resignation or removal. The RICC 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 RICC's notification of departure.

5. *Prevention of Money Laundering*

- 5.1 Responsibility for the RICC's compliance with its prevention of Money Laundering obligations rests with the Board of Directors of the RICC.
- 5.2 The RICC shall at all times have a Money Laundering Reporting Officer ('MLRO').
- 5.3 The RICC 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 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.
- 5.4 The RICC shall notify the MFSA of the resignation or removal of its MLRO upon becoming aware of the proposed resignation or removal.
- 5.5 The RICC 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 RICC's notification of departure.

6. Outsourcing by RICCs

- 6.1 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 RICC's compliance with all its obligations.
- 6.2 An operational function of a RICC shall be regarded as critical or important if a defect or failure in its performance would materially impair the continuing compliance of a RICC or any of its incorporated cells 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 administrative services to its incorporated cells.
- 6.3 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 6.1 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.

Conditions for Outsourcing Critical or Important Operational Functions or Administrative services.

- 6.4 When the RICC outsources critical or important operational functions or any administrative services, the RICC remains fully responsible for discharging all of its obligations under these Rules and is required to comply, in particular with the following conditions:
- i. the outsourcing must not result in the delegation by senior management of its responsibility;
 - ii. the relationship and obligations of the RICC towards its ICs under these Rules must not be altered;
 - iii. the compliance by the RICC with these Rules must not be undermined;

- iv. none of the other conditions subject to which the RICC was granted a recognition in terms of article 9A of the Act must be removed or modified.
- 6.5 The RICC 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.
- 6.6 Where any external service providers are adopted by a RICC to service its ICs, the RICC shall in particular take the necessary steps to ensure that the following conditions are satisfied:
- i. any service providers appointed to service their ICs must have the ability, capacity and any authorisation required by law to perform the outsourced functions, services or activities reliably and professionally;
 - ii. the service providers must carry out the outsourced services effectively, and to this end the RICC must establish methods for assessing the standard of performance of the service providers;
 - iii. the service provider must properly supervise the carrying out of the outsourced functions, and adequately manage the risks associated with the outsourcing;
 - iv. 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;
 - v. the RICC 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;
 - vi. the service provider must disclose to the RICC 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;
 - vii. the RICC and the IC must be able to terminate the arrangement for outsourcing where necessary without detriment to the continuity and quality of its provision of services to its incorporated cells;
 - viii. the service provider must cooperate with the MFSA in connection with the outsourced activities;
 - ix. the RICC, 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;

- x. the service provider must protect any confidential information relating to the RICC and its incorporated cells;
 - xi. the RICC 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.
- 6.7 The respective rights and obligations of the RICC and of the service provider must be clearly allocated and set out in a written agreement.
- 6.8 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.
- 6.9 The RICC 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.

7. Financial Reporting and Audit Requirement

- 7.1 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.
- 7.2 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.
- 7.3 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.
- 7.4 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.
- 7.5 In respect of each annual accounting period, the RICC shall require its auditor to prepare a management letter in accordance with International Standards on Auditing.
- 7.6 RICC's 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 RICC's 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.

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

- 8.1 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.

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INVESTMENT SERVICES RULES FOR RECOGNISED PERSONS

PART BII: ONGOING REQUIREMENTS FOR INCORPORATED CELLS OF RECOGNISED INCORPORATED CELL COMPANIES

1. Incorporated Cells set up under an RICC may be set up as:
 - an investment company with variable share capital (SICAV) in terms of the Companies Act (Chapter 386 of the Laws of Malta);
 - an investment company with fixed share capital in terms of the Companies Act (Chapter 386 of the Laws of Malta).
2. Each IC can be either third party managed or self-managed. In the case where an IC is third-party managed, it will be required to appoint an investment manager, which should be approved by the RICC.
3. An IC which is third-party managed shall appoint its own investment manager which may be the same or different from the investment manager appointed by any other incorporated cells set up under the same RICC. However, in any case, the investment manager appointed has to be approved by both the RICC and the MFSA.
4. An IC shall, unless otherwise authorised in writing by the MFSA, appoint the service providers selected for it by its RICC, under the same terms and conditions as shall have been approved by the Authority for this purpose.
5. An IC shall have the same registered office as its RICC at all times.
6. Each IC is regulated by its own Memorandum and Articles of Association. Each of the constitutional documents or any changes thereto must be endorsed by the RICC. No changes to the constitutional documents of the IC shall be effected except as approved by Resolution of the Board of Directors of the IC and the RICC and in accordance with the Standard Licence Conditions applicable to such schemes.
7. Each IC must issue its own prospectus which may either be based on the standard form used by incorporated cells that belong to the same RICC or specific to the particular incorporated cell. Provided that no prospectus or changes thereto shall be issued by the IC unless it has first been approved by the RICC and the MFSA.
8. An IC that has been granted or has applied for a Collective Investment Scheme Licence may apply for admissibility to listing with the Listing Authority (the MFSA is the Listing Authority in terms of the Financial Market Act, 1990).

9. The directors of an IC are not required to be the same as those of the RICC. However the RICC and the IC must have at least once common director. The MFSA may require that directors with different competencies sit on the different boards of directors of the incorporated cells. The common director shall report to the Board of the RICC on a regular basis and must provide the RICC with any information that may be relevant to the fulfilment of the RICC's compliance obligations in relation to its incorporated cells.
10. In addition to the obligations arising under the Companies Act, the IC shall notify the RICC and the MFSA within 14 days of a director of the IC being appointed or ceasing to be a director of the cell.
11. An IC may create sub-funds. In this regard, an IC is required to comply with Section 10 of Part A of the Investment Services Rules for Retail Collective Investment Schemes or Section 11 of Part A of the Investment Services Rules for Professional Investor Funds, as applicable.
12. Unless expressly prohibited by any rules, laws or regulations or by its articles of association, an IC shall be permitted to own shares in any other IC of its RICC subject to any conditions that may apply in terms of its licence.
13. In addition to the requirements of article 6 of the Companies Act, an IC of an RICC shall also indicate in a suitable manner in all of its business letters and forms that it is an IC of a RICC and the name of the RICC.
14. No IC of a RICC shall transfer, relocate or convert itself in any other manner except as authorised by the competent authority and subject to any conditions which the latter deems fit to impose.