

**S.I. 119 of 2024**

## SECURITIES ACT, 2007

**Securities (Conduct of Business) (Amendment) Regulations, 2024**

In exercise of the powers conferred by section 133, read with section 65 of the Securities Act, the Minister responsible for Finance on recommendation of the Securities Authority makes the following regulations —

**Citation**

1. These regulations may be cited as the Securities (Conduct of Business) (Amendment) Regulations, 2024.

**Amendment of Securities (Conduct of Business) Regulations 2008**

2. The Securities (Conduct of Business) Regulations is hereby amended —

(a) by inserting in regulation 2 before the definition of “approved bank” the following —

“affiliated entity” means a company which —

(i) stands in relation to another body corporate as a holding company or ultimate holding company or subsidiary company of that body corporate; or

(ii) is a body corporate that is a parent or subsidiary of a body corporate referred to in paragraph (i); or

(iii) is in relation to another body corporate, a member of the same group of companies by virtue of common ownership or control;

(b) by inserting in regulation 2 after the definition of “client bank account” the following —

“complaint handling” means the process of handling complaints by the licensee;

“compliance officer” means the individual appointed under section 23 (2) of the Financial Services Authority Act and 34 (2) of the Anti-Money Laundering and Countering the Financing of Terrorism Act;

“core function” means a function; the failure or inadequacy of which, arising from any weakness or failure on the part of the licensee in its performance, materially and adversely affects the licensee's ability to conduct its operations in a proper and efficient manner;

“domicile” means domicile as defined pursuant to Article 10 of the Civil Code;

“margin” means the pre-agreed amount a retail client is required to have in the form of money to effect a securities transaction;

“outsource” means a business practice in which a licensee uses a service provider to perform tasks, functions, processes, services or activities that would, or could in principle, otherwise be undertaken by the licensee itself;

“outsourcing agreement” means a written agreement setting out the terms and conditions governing the relations, obligations, responsibilities, rights and expectations of the parties involved;

“professional client” means professional client pursuant to regulation 35(1);

“relevant body” means an entity or organization that has the authority to regulate or authorize the activities of a particular entity by virtue of its legal, regulatory, or contractual relationship with that entity;

“restricted speculative investment” means —

- (i) a leveraged contract for differences;
- (ii) a leveraged rolling spot forex contract;
- (iii) an option over a contract referred to in paragraphs (i) or (ii); or
- (iv) any other leveraged investment similar in nature to an instrument referred to in paragraphs (i), (ii) or (iii);

“retail client” means a client who is not a professional client;

“rolling spot forex contract” means an instrument that falls within paragraph 8(b) of the definition of contract for differences in Schedule 1 of the Act, where the value of the contract is ultimately determined by reference, wholly or in part, to fluctuations in an exchange rate or the value of a currency;

“service provider” means a third party individual or company into which an outsourcing agreement has been entered;

“support function” means a function that does not constitute a core function and which generally supports the operation of the business;

- (c) by repealing regulation 24 and substituting therefor the following —

“24.(1) A licensee shall employ a resident person, who may be a compliance officer, to undertake complaints handling.

(2) A licensee shall have internal policies and procedures in place to effectively undertake complaints

handling by the resident person employed pursuant to subregulation (1) which he or she is to, before their implementation, present to the Securities Authority for approval.

(3) A licensee shall ensure that all complaints are promptly attended to and that all actions to remedy the complaints pursuant to the internal policies and procedures are exhausted.

(4) A licensee shall maintain an accurate and up-to-date database of all complaints received which shall include, but shall not be limited to, the following information, in relation to each complainant —

- (a) a copy of the biometric page of his passport or national identity card;
- (b) his email address;
- (c) his country of residence;
- (d) the date on which his account was opened;
- (e) the status of his account;
- (f) the complaint reference number assigned to him after a complaint is lodged;
- (g) the date on which the complaint is lodged;
- (h) the nature of the complaint; and
- (i) the status of the complaint in the complaint process.

(5) A licensee shall ensure that all complaints received are properly documented.

- (d) in regulation 25, by repealing subregulation (4) and substituting therefor the following —

“(4) A licensee shall for a period of not less than seven years, keep and maintain in physical or digital copies at its principal place of business the following records for inspection by the Authority or by any person whom the Authority in writing authorises —

- (a) client account statements;
- (b) records of transactions;
- (c) order tickets;
- (d) confirmations;
- (e) stock ledgers;
- (f) visual, spoken and written records of all forms of correspondences had with his or her clients irrespective of the method used;
- (g) constitutional documents pertaining to the outsourced service provider;
- (h) outsourcing agreements;
- (i) details of the business model of the outsourced service provider; and
- (j) records of payment for the services the licences obtain in accordance with these regulations.

- (e) by inserting after regulation 33, the following —

**“PART 4  
WORLDWIDE OPERATIONS**

**34.(1)** A licensee shall notify the Securities Authority of the countries in which he or she offers or intends to offer its services thereby —

- (a) declaring, through its Board of Directors, its intention to comply with the applicable laws and regulations of those countries; and
- (b) providing assurance that the relevant jurisdictions have allowed their residents to engage with the licensee.

(2) The Authority shall, at the time of application for a licence or at the post-licensing stage, require the applicant to provide written evidence of the permission it has obtained to solicit or onboard clients in countries where their citizens are permitted to engage in securities businesses.

