

Regulation on Licensing and Conduct of Central Depository

Citation

1. This Regulation may be cited as the “Regulation on Licensing and Conduct of Central Depository”.

Interpretation

2. In this Regulation, unless the context otherwise requires -
 - (A) “Authority” shall mean the Capital Market Development Authority
 - (B) Any term defined in the Maldives Securities Act shall have the meaning assigned to it in the Act.
 - (C) For the purposes of this Regulation, an associated person means a person who is related to another person in accordance with any of the following provisions:
 - a) Natural persons are related if,
 - (i) one is the spouse of the other;
 - (ii) the relationship between them is that of parent and child, brothers and sisters (including half brothers and sisters);
 - (iii) they are partners in a partnership to which the Partnership Act of Maldives applies.
 - b) Companies are associated persons if they are associated bodies corporate in which greater than 5% of the shareholding is owned/controlled by the other company.
 - c) A natural person and a company are associated persons if,
 - (i) the natural person directly or indirectly holds or can control greater than 5% shareholding of the company;
 - (ii) the natural person is a director of the company or of another company that is associated to the body corporate.

Application

3. An application for grant of approval to operate a Central Depository shall be submitted to the Authority in the Form set out in Schedule 1.

Licensing conditions

4.
 - (a) The License issued under this Regulation is specific to the Applicant and shall not be transferable.
 - (b) The holder of a depository license shall start operating its business on a date specified by the Authority.
 - (c) The Central Depository shall prepare and publicly disclose a comprehensive business plan for minimizing issuance of physical certificates by issuers and maximizing securities in book entry form. In addition, the plan should set out risk management measures adopted by the Depository.

The Central Depository shall prepare the plan in consultation with the Authority and within the period specified by the Authority.

- (d) The Central Depository shall put in place necessary arrangements to the satisfaction of the Authority for the protection of the confidentiality of the information of its account holders.
- (e) Within commencement of business, the Central Depository shall prepare and implement a business continuity plan to the satisfaction of the Authority, which would set out the procedures and systems necessary to continue or restore the operation of the Central Depository in the event of a disruption. This plan, including any subsequent modification, shall be implemented and updated on a continuous basis.
- (f) The Central Depository shall confine its activities to the generally recognized core functions of a Central Depository and not directly or indirectly enter to any other business. The Central Depository shall also not outsource any of its core functions without the prior approval of the Authority.
- (g) The Central Depository shall abide by the Corporate Governance Code set by the Authority.
- (h) The Authority retains the right to impose additional conditions for grant of a license under this Regulation.

Memorandum and Articles of Association

- 5. The Memorandum and Articles of Association of the Central Depository should not be changed without the prior approval of the Authority.

Central Depository Rules

- 6. (a) The Central Depository shall make rules pertaining to the following –
 - (i) protection of account holders against abuse of confidential information, misleading information, fraud, deceit, and other adverse practices in depository, clearing and settlement services;
 - (ii) handling of complaints from investors and mechanisms for dispute resolution;
 - (iii) carrying out of the business of the Central Depository with due regard to interest of the investing public and;
 - (iv) responsibility of the Central Depository for the actions of employees, agents in their dealings with the public.
- (b) Any rules made by the Central Depository shall be submitted to the Authority for approval and any amendments or changes to the rules can only be made after obtaining prior approval from the Authority.

Board

- 7. (a) The Central Depository Company shall be governed by a board of directors which shall be approved by Authority.
- (b) No person shall be eligible to become a Director of the Central Depository Company if he does not meet the fit and proper standards for a Director of the Central Depository, as may be specified by the Authority from time to time. Further, no person shall be appointed to or removed from the Board of Directors of the Central Depository without prior written approval of the Authority.

Shareholders

8. (a) Shareholders of the Central Depository Company shall comprise of institutions or persons approved by the Authority.
- (b) The shareholding structure of the Central Depository Company should be as follows:
- (i) Stock Exchange Company should hold at least 51% of the total outstanding shares of the Central Depository Company.
 - (ii) Any other financial institution or any other person approved by the Authority may hold directly or indirectly or as associated persons hold up to 5% each of the total outstanding shares of the Central Depository Company.
- (c) The presence or absence and degree of association between two or more persons shall be determined by the Board of the Authority based on its opinion whether or not it is reasonable to expect that the concerned persons can exercise the rights of their shares of the Central Depository Company independent of each other.
- (d) Where the Authority is of the view that any two or more associated persons hold or control more than the requisite shareholding specified in subsection (b) the Authority may direct any one or more of the said persons to sell whole or part of their shares to another person approved by the Authority, so that the aggregate votes that may be cast by a shareholder in a general meeting of the Central Depository Company shall not be more than the requisite shareholding specified in subsection (b).
- (e) Where the Government takes 100% ownership of the Central Depository Company subsections (a) – (d) will not be applicable to the Government Central Depository Company formed pursuant to the Act. However, where the Government Central Depository Company is privatized, the provisions of this section will apply.

