

## **Chapter 4**

### **APPOINTMENT OF THIRD PARTY TO UNDERTAKE FUNCTIONS**

#### **General**

- 4.01 A management company may appoint a third party to undertake its fund management function.
- 4.02 The management company is responsible for proper conduct of the function undertaken by such third party and will be held equally responsible for the action and omission by the third party.
- 4.03 For the purpose of these Guidelines, a third party appointed by a management company to undertake the fund management function for a fund will be referred to as 'fund manager'.
- 4.04 A management company must ensure that—
- (a) adequate procedures are in place to monitor the conduct of the fund manager and to ensure that the function undertaken is performed in a proper and efficient manner;
  - (b) there are controls in place to ensure compliance with the securities laws, these Guidelines, prospectus and deed; and

- (c) in relation to an appointment of a foreign fund manager, a letter of undertaking is provided by the foreign fund manager to the SC that it will maintain for a period of at least seven years, proper records–
  - (i) that sufficiently explain the transactions entered into on behalf of the fund and the financial position of the fund; and
  - (ii) that will enable such records to be conveniently and properly audited or inspected.

4.05 In appointing a fund manager, a management company must also ensure that the person appointed is suitable to undertake the particular function, including that it–

- (a) is duly licensed or authorised by the relevant authority;
- (b) has adequate financial resources;
- (c) has an adequate track record in the performance of the function; and
- (d) has adequate and appropriate human resources, systems, procedures and processes to carry out the function, including on compliance with applicable requirements and policies and procedures on internal controls.

4.06 The service agreement governing the appointment of a fund manager must, among others, contain clear provisions on–

- (a) the services to be provided;

- (b) the fees, remuneration and other charges;
- (c) any restriction or prohibition regarding the performance of the function to be undertaken; and
- (d) reporting requirements, including the line of reporting to the management company, and means of evaluating the performance of the fund manager.

4.07 An appointment of a fund manager by a management company requires prior notification to the SC in writing.

4.08 Where a management company appoints a foreign fund manager, the agreement between the management company and foreign fund manager must include, in addition to the requirements set out in paragraph 4.06, the following requirements:

- (a) Adequate training arrangements between the foreign fund manager and the management company; and
- (b) Powers of examination and inspection by the management company, the trustee and the SC to ensure that the foreign fund manager is in compliance with the applicable requirements of the securities laws, these Guidelines, prospectus or the deed.

4.09 An officer of a fund manager, must not hold office as a member of -

- (a) the oversight function of any fund for which the fund manager is appointed to manage; or

- (b) the Shariah adviser of any fund for which the fund manager is appointed to manage.

4.10 Paragraph 4.09(a) does not apply where the fund manager and the management company satisfy the following conditions:

- (a) The fund manager and the management company are related companies whereby—
  - (i) the fund manager is an ultimate holding company which wholly-owns the management company;
  - (ii) the fund manager is a wholly-owned subsidiary of the management company; or
  - (iii) the fund manager and the management company concerned are wholly-owned subsidiaries of the same ultimate holding company; and
- (b) The management company has notified the respective unit holders of such appointment.

4.11 The fund manager's remuneration must be paid by the management company and not be charged to the fund.