

The text below is an internet version of the Rules made by the FSC under section 93 of the Financial Services Act 2007 and is for information purposes only. Whilst reasonable care has been taken to ensure its accuracy, the authoritative version is the one published in the Government Gazette of Mauritius (GN No. 277 of 2016) as subsequently amended by (GN No. 211 of 2020).

THE FINANCIAL SERVICES ACT

FSC Rules made by the Commission under section 93 of the Financial Services Act

1. Citation

These Rules may be cited as the Financial Services (Investment Banking) Rules 2016.

2. Interpretation

In these Rules —

"Act" means the Financial Services Act;

"IFRS" has the same meaning as in the Financial Reporting Act; and

"International Standards on Auditing" has the same meaning as in the Financial Reporting Act.

3. Application of Rules

(1) These Rules shall apply to a person holding an Investment Banking Licence issued under the Act.

(2) A person holding an Investment Banking Licence may conduct the activities of an investment dealer (full service dealer including underwriting), investment adviser (unrestricted), investment adviser (corporate finance advisory), asset management, distribution of financial services and such other activities as specified in the Schedule.

(3) For avoidance of doubt —

(a) "asset management" means a licence issued under section 14 of the Act to carry out this activity;

(b) "distribution of financial products" means a licence issued under section 14 of the Act to carry out this activity;

(c) "investment adviser (corporate finance advisory)" means the holder of a licence issued under section 30 of the Securities Act and as categorised under Rule 5 of the Securities (Licensing) Rules;

(d) "investment adviser (unrestricted)" means the holder of a licence issued under section 30 of the Securities Act and as categorised under Rule 5 of the Securities (Licensing) Rules;

(e) "investment banker" means the holder of a licence issued under section 79A of the Act; and

- (f) "investment dealer (full service dealer including underwriting)" means the holder of a licence issued under section 29 of the Securities Act and as categorised under Rule 4 of the Securities (Licensing) Rules.

4. Application for an Investment Banking Licence

- (1) No person shall apply for an Investment Banking Licence unless that person is
 - (a) a company incorporated under the Companies Act; or
 - (b) registered as a branch of a foreign company.
- (2) No management company shall apply for an Investment Banking Licence.
- (3) An application for an Investment Banking Licence shall be made in such form and manner as may be specified in the Financial Services (Consolidated Licensing and Fees) Rules 2008 and shall be accompanied by —
 - (a) the constitution of the applicant;
 - (b) a copy of the corporate governance infrastructure and internal procedures manual of the applicant;
 - (c) a detailed description of the systems and procedures set up by the applicant to -
 - (i) prevent conflicts of interest, money laundering and financing of terrorism; and
 - (ii) protect the interests of clients;
 - (d) any such information as the Commission may require.

5. Grant of a licence

The Commission may issue an Investment Banking Licence where it is satisfied that —

- (a) the applicant complies with the provisions of—
 - (i) the relevant Acts; and
 - (ii) codes or guidelines which the Commission may issue from time to time;
- (b) the applicant has the financial resources, organisation and management capacities that are necessary to carry on the business which is the subject-matter of the application; and
- (c) no prejudice will be caused to the financial services industry or any part thereof or to the public if the licence is issued.

6. Activities of holder of an Investment Banking Licence

- (1) In addition to the activities specified in section 79A(3) of the Act, the holder of an Investment Banking Licence may conduct such activities as specified in the Schedule.
- (2) No person holding an Investment Banking Licence shall conduct banking business as defined in the Banking Act unless that person holds a banking licence issued under the Banking Act.

7. Management of the holder of an Investment Banking Licence

- (1) The holder of an Investment Banking Licence shall have a board of directors consisting of at least 5 natural persons, of which 40 per cent or such other number and percentage as may be approved by the Commission shall be independent directors.
- (2) For the purposes of paragraph (1), a director shall be deemed to be independent where, other than being a board member, he has no relationship with or interest in the holder of the Investment Banking Licence or its group of companies, which could or could be reasonably perceived to, materially affect the exercise of his judgment in the best interest of the holder of the Investment Banking Licence.
- (3) The board of directors under paragraph (1) shall set up such sub-committees as it thinks fit in order to ensure that the business of the holder of the Investment Banking Licence is conducted in accordance with sound corporate governance principles.
- (4) A sub-committee referred to under paragraph (3) may include, but shall not be limited to —
 - (a) a corporate governance committee;
 - (b) an audit committee; or
 - (c) a risk management committee.

7A Experience of shareholders and Chief Executive Officer

- (1) The majority of the shares of a holder of an investment banking licence, shall be held by an entity or a group with at least one entity regulated in Mauritius or an equivalent jurisdiction to provide investment banking, asset management, investment advisory, and/or corporate finance services for at least 5 years.
- (2) A holder of an investment banking licence shall at all times ensure that it has a Chief Executive Officer with at least 15 years relevant experience in investment banking, asset management, investment advisory and/or corporate finance.
- (3) Where a holder of an investment banking licence issued before 31 March 2019 does not meet any requirements of this rule, it shall submit to the Commission a plan which will ensure that it will comply with this rule within a pre-determined timeframe approved by the Commission.
- (4) For the purposes of this rule, a Chief Executive Officer is a person responsible for the conduct of the business of the organisation under the immediate authority of the board of directors.

[GN No. 211 of 2020]

8. Minimum stated unimpaired capital requirements

- (1) The holder of an Investment Banking Licence shall maintain a fully paid minimum stated unimpaired capital of at least 50 million rupees or such other amount as may be determined by the Commission.
- (2) Where the holder of an Investment Banking Licence is unable to maintain the fully paid minimum stated unimpaired capital under paragraph (1), it shall immediately notify the Commission.
- (3) Where the Commission receives a notification under paragraph (2), it shall take such action as it thinks appropriate under the relevant Acts.
- (4) Where a holder of an investment banking licence issued before 31 March 2019 does not meet any requirements of this rule, it shall submit to the Commission a plan which will ensure that it will comply with this rule within a pre-determined timeframe approved by the Commission.

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9. Internal Control

The holder of an Investment Banking Licence shall establish documented rules of internal control.

10. Insurance Policies

The holder of an Investment Banking Licence shall subscribe to such insurance policies as are necessary to cover —

- (a) fraudulent activities of employees;
- (b) fraudulent instructions;
- (c) losses arising from the malicious or fraudulent corruption of electronic data or electronic transactions; and
- (d) legal liability to third parties arising from breaches of professional duties.

11. Annual Report

(1) The holder of an Investment Banking Licence shall file with the Commission, within 90 days of its balance sheet date, an annual report which shall include —

- (a) a report on its corporate governance policy as well as any other information required by the Commission;
 - (b) an audited report on its risk management procedures and their application;
 - (c) audited financial statements prepared in accordance with IFRS or such other standards as may be issued under the Financial Reporting Act 2004;
 - (d) consolidated financial statements where the holder of an Investment Banking Licence is a holding company or a subsidiary or a branch of a company incorporated abroad; and
 - (e) such other requirements as may be specified in the relevant Acts.
- (2) Any financial statement included in an annual report under paragraph (1) shall be audited in accordance with International Standards on Auditing or such other

standards as may be issued under the Financial Reporting Act 2004, by an audit firm approved by the Commission.

12. Commencement

These Rules shall be deemed to have come into operation on 7 September 2016.

Made by the Commission on 9 December 2016.

SCHEDULE

(Rules 3 and 6)

Distribution of financial products