Dealing in Listed Securities

9. (a) A Director of the Central Depository Company shall not deal in listed securities as may be specified by the Authority from time to time. Further, each Director of Central Depository Company shall promptly disclose to the Central Depository all direct or indirect dealings in securities done on his account, on account of his spouse, or on account of his minor children. A Director shall also disclose to the Central Depository all securities beneficially owned by him, his spouse, or minor children and any change thereof.
- (b) An employee of the Central Depository shall not, directly or indirectly, deal in listed securities, save as subscription of securities in a public offer and sale of the same in the Stock market.

Action against directors of the Central Depository

10. If a Director or employee of the Central Depository fails to comply with the requirements of this Regulation, the Authority may take action against that person provided that the Authority shall first issue a show cause notice to the concerned person and give that person an adequate opportunity to defend himself. Actions taken by the Authority under this section shall be fully and immediately disclosed to the public.

Depository, clearing and Settlement system

11. The depository, clearing and settlement system or mechanism to be adopted by the Central Depository shall be approved by the Authority.

Capital Requirements

12. (a) The Central Depository Company is required to have adequate paid up capital to run its operations.

(b) The Authority may require the Central Depository Company to maintain a minimum paid up capital and net capital that maybe prescribed by the Authority from time to time.

Fees and Deposits

13. (a) The Central Depository shall be required to pay an annual license fee as maybe prescribed by the Authority from time to time.

(b) In the event a license is damaged, defaced or lost, the Central Depository may be required to pay a license replacement fee as maybe prescribed by the Authority from time to time.

(c) The Central Depository may be required to deposit with the Authority as a cash deposit, an amount that may be determined by the Authority. The Authority shall invest this amount in a bank fixed deposit or in Treasury Bills or any other such investment vehicle as may be determined by the CMDA. The CMDA shall annually, pay interest received on this investment to the Central Depository Company, less administrative charges as may be specified from time to time by CMDA.

Charges to be levied by the Central Depository

14. All fees and service charges levied by the Central Depository on the listed companies and dealing companies or any other person benefiting from the services of the Central Depository Company, and any amendment in the said fees and service charges, shall be subject to the prior approval of the Authority.

Records to be maintained

15. The Central Depository shall maintain and preserve the following records and documents, for a period of six years -
 - (a) minutes of the meetings of-
 - (i) its Board of Directors and shareholders; and
 - (ii) any standing committee or committees of its Board of Directors;
 - (b) register of shareholders including the full names and physical addresses of all directors and shareholders and their shareholding percentages;
 - (c) register of representatives and agents;
 - (d) record of securities transactions;
 - (e) statistical information on depository, clearing and settlement activities;
 - (f) register of all account holders;

- (g) annual audited accounts;
- (h) financial records of all transactions of the Central Depository

Reporting obligations

16. (a) The Central Depository shall maintain information in both print and electronic form, regarding depository, clearing and settlement services.
- (b) The Central Depository shall, by the last day of April in each year, furnish the Authority with an annual report of its activities during the preceding calendar year and such report shall contain information on -
- (i) changes in its rules;
 - (ii) changes to the Board of Directors;
 - (iii) composition and mandates of all the committees set up and changes (if any) in the membership of its existing ones;
 - (iv) any other matters that the Authority may request.
- (c) The annual accounts of the Central Depository shall be audited by an independent auditor approved by the Authority. The Auditor appointed as such shall not be removed without the prior approval of the Authority;
- (d) The Central Depository shall furnish the Authority with all documents and notices that it issues to its shareholders in connection with the annual general meetings within ten days prior to the date of such meetings.
- (e) Communications to investors shall be by way of publication in at least two daily newspapers of national circulation and through other media.
- (f) The Central Depository shall immediately report to the Authority by telephone and in writing whenever-
- (i) there is a delay in the opening or closing of the Central Depository;
 - (ii) there is a default on settlement and delivery;
 - (iii) there are incidences of violation of the Act or the Central Depository rules;
 - (iv) the Central Depository receives any non-public information that its chief executive believes could have a material effect on the market in general or on any specific securities; or
 - (v) the Authority requests for any information.
- (g) The Central Depository shall provide to the Authority Minutes of all meetings of its board of directors as well as minutes of any committee formed by the board within three working days.

Submission of annual budget

17. (a) The Central Depository shall submit its annual budget to the Authority not later than thirty days before the commencement of its financial year.
- (b) Any revisions to the budget shall be submitted to the Authority not later than fifteen days before the commencement of its financial year.

Amendments

18. (a) The Authority has the power to make modifications and amendments to the regulations governing the Central Depository as may be necessary for the smooth operations of the Central Depository and the securities market. Amendments to this regulation can be brought by the Board of Directors of the Authority.
- (b) The Board of the Authority retains the right to waive any one or more of the provisions under this Regulation, where it is reasonable to do so in the interest of the public.

