

REGULATIONS ON INVESTMENT ADVISERS

R-375

14 Oct 2014

*Citation and
Commencement*

1. (a) These regulations are made pursuant to the powers conferred upon the Authority by sections 30 and 60(b) of the Maldives Securities Act (02/2006)
- (b) These Regulations shall be cited as “Regulations on Investment Advisers.” These regulations shall commence from the date of publication in the official gazette.

Scope

2. (a) These regulations shall apply to Investment Advisers and Investment Advisers’ Representatives.

Interpretations

3. In these Regulations, unless the context otherwise requires, any term defined in the Maldives Securities Act shall have the meaning so assigned to it in the Act.
“Act” shall mean the Maldives Securities Act (02/2006).
“Authority” shall mean the Capital Market Development Authority established under the Law number 2/2006 (Maldives Securities Act)
“Investment Adviser” shall have the meaning ascribed in the Act
“Corporate Investment Adviser” shall mean an investment adviser that holds a license as a body corporate.
“Investment Advisers’ Representative” shall mean an individual appointed by a corporate investment adviser, and approved by the Authority, to act for or on behalf the corporate investment adviser.
“Financial reporters” shall have the meaning ascribed in the Act.

Eligibility requirements

*Eligibility requirements
for corporate advisers*

4. In addition to the requirements set forth in section 30 and 31 of the Act, the Directors of the applicant shall satisfy the following criteria
 - (1) Has not been convicted of theft, embezzlement,

robbery or fraud within 10 years immediately preceding the date of application.

(2) Has not been adjudged bankrupt

(3) Satisfy the fit and proper criteria set by the Authority

Eligibility requirements for individuals

5. In addition to the requirements set in section 30 and 31 of the Act, an individual applicant shall meet the following criteria

(1) Satisfy the criteria set forth in section 4 of these regulations

(2) Has passed an examination set by the Authority for the Investment Advisers and Investment Advisers' Representatives, or has passed any such examination acceptable to the Authority

Amendments to eligibility requirements

6. Amendments may be brought to the eligibility requirements stated in these regulations and such amendments shall commence upon publication in the official gazette.

Licensing, Renewal, Capital Requirements and Fees

Application for license

- 7.
- (a) An application for license or renewal of license shall be made by the form prescribed in Schedule 2.
 - (b) The Authority may require an applicant to furnish the application form with such further information as the Authority considers necessary in relation to the application.
 - (c) The Authority shall notify the applicant the decision made regarding the application, within 45 (forty five) days from the receipt of application, or where the Authority requires further information on the application, from the date of receipt of such information.
 - (d) All licenses issued or renewed under the Act shall be valid for a period of two years from the date of the issuance or renewal as the case may be.
 - (e) An application for a corporate investment adviser shall be accompanied by at least one application for Investment Advisers' Representative license.
 - (f) Actions may be taken under section 32(b) of the Act, against any person who, in connection with an application for license or renewal of license, willfully or knowingly makes a statement which is false or misleading, or omits to state the relevant

matters.

Expiry, Revocation and Suspension of Licenses

8. (a) License issued under these regulations is deemed revoked upon occurrence of any event stated of the Act.
- (b) Authority may revoke or temporarily suspend the license issued under these regulations upon the occurrence of any event stated in section 34 (b) of the Act.

Licensing conditions

9. Authority may, under section 32 of the Act, attach conditions to license and by written notice, may vary such conditions or may impose additional conditions under section 31 of the Act.

Processing fee

10. Application for license or renewal of license shall be accompanied by the application processing fee prescribed in Schedule 1 of these regulations

Annual fee

11. All licensees shall pay an annual fee as prescribed in Schedule 1 of these regulations

Capital requirements

12. A corporate investment adviser shall have a paid up capital of not less than MVR 250,000 (two hundred and fifty thousand), and a net capital of not less than MVR 100,000 (hundred thousand).

Register of Interest in Securities

Maintenance of Register of interest in securities

13. Investment advisers, Representatives and Financial Reporters shall maintain a register of their interests in securities under Chapter VI of the Securities Act (02/2006)

Financial and Compliance Requirements

Books and records to be maintained by Advisers

14. Investment Advisers shall keep true, accurate and current information in the following books and records relating to its investment advisory service:
- (a) Journals, including cash receipts disbursement records, and any other records of original entry forming the basis of entries in any ledger.
- (b) General and other ledgers reflecting assets, liabilities, reserve, capital, income and expense accounts.
- (c) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt, or delivery of a particular

security, and of any such order or instruction. Such a memorandum shall also show the terms and conditions of the order or instructions.

