

INVESTMENT SERVICES RULES FOR RECOGNISED PERSONS

Part A.I: RECOGNISED FUND ADMINISTRATORS

1. Regulation of Fund Administrators

The Investment Services Act, 1994 (“the Act”) provides a statutory basis for regulating the provision of Fund Administration Services. The following sections make reference to various parts of the Act but do not attempt to reproduce it, and therefore should not be treated as a substitute for reading the Act itself.

Article 9A(1) of the Act provides that any person who, in Malta or from Malta, provides to Licence Holders in Malta or to equivalent authorised persons and schemes overseas, administrative services which do not themselves constitute licensable activity under the Act, shall require MFSA’s recognition.

2. Fund Administration Services

In terms of article 9A(2)(i) of the Act, the MFSA may from time to time, issue Investment Services Rules laying down the requirements for recognition, including establishing which activities constitute administrative services for the purposes of this article. In this regard, such administrative services shall be limited to Fund Administration Services, which shall include the following services:

- i. Preparation of Net Asset Value
- ii. Reconciliations
- iii. Pricing the Investment Portfolio
- iv. Fund Accounting
- v. Preparation of Contract Notes
- vi. Transfer Agency
- vii. Payment of Bills
- viii. Preparation of Financial Statements
- ix. Performance Reporting
- x. Compliance Reporting
- xi. Registrar

The above is not to be interpreted as an exhaustive list of services which may be provided by a Fund Administrator. Services (i) to (vi) are generally regarded as the ‘core’ services ordinarily performed by Fund Administrators for which recognition in terms of Article 9A of the Act would be required, whilst services (vii) to (xi) are ancillary services which may also be provided by such persons. The same provision of one or a limited number of ancillary services may not necessarily trigger the recognition requirement and potential applicants for recognition are advised to consult the MFSA in advance particularly if they do not intend providing any of the ‘core’ services in order that it may be determined whether the recognition requirement applies.

3. Criteria which MFSA will apply in considering an application for Recognition for the provision of Fund Administration Services

The MFSA shall not recognise an Applicant for recognition in terms of Article 9A of the Act unless it is satisfied that:

- a. such Applicant is a fit and proper person to provide Fund Administration Services and
- b. such Applicant will comply in all respects with the provisions of the Act, any relevant Regulations and these Rules and
- c. the Directors and officers of the Applicant are fit and proper persons to carry out the functions required of them.

When considering whether to grant recognition or otherwise to an Applicant, the MFSA must take account of:

- a. the degree of protection to the investors in the Fund(s) to be serviced;
- b. the degree of protection to the reputation of Malta taking into account Malta's international commitments; and
- c. the promotion of competition and choice.

The scope of the Act is wide and it covers many different kinds of business. However, in all cases, the MFSA applies the same standards relating to the “fit and proper” status of the Applicant, the track record of the Applicant (and those associated with it), and the nature of the business.

The “fit and proper” test is one which an Applicant and a Recognised Fund Administrator must satisfy on a continuing basis. Each case is assessed on the basis of the relevant circumstances. The onus of proving that the required standards are met is on the Applicant and Recognised Fund Administrator. It is not the task of the MFSA to prove that an Applicant is not fit and proper either during the application process or thereafter. The MFSA's approach is cumulative that is to say the Authority may conclude that an Applicant or a Recognised Fund Administrator has failed the test on the basis of considering several situations, each of which on its own would not lead to that conclusion. An open and honest relationship with the MFSA is essential. When arriving at its decision as to whether an Applicant or a Recognised Fund Administrator is fit and proper the MFSA will take account both of what is said and of what is not said (for example in respect of a director's criminal record). It should be noted that it is an offence to provide inaccurate, false or misleading information.

The MFSA will only grant the Applicant recognition in terms of article 9A of the Act, if it is satisfied of the Applicant's fit and proper status, including that of all persons connected therewith, in particular its Directors and Qualifying Shareholders. It is to be noted that the "fit and proper" test in respect of an application for recognition focuses primarily on the integrity of the parties involved and the MFSA does not undertake any thorough evaluation of the competence and solvency of the Applicant as in the case of applications for licences issued in terms of the Act. Integrity involves the Recognised Fund Administrator and its employees acting honestly and in a trustworthy fashion in relation to its clients and other parties. Moreover, the Recognised Fund Administrator will not be subject to any on-going requirements or conditions, other than those specified in Part B.I as may be amended or supplemented in the Recognition Certificate issued by the MFSA.

5. The Application Process

When submitting an application for Recognition as an Administrator of a Collective Investment Scheme, the promoter should ensure that the appropriate Application Form (Schedule I to this Part refers) is completed.