**PART 5  
CLIENTS PROTECTION**

**35.(1)** A licensee, before offering a service to or for a person, in accordance with the requirements under this regulation, shall classify that person as a —

- (a) retail client; or
- (b) professional client.

(2) For the purpose of these regulations, the following shall be deemed professional clients —

- (a) an entity required to be authorised or regulated by the relevant body to operate in the financial markets as —
  - (i) a credit institution;
  - (ii) an investment firm;
  - (iii) any other authorised or regulated financial institutions;
  - (iv) an insurance company;
  - (v) a collective investment scheme and management company of such scheme;
  - (vi) a pension funds and management company of such fund;
  - (vii) a commodity and commodity derivatives dealer;
  - (viii) a local company;
  - (ix) any other institutional investor;
- (b) an entity who satisfies at least two of the following conditions —
  - (i) its balance sheet total is at a minimum of US\$ 20 million or the equivalent in any other currency; or
  - (ii) its net turnover is at a minimum of US\$ 40 million or the equivalent in any other currency; or

- (iii) its own funds are at a minimum of US\$2 million or the equivalent in any other currency.
- (c) governments, including public bodies managing public finance and debt and licensed financial institutions;
- (d) other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions; and
- (e) individuals who can be classified as a Professional Client only if they meet the specified net assets and expertise requirements pursuant to subregulation (4) and (5).

(3) For the purpose of a classification referred in paragraph (e) of subregulation (2), a licensee shall assess an individual and following the assessment, classify the individual as a professional client if the licensee is satisfied that the individual has net assets worth at least US\$ 1 million.

(4) A licensee, when calculating net assets of an individual pursuant to subregulation (3) —

- (a) shall exclude the value of the building at which the individual domiciles;
- (b) shall exclude any representation of fiat currency belonging to that individual; and
- (c) may include any other assets held directly or indirectly by that individual



through direct legal ownership, beneficial ownership or by both legal and beneficial ownership;

(5) For the purpose of an assessment carried out pursuant to subregulation (3), a licensee must, where applicable, take into consideration the following —

- (a) the individual's knowledge and understanding of the relevant financial markets, types of financial products or arrangements and the risks involved either generally or in relation to a proposed transaction;
- (b) the length of time the individual has participated in relevant financial markets, the frequency of dealings and the extent to which the individual has relied on professional financial advice;
- (c) the size and nature of transactions that have been undertaken by, or on behalf of the individual in relevant financial markets;
- (d) the individual's relevant qualifications relating to financial markets;
- (e) the composition and size of the individual's existing financial investment portfolio;
- (f) in the case of credit or insurance transactions, relevant experience in relation to similar transactions to be able to understand the risks associated with such transactions; and

- (g) any other matter which the licensee considers relevant.

(6) If a licensee becomes aware that a professional client no longer fulfils the requirements pursuant to subregulation (3), and no longer qualifies as such, the licensee shall, as soon as possible, inform the professional client of this fact and of the measures that are available to the client to facilitate his compliance to the requirements.

(7) A licensee must classify as a retail client any person who is not classified as professional client.

(8) A licensee must not deal in a restricted speculative investment with a retail client, unless the licensee has carried out an appropriateness assessment of the person and formed a reasonable view that the person —

- (a) possesses adequate skills and expertise to understand the risks involved in trading in the type of restricted speculative investment;
- (b) has the ability to absorb potential significant losses resulting from trading in the restricted speculative investment due to leverage; or
- (c) qualifies as a professional clients.

(9) A licensee shall not open a position in relation to a restricted speculative investment for a retail client unless the margin posted to open the position is in the form of money and the client has for that purpose opened a trading account.

(10) The liability of a retail client, for all restricted speculative investments connected to that retail client's

trading account with a licensee that deals in restricted speculative investments, is limited to the funds in that trading account.

(11) A licensee must maintain records to demonstrate its compliance with the requirements of this section.

(12) Records referred to subsection (11) must be kept for a period not less than seven years from the date that the business relationship is initiated.

## **PART 6 OUTSOURCING**

### **Outsourcing of support function**

**36.(1)** A licensee may outsource a support function of its business to an external service provider.

(2) An outsourcing pursuant subregulation (1) must be formally established with the external service provider through a binding agreement.

(3) The licensee's intention to outsource shall, no later than 14 days prior to engaging the services of the external service provider, be notified to the Authority in writing together with the agreement entered into pursuant to subregulation (2).

### **Core functions**

**37.(1)** A licensee shall not outsource a core function of its business unless it is to an affiliated entity.

(2) A licensee before outsourcing a core function pursuant to subsection (1) shall —

- (a) 30 days prior to engaging the services of the affiliated entity, obtain approval of the Authority; and
  - (b) enter into a binding agreement with the affiliated entity, as to the terms and conditions of the outsourcing.
- (3) An agreement for the outsourcing of core functions pursuant to subregulation (1) must be approved by the Board of Directors of the licensee and submitted to the Authority for further approval at the time the request for approval of the outsourcing of the core functions is sought.
- (4) The Authority may impose conditions on an approval granted under this regulation.

**Transition and savings provision**

3. Entities licensed before the coming into force of these Regulations, shall within eighteen months of the commencement of these regulations, comply with their provisions.

**MADE this 30<sup>th</sup> day of December, 2024.**

**NAADIR HASSAN  
MINISTER OF FINANCE,  
NATIONAL PLANNING AND TRADE**

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