SCHEDULE: 1

APPLICATION FOR LICENSE TO OPERATE A CENTRAL DEPOSITORY

1. **General Information:**

a. Name of Applicant Company:

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b. Registered office:

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c. Date of incorporation

d. Full address and telephone number of the principal place at which the business of the Applicant is to be carried on: (The Central Depository should be located in a place with good access to the public)

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2. **Financial, technical and other aspects to be considered in relation to providing clearing, settlement & Depository services**

(Please include details and attach plans where necessary)

a. Proposed authorized and paid up capital of the proposed Central Depository Company (The company should have adequate capital to run the operations)

b. Proposed shareholders and their financial commitment in the capital of the proposed Central Depository Company

c. Draft business plan for the proposed Central Depository Company for five years.
- Detailed organisational structure and internal control procedures
- Estimated fee and revenue structure for the services
- Strategic marketing plan for the growth of the business

d. Proposed Board & governance structure

e. Key management team along with their qualifications and experience

f. Outline of the draft Memorandum and Articles of Association (which shall be in the form as directed and approved by the CMDA)

g. IT deployment plan and Systems.

3. The details of shareholders of the Applicant, including the name address, amount of shares being held and date of acquisition. *(Please attach a list)*

Name	Address	Number of shares	Date of acquisition of shares

4. Details of each Director, Company Secretary, Chief Executive Officer and other key personnel of the Company:

Name:

ID card number

Residential Address:

Date of Birth:

Date of appointment:

Office held:

Educational qualifications:

5. Name and address of each person who, directly or indirectly, exercises or has power to exercise a controlling influence over the management and policies of the Applicant other than those shown as Directors:

Full Name	Address

6. Is any Director or Secretary of the Applicant a Director of any other corporation?

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If the answer is "YES" give details of:

Name(s) of Company	Place of Incorporation	Office held	Date of appointment

7. Has the Applicant or any Director or Secretary of the Applicant within the past 10 years:-

(a) been licensed or registered in any place under any law which requires licensing or registration in relation to provisions of securities related services? If answer is "YES" give details thereof:

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(b) been licensed, registered or otherwise authorised by law to carry on any trade, business or profession in any place? If answer is "YES" give details thereof:

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8. Has any Director or Secretary of the Applicant within the past 10 years:-

(a) been known by any name other than the name or names shown in this application? If answer is "YES" give details thereof:

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(b) been convicted of any offence other than a traffic offence in Maldives or elsewhere or are there any proceedings now pending which may lead to such a conviction? If answer is "YES" give details thereof:

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(c) had judgment including findings in relation to fraud, misrepresentation or dishonesty been given against him in any civil proceedings, in Maldives or elsewhere? If answer is "YES" give details thereof:

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(d) been declared bankrupt or compounded with or made an arrangement for the benefit of his creditors, in Maldives or elsewhere? If answer is "YES" give details thereof:

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(e) been engaged in the management of any corporation other than those referred to in answer to question 7? If answer is "YES" give details thereof:

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(f) been refused as a Director, or been Director of a Company that has gone into receivership or liquidation, in Maldives or elsewhere? If answer is "YES" give details thereof:

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9. Has any Director or management staff of the Applicant had any experience in performing the functions in this area? If answer is "YES" give details thereof:

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10. In relation to each Director and Secretary of the Applicant set out below details of the officer's employment and business activities, during the previous 5 years:

Name of Director or Secretary	Name and address of employer (if self-employed, so state)	Nature of business or activity	Description of duties in relation to the employment	Period of employment or activity (give exact dates)

11. Include certified copies of any formal qualifications or training of the Directors or Secretary of the Applicant.
12. Set out below details of two persons with whom each Director and the Secretary of the Applicant has had regular contact over the past 5 years and of whom the Authority may enquire regarding the character and reputation of the respective Director or Secretary.

Name of Director or Secretary in respect of whom enquiries may be made	Name of character referee	Occupation of character referee	Address of character referee

Note:

- (1) Set out any additional information that the Applicant deemed as important for the purpose of this application
 - If space is insufficient to provide details, please attach annexure(s). Any such annexure should be identified as such and signed by the signatory to this application.

- (2) **Please attach the following with the application**
 - Copy of the Registration Certificates under the Companies Act for the Applicant
 - Draft Memorandum and Articles of Association of the proposed Central Depository Company
 - Rules of the proposed Central Depository
 - Business Plan & Marketing Plan of the proposed Central Depository Company
 - Profile of the Chief Executive Officer and other key employees of the proposed the Central Depository Company
 - Last audited balance-sheet and profit and loss statement (these statements should be certified by Auditors approved by the Auditor General)
 - Completed Clearance form (Appendix:1)
 - Certified copies of any formal qualifications or training of the Directors and Secretary of the Applicant
 - Any other information or documents required by CMDA.

Undertaking for compliance with the Securities Laws Rules/Regulations

All Applicants shall be required to furnish an express undertaking to CMDA confirming that the Applicant understands and acknowledges that the license (right) to establish and operate a Central Depository in the Maldives shall be subject to their continued compliance with the Securities Laws and other Rules/ Regulations of CMDA, and that the Applicant also acknowledges that such a license (right) could be suspended, or withdrawn by CMDA in case of breach of any of the present or future provisions of these regulatory requirements.

Declaration:

We have read and understood the Maldives Securities Act and the regulation made under the Act, and we are aware of the provisions of the section 32 of the Maldives Securities Act relating to false statements in application.

Number	Name of Director / Company Secretary	Signature	Date

