FINANCIAL RESOURCES REQUIREMENTS RULES FOR ASSET MANAGERS, 2023

Contents

NON-BANK FINANCIAL INSTITUTIONS REGULATORY AUTHORITY ("NBFIRA")

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PART 1: PRELIMINARY

1.1 Application

(1) These Rules may be cited as the Financial Resources Requirements Rules for Asset Managers.

(2) The Non-Bank Financial Institutions Regulatory Authority (NBFIRA) may issue guidance regarding the standards of conduct and practice expected in relation to any aspect of the regulatory framework. Such guidance presents an outline of compliance with the Rules.

PART 2: FINANCIAL RESOURCES REQUIREMENTS

2.1 Financial Resources Requirements

(1) An Asset Manager shall, at all times, maintain:

(a) Net assets of not less than P600,000 or

(b) Liquid assets sufficient to cover at least 3 months of expenditure, whichever is greater based on the previous year's audited financial statements.

(2) An Asset Manager shall follow the framework for the calculations of financial resources requirements as may be prescribed by NBFIRA.

Guidance Note

The Financial Resources Requirements Rules recognise that there will be some instances where the Rules for financial resources requirements and liquidity requirements will not consider the nature and complexity of the Asset Manager.

Such instances might be, for example, due to foreign exchange risk, risk of counterparty default, off balance sheet assets and liability (including contingent liabilities) or principal positions which the Asset Manager has taken.

Accordingly, the Board and Management of the Asset Manager should consider an appropriate additional provision above the level required in these Rules and evidence that consideration.

In assessing the above, as a minimum, the Board should consider the calculations laid out under Rule 8.1. These calculations are intended to be a guidance.

PART 3: **INSURANCE ARRANGEMENTS**

3.1 **Insurance Arrangements**

(1) An NBFI acting as an Asset Manager must maintain insurance cover which is commensurate with the size and nature of the business. Cover must include Professional Indemnity Insurance (PII) and insurance against employee dishonesty or fraud (Fidelity Insurance).

Guidance Note

The consideration by the Asset Manager of its insurance requirements should be clearly documented, at local Board or Senior Management level, to demonstrate how the decision was made.

NBFIRA expects all Asset Managers, whether they are part of organisations with offices elsewhere, to consider the insurance requirements for entities in Botswana.

Where a local operation is part of a group and the local Board or Management do not consider availability, to the Botswana Asset Manager, to be adequate, NBFIRA expects the Board, or Management, to plan to maintain appropriate cover. This may include purchasing a separate policy for the local operation in line with the applicable Insurance Industry Act.\

NB: An insurance cover for Botswana licensed NBFI, shall be placed with Botswana based insurers and reinsurers in line with the Insurance Industry Act.

Guidance Note

Insurance cover based on a prior year's audited financial statements does not need to be amended before the next annual renewal following the release of the following year's annual financial statements. However, the Asset Manager should consider whether to arrange additional cover if the annual financial statements show a material increase in income.

(2) Notwithstanding 3.1(1)1 above, a licensee is not required to have aggregate insurance cover exceeding an amount determined by a certified Assessor, provided the Board of the licensee has considered and decided that such level of cover is appropriate and sufficient for its business. The licensee shall be able to evidence the Board assessment if requested by NBFIRA.

Guidance Note

Rule 3.1(2) above is also applicable to an Asset Manager which is a part of a group and relies on Professional Indemnity Cover provided by the group. For this case, the consideration should ensure the group professional indemnity cover policy is appropriate for the Asset Manager, in particular that the Asset manager will be able to fund the excess if a claim is made on the professional indemnity cover policy.

(3) Where the Asset Manager also carries out activities not regulated by NBFIRA, the Asset Manager shall consider whether the minimum indemnity limit of its professional indemnity policy, and scope of the professional indemnity cover, are appropriate for its business, shall consider possible claims that may also arise from unregulated business.

3.2 Scope of Cover

(1) An Asset manager shall maintain, at all times, cover for:

(a) negligence, errors or omissions by the Asset Manager or its employees;
(b) any liability for the dishonesty or fraudulent acts of employees which may fall on the Asset Manager;
(c) liabilities which the Asset Manager might incur, in any jurisdiction, in which it could reasonably foresee that it may be held liable for damages and costs;
(d) legal defense costs; and
(e) Any other operational risk that might be incurred by the Asset Manager

Part 4: **NOTIFICATIONS**

4.1 Immediate Notification

(1) An Asset Manager shall notify NBFIRA, immediately, where:-

(a) it is in breach of its financial resources requirement or liquidity requirement, including getting out, in writing, the steps that it is taking, or was taken, to remedy the breach;
(b) it anticipates being in breach of its financial resources requirement or liquidity

requirement within thirty (30) days; including settling out, in writing, the steps that it proposes to take to avoid the breach;

(c) its auditor’s intent to qualify the Financial Statements;
(d) the liabilities of a subsidiary of the Asset Manager exceed the subsidiary’s assets;
(e) the liabilities of the parent company of the Asset Manager exceed the parent company’s assets; and
(f) remedial actions taken to address (d) and (e) above.

Part 5: **GENERAL PROVISIONS**

(1) The Returns submitted by an Asset Management company shall be signed by the Managing Director and Head of Finance.

(2) No Asset Manager shall be allowed a shortfall in any capital funds, other than in specific temporary exceptions granted by NBFIRA due to unusual circumstances.