- (d) All cheque books, bank statements, cancelled cheques and cash reconciliations of the investment adviser.
- (e) All bills or statement or copies thereof, paid or unpaid, relating to the investment advisers' business.
- (f) All trial balances of financial statements, and internal audit working papers relating to the business.
- (g) Originals of all written communications received and copies of all written communications sent relating to any recommendation made or advice given, or relating to any receipt, disbursement or delivery of funds or securities, provided however, that the investment adviser shall not be required to keep any unsolicited market letters or communications of general public distribution not prepared by or for the investment adviser.
- (h) A list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transaction of any clients.
- (i) All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser, or copies thereof.
- (j) All written agreements entered into by the investment adviser with any client relating to the business of such investment adviser.
- (k) A copy of each notice, circular, advertisement, newspaper article, investment letter or other communication that the investment adviser circulates or distributes to clients or potential clients.
- (l) Records of every transaction in securities in which the investment adviser or a representative of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership.

Appointment and removal of auditors

- 15.** An investment adviser shall appoint a qualified auditor to audit the financial accounts of the investment adviser and notify the Authority.

Financial records

- 16.** An investment adviser with respect of its investment advisory business, must prepare and submit to the Authority before the end January each year, audited annual financial statements for the past financial year, comprising of:
- (a) balance sheet;
 - (b) profit and loss statement;
 - (c) cash flow statement

Information Disclosure To Clients And Custody Of Clients' Funds

Duty to act in the interests of the clients

- 17.** (a) It shall be unlawful for an investment adviser to act in a manner that is misleading, or omit material facts or engage in other fraudulent acts and practices in connection with the conduct of an investment advisory business.
- (b) As a fiduciary, an investment adviser owes its clients undivided loyalty, and shall not engage in activity that conflicts with a client's interest without the client's consent.

Written disclosure statements to clients or prospective clients

- 18.** (a) An investment adviser shall furnish each client or prospective client with a written disclosure statement or a brochure, describing the adviser's business practices and educational and business background including the following:-
- 1) Educational background and business/investment experience of the investment adviser [advisers' representative or each member of the investment committee]
 - 2) Type of advisory services offered [e.g. Investment supervisory services, management of accounts, issuing of periodicals, issue of special reports on securities, etc.]
 - 3) Basis for charging fees and the rates [e.g. percentage basis, hourly basis, fixed fee basis, subscription fee basis, commissions or other specified basis]
 - 4) Type of client the investment advice is provided to [e.g. individuals, banks, charitable organizations].
 - 5) Type of investments on which advice is offered [e.g. equity securities, municipal securities, corporate debt securities, mutual funds, real estate and futures contracts etc.]

- 6) Particulars about the duration of the investment
- 7) Whether advise includes financial planning
- 8) Whether investment adviser is actively engaged in a business other than providing investment advice (giving a brief description of such other business)
- 9) The frequency and nature of regular reports to clients on their accounts.
- 10) Whether investment adviser has authority or investment discretion, without obtaining specific client consent, to purchase or sell securities (Where the investment adviser has such discretion, investment advisers' balance sheet for the most recent fiscal year must be provided to the client or prospective client)
- 11) For the purposes of a balance sheet, a sole proprietor or individual investment adviser is required to show investment advisory business assets and liabilities separate from other businesses /personal assets and liabilities.

Advertisements

General principles

19. (a) Requirements set forth in this section shall apply to all advertisements including documents and reports published by the investment advisers
- (b) All advertisements shall adhere to the following principles
 - 1) An advertisement shall be based on principles of good faith and fair presentation and shall not in any way mislead or deceive prospective investors.
 - 2) An advertisement shall adhere to the highest standards of accuracy.
 - 3) An advertisement shall be couched in clear language easily understandable by the public at large.
 - 4) An advertisement shall describe clearly and unambiguously the nature of the investment or the service offered.
 - 5) An advertisement shall state sufficient relevant information such that an adequate description of the investment or services offered is conveyed to the recipient.