The application process to be followed by an Applicant for Recognition in terms of article 9A of the Act, is summarised below.

There are three phases as follows:-

Phase One – Preparatory

- i. MFSA recommends that the promoters arrange to meet representatives of the MFSA to describe their proposal. This preliminary meeting should take place well in advance of submitting an Application for Recognition. Although guidance will be given on the applicable regulatory requirements and on the completion of the Application documents, responsibility for the formulation of the proposal and the completion of the Application documents will remain with the Applicant. It is essential that the Applicant submits a comprehensive (written) description of the proposed activity before the meeting.
- ii. The next stage is that the promoters submit a draft (rather than a Final) Application Form, together with supporting documents as specified in the Application Form itself.
- iii. The draft Application and the supporting documentation will be reviewed and comments provided to the Applicant. The MFSA may ask for more information and may make such further enquiries as it considers necessary. The 'fit and proper' checks – which entail following up the information which has been provided in the Application documents, begin at this stage.

Phase Two – Pre-Recognition

- iv. Once the review of the draft Application and supporting documents has been completed and sufficient replies to the Authority's due diligence enquiries have been received, the Authority will issue (provided it is satisfied that the Applicant meets the eligibility criteria for Recognition) its 'in principle' approval for the Recognition of the Applicant.
- v. At this stage, the Applicant will be required to finalise any outstanding matters, such as incorporation of Company (or registration of partnership), submission of signed copies of the revised Application form together with supporting documents in their final format, and any other issues raised during the Application process.
- vi. The Applicant will be Recognised as soon as all pre-Recognition issues are resolved.

Phase Three – Post-Recognition /Pre-Commencement of Business

- vii. The Applicant may also be required to satisfy a number of post-Recognition matters prior to formal commencement of business.

The Recognised Fund Administrator acknowledges that the MFSA will not be liable in damages for anything done or omitted to be done unless the act or omission is shown to have been done or omitted to be done in bad faith.

The Recognised Fund Administrator acknowledges that the MFSA has the right, from time to time, to vary or revoke any condition or to impose new conditions.

6. Application Documents

A request for Recognition as an Administrator of a Collective Investment Scheme in terms of article 9A of the Act should be supported by the following documents:

- i. a duly completed Application for recognition as an Administrator of a Collective Investment Scheme;
- ii. a business plan, including a description of the Fund Administration Services to be provided and details as to whom such services will be provided;
- iii. Memorandum & Articles of Association, deed of partnership or equivalent constitutive document depending on the legal structure of the Applicant;
- iv. a copy of the most recent audited accounts of the Applicant or in the case of a new entity, three year financial projections;

- v. a duly completed Personal Questionnaire in the form set out in Schedule II to Part A.I of these Rules by each Director and Qualifying Shareholder(s) of the Applicant as well as by the Applicant's proposed Compliance Officer and Money Laundering Reporting Officer.
- vi. resolution of the Directors/ General Partners of the Applicant confirming their intention to apply for a Recognition as an Administrator of a Collective Investment Scheme in terms of article 9A of the Act on behalf of the Applicant;
- vii. address of the premises in Malta from where the Fund Administration Services will be rendered including the relevant contact details;
- viii. Memorandum and Articles of Association and most recent audited accounts of any Qualifying corporate shareholders of the Applicant;
- ix. a chart which illustrates the internal operational structure of the Applicant with respect to its proposed fund administration business (this should show names, reporting lines and roles);
- x. [where the Applicant forms part of a Group] a diagram showing the relationships between the Applicant and other members of the Group. The "family tree" submitted should give details up to the ultimate beneficial owner(s), showing percentage sizes of holdings in each entity; unless:
 - a. the entity has one ultimate beneficial owner with a holding of over 50% of the voting rights; or
 - b. the entity has no less than fifty ultimate beneficial owners who between them account for over 50% of the voting rights.

If (a) or (b) apply, it will only be necessary to give details of the ultimate beneficial owners with holdings of 10% or more;

The MFSA may require Applicants requesting recognition in terms of Article 9A of the Act to submit to the MFSA whatever additional information it deems appropriate for the purposes of determining whether it should grant Recognition to the Applicant as Administrator of a Collective Investment Scheme.

Persons in possession of a licence under the Financial Institutions Act, 1994 or the Banking Act, 1994 or persons in possession of a licence under the Investment Services Act 1994, shall, in applying for recognition in terms of article 9A of the Act, be exempt from the requirement to submit application documents listed in paras. (i), (iii), (iv), (v), (vii), (viii) and (x).