(3) NBFIRA may require the Key Personnel to appear personally and produce the company's set of financial statements and answer questions, including questions relating to any actual or possible violation of these Rules.

(4) NBFIRA may appoint an external auditor to verify capital shortfalls when they are detected or suspected. In the event that such irregularities and/or capital shortfall, as the case maybe, are confirmed by the auditor, the Asset Manager shall bear all the costs associated with the verification exercise.

(5) NBFIRA will have full discretion regarding the necessity and sufficiency of special adjustments in any particular case presented by the Asset Manager, taking into consideration all factors pertaining to the market with regard to the financial position or future contracts and the affairs as a whole of the Asset Manager involved.

(6) The Regulatory Authority may modify these or prescribe additional requirements as it may deem appropriate for the discharge of its mandate from time to time.

(7)

Part 6: **TRANSITIONAL ARRANGEMENTS, CITATIONS AND COMMENCEMENT**

6.1 Transitional Arrangements

(1) An Asset Manager shall comply with these Rules at their next insurance renewal following the date on which Financial Resources Requirements Rules for Asset managers come into effect.

6.2 Citation and Commencement

(1) These Rules may be cited as the Financial Resources Requirements Rules for Asset Managers, 2023.

(2) These Rules come into effect on April, 01, 2023.

Part 7: MISCELLANEOUS

(1) Beyond the minimum levels of capital specified in the Rules, it is the responsibility of the Board of Directors and Senior Management of an Asset manager to make regular assessments of the company's financial resources to ensure that its capital resources are appropriate for the level and nature of all the risks to which the company is exposed.

(2) All Asset Managers should have suitable systems in place to identify, measure and manage the risks associated with their activities, and to hold capital which is adequate for their overall risk profile. As part of the process, all Asset Managers should maintain and implement capital management plans setting out its overall strategy for managing capital resources over time. The capital management plan should be consistent with the company's overall business plan and should include actions and procedures for monitoring compliance with the required financial resources ratios. Targets and trigger ratios should be set to alert management of, and avert, potential breaches to the minimum capital ratios.

(3) An Asset Manager shall obtain prior written consent from NBFIRA before;

(a) seeking to reduce or change the nature of its issued capital or the rights and obligations of its security shareholdings;

(b) acquiring 10 percent or more of the voting securities of another company; or

(c) entering into any agreement to sell or merge the whole or any part of the registered firm to or with a third party.

(4) An Asset Manager shall as soon as it becomes aware, notify NBFIRA immediately of an incident that is likely to impair its minimum liquidity requirement as well as provide a mitigation plan. The Asset Manager shall in addition, submit a plan on how it will rectify the position in a period not exceeding thirty (30) days.

(5) Where an Asset Manager fails to comply with these Rules, NBFIRA may consider initiating appropriate regulatory action.

(6) In terms of the Act, NBFIRA may reprimand, sanction, suspend and or cancel the registration of an Asset Manager declared a defaulter.

(7) The suspension or cancellation of an Asset Manager 's registration shall automatically suspend all rights and privileges of the Asset Manager, without relieving it of its liabilities.

8. CALCULATIONS OF FINANCIAL RESOURCES REQUIREMENTS

(Rule 2.2)

1. PROPRIETARY POSITIONS OF ASSET MANAGERS

1.1 An Asset Manager shall include in its liquid assets any of the following assets that it beneficially owns;

(a) cash and cash equivalents;
(b) listed shares;
(c) liquid debt securities; and
(d) any other securities subject to NBFIRA's approval; at market value, less the haircut amounts in relation to the securities or specified investments concerned, which may be prescribed by NBFIRA.

2. RECEIVABLE FROM ACTIVITIES ASSOCIATED WITH ASSET MANAGEMENT.

2.1 An Asset Manager shall include in its liquid assets, undisputed amounts receivable from any of its activities associated with asset management.

3. AMOUNTS RECEIVABLE UNDER REPURCHASE TRANSACTIONS

3.1 An Asset Manager which is the purchaser in the first instance of any securities under a purchase transaction shall include in its liquid assets, any amount receivable from the seller of the securities that it is deemed to have in respect of the consideration for which it purchased the securities.

4. MISCELLANEOUS ASSETS

4.1 An Asset Manager shall include in its liquid assets any of the following assets-

(a) The amount of any fees, commissions, commission rebates and interest charges to which it is beneficially entitled which arise from the carrying on by it of any regulated activity for which it is licensed; and-

(i) which have accrued and will first be due for billing or payment within the next 3 months; or

(ii) which have been billed or fallen due for payment and remain outstanding for one month or less after the date on which they were billed or fell due.

(b) deposits which it beneficially owns and maintained with, and in accordance with the rules or requirements of, a licensed Securities Exchange as security for its obligations or liabilities owed to the licensed Securities Exchange;

(c) prepaid operating expenses which will be incurred within the next 3 months;

(d) interest accrued to it under an interest rate swap agreement to which it is a party, other than interest which remains outstanding after it is first due for payment;

(e) dividends receivable on shares listed on a licensed Securities Exchange or on a Specified Exchange that are traded on an ex-dividend basis and which it beneficially owns; and

(f) interest accrued on qualifying debt securities or special debt securities that are traded on an ex- interest basis and which it beneficially owns.