- 6) Forecasts or projections of future performance shall, be attributed to an identified source that takes responsibility for the forecast or projection and, must state that the forecasts or projections are based on assumptions which are subject to risks or uncertainties that may cause actual occurrences to differ materially from the forecasts or projections.
 - 7) Performance figures quoted, referred to or reproduced in any advertisements shall provide comparison to the same figures of the preceding period
 - 8) Graphs, tables and other diagrams used in an advertisement shall be to scale and based on true values.
 - 9) Sufficient prominence shall be given in an advertisement to the risks associated with the particular investment.
 - 10) An advertisement to be disseminated to the public shall be signed
 - a. by the individual issuing it in the case of a natural person; or
 - b. by a director, executive officer in the case of a body corporate
- (c) An advertisement shall contain a clearly displayed or audible statement which makes it plain that the advertisement contains promotional material and has a promotional purpose.
- (d) There shall be included in each advertisement
- i. a statement to the effect that returns may not materialize as expected if the investment offered is one that may fluctuate in value where reference is made to returns on investment;
 - ii. a statement cautioning the investor that changes in the rate of exchange may cause the value of the investment to appreciate or depreciate in the case of an investment involving exposure to a foreign currency.

Schedule 1
Fees

(1) *Application processing fee*

- a) Investment advisers – MVR 500
- b) Investment advisers' representatives – MVR 100

(2) *Annual fee*

- a) Investment advisers – MVR 10,000
- b) Investment advisers' representatives – MVR 5,000

Schedule 2

Application for grant of/renewal of license for Investment Advisers and Investment Advisers' Representatives

(This form is prescribed as a sample. The information required by this form may be submitted in the prescribed order)

- (1) Type of application
 - a. Please indicate if this is an initial application for a license or an application for the renewal of an existing license.
 - i. Initial application
 - ii. Renewal
 - b. Category of license
 - i. Investment Adviser
 - ii. Investment Advisers' Representative
- (2) General Information of the applicant
 - a. If for renewal of license, existing license number and issued date
 - b. Name and address
 - c. ID card number and Date of birth; in case of a body corporate Registration number and date of registration
 - d. Phone, fax and email
 - e. Principal banker, address and account numbers
 - f. Name and address of the Auditor
 - g. In case of individuals, the current employment details (employment and institution)

Note: Numbers (3) to (6) apply only to body corporates; and may be omitted where the application is for a renewal of license and there has been no change in these information

- (3) Authorized, issued and paid up capital (number of shares and value)
- (4) Names and addresses of the principal shareholders of applicant
- (5) Names, addresses, current employment(s)/directorship(s), education and experience of the Directors and top management
- (6) Names and addresses of the parent, subsidiary and associate companies of the applicant
- (7) Declaration of the applicant (where the applicant is a body corporate, declaration by directors)
 - a. We, the undersigned, certify that the above information is true and accurate. We also agree to inform the Authority immediately of any change in any of the particulars stated in this application.
 - b. I agree to provide if necessary, further information applicable to assist the Authority in evaluating my financial position (for individual investment advisers);
 - c. **We confirm that**
 - i. the applicant is not in the course of being wound up;

- ii. no receiver or manager has been appointed under any law with regard to the business and assets of the applicant
- iii. the applicant has not entered into any compromise or scheme of arrangement with any of its creditors either in Maldives or outside which is still in operation;
- iv. that neither the applicant nor any of the directors/partners and executive officers of the applicant have been
 - a) adjudged bankrupt anywhere;
 - b) convicted either in Maldives or elsewhere within 10 years immediately preceding the date on which this application is made of an offence involving theft, robbery, embezzlement, fraud or dishonesty;

[Name of the applicant]

Signature(s) [in case of a company, all directors]

[Date]

[Stamp]

** Following documents should be submitted along with the application, except if the application is for a renewal and there has been no change in this information*

- 1) For individuals – copy of the National ID card, copies of educational certificates, a Passport size color photograph
- 2) For body corporates –
 - a. Copy of the registration certificate
 - b. Most recent two years' audited financial statements
 - c. Copies of National ID card and educational certificates of the Directors and top management
 - d. Curriculum Vitae of the Directors and top management
 - e. Copy of the memorandum and articles of association
 - f. Business proposal including organizational structure, roles and responsibilities
- 3) Where an employee of the applicant applies for Investment Advisers' representative license, a confirmation of that fact
- 4) Completed record clearance form of Investment Adviser, Directors of the Investment Adviser and Investment Adviser's Representatives (forms may be obtained from the Authority)