

The text below is an internet version of the Rules made by the Financial Services Commission under Section 93 of the Financial Services Act 2007 and Section 155 the Securities Act 2005 and is for information purposes only. Whilst reasonable care has been taken to ensure its accuracy, the authoritative version is the one published in the *Government Gazette* of Mauritius (GN No. 245 of 2013)

SECURITIES (RECOGNITION OF REMOTE CUSTODIANS) RULES 2013

ARRANGEMENT OF RULES

PART I - PRELIMINARY

1. Citation
2. Interpretation
3. Scope of the Rules

PART II - RECOGNITION OF REMOTE CUSTODIANS

4. Application for recognition

PART III - REMOTE CUSTODIAN AGENT

5. Remote custodian agent
6. Functions of the remote custodian agent

PART IV - MISCELLANEOUS

7. Fees
8. Variation of the recognition
9. Withdrawal of the recognition
10. Consequential amendments
11. Commencement

SECURITIES (RECOGNITION OF REMOTE CUSTODIANS) RULES 2013

FSC Rules made by the Financial Services Commission under Section 93 of the Financial Services Act 2007 and Section 155 of Securities Act 2005.

PART I PRELIMINARY

1. Citation

These Rules may be cited as the Securities (Recognition of Remote Custodians) Rules 2013.

2. Interpretation

In these Rules –

"Act" means the Securities Act 2005;

“applicant” means a person applying for recognition to act as remote custodian on a licensed clearing and settlement facility in Mauritius;

“Chartered Secretary” means a member of the Institute of Chartered Secretaries and Administrators of the United Kingdom;

“clearing and settlement facility” means a clearing and settlement facility licensed under section 10 of the Act;

“Commission” has the same meaning as in the Act;

“Financial Services Act” means the Financial Services Act 2007;

“law practitioner” has the same meaning as in the Law Practitioners Act 1984;

“management company” has the same meaning as in the Financial Services Act;

“qualified auditor” has the same meaning as in the Companies Act 2001;

“remote custodian” means an entity incorporated or registered in a foreign jurisdiction, recognized by the Commission to hold the custody of clients’ securities and to provide custodial services, and admitted to participate in the clearing and settlement of trades on behalf of its clients in a clearing and settlement facility licensed by the Commission;

“remote custodian agent” means an agent appointed by a remote custodian in accordance with Rule 6.

3. Scope of the Rules

These Rules shall apply to the recognition of remote custodians which shall be admitted to clear and settle trades on behalf of its clients on a clearing and settlement facility licensed by the Commission.

PART II RECOGNITION OF REMOTE CUSTODIANS

4. Application for recognition

- (1) No remote custodian shall participate on a clearing and settlement facility unless it is duly recognized by the Commission.
- (2) The Commission may recognize an applicant to act as a remote custodian under such terms and conditions it deems appropriate, if it is satisfied that the applicant is exercising the functions of holding the custody of clients’ securities and providing custodial services in a jurisdiction whose regulatory framework is consistent with international best practices.
- (3) An application for recognition shall be accompanied by –
 - (a) evidence that the remote custodian is regulated by a relevant foreign regulatory body;

- (b) a certified true copy of the certificate of incorporation or any other evidence of registration of the applicant;
- (c) a certified true copy of the agreement entered into between the remote custodian and the remote custodian agent pursuant to Rule 6(2) of these Rules;
- (d)
 - (i) a certificate of good standing from the relevant foreign regulatory body, where the applicant is licensed or otherwise regulated; or
 - (ii) a statement from a lawyer authorized to practise law in the foreign jurisdiction certifying that the applicant is legally entitled under the laws of that jurisdiction to carry out the functions of holding the custody of clients' securities and providing custodial services in that jurisdiction;
- (e) confirmation from the remote custodian agent that due diligence checks on the clients of the remote custodian have been conducted in accordance with the anti-money laundering and combating financing of terrorism principles applicable in the equivalent foreign jurisdiction in which the custodian is incorporated or otherwise registered;
- (f) confirmation from the clearing and settlement facility that due diligence checks on the remote custodian have been conducted in accordance with the anti- money laundering and combating financing of terrorism principles as applicable;
- (g) a copy of the agreement to be entered with the clearing and settlement facility; and
- (h) any other information that the Commission may deem necessary.

PART III

REMOTE CUSTODIAN AGENT

5. Remote custodian agent

- (1) A remote custodian duly recognized by the Commission shall at all times have a remote custodian agent in Mauritius who shall be a law practitioner, a qualified auditor, a Chartered Secretary or a management company.

- (2) An applicant for recognition as remote custodian shall enter into an agreement with a remote custodian agent prior to applying for recognition with the Commission.

6. Functions of the remote custodian agent

The remote custodian agent shall provide such services as the remote custodian may require in Mauritius, including –

- (a) the filing of all documents with the Commission as may be required;
- (b) the receiving and forwarding of any communication, notice or summons from, and to, the Commission or the clearing and settlement facility or any other party;
- (c) the notification, within 21 days, of any change in the beneficial ownership of the applicant, any alteration to any document submitted to the Commission or to the clearing and settlement facility by the remote custodian and any other material change; and
- (d) the filing of any other information which the Commission may require.

PART IV

MISCELLANEOUS

7. Fees

An applicant for recognition as a remote custodian shall pay the applicable fees as specified in the Financial Services (Consolidated Licensing and Fees) Rules 2008.

8. Variation of the recognition

The Commission may, at any time, vary the terms and conditions of the recognition as it deems fit.

9. Withdrawal of the recognition

The recognition of a remote custodian by the Commission shall be withdrawn where –

- (a) the remote custodian is no longer permitted to act as custodian in the jurisdiction where it was participating at the time of the application;
- (b) the agreement between the clearing and settlement facility and the remote custodian is terminated;
- (c) there is a breach of the Financial Services Act, the Act, rules and regulations made under these Acts or any condition imposed by the Commission; or
- (d) the remote custodian surrenders its recognition and settles all dues with the Commission.

10. Consequential amendments

The Financial Services (Consolidated Licensing and Fees) Rules 2008 are amended in Part 1 of the First Schedule by inserting the following table immediately after the table for “Foreign Investment Dealers trading on GBOT” –

Remote Custodians participating on a clearing and settlement facility licensed under the Securities Act 2005				
Code	Recognition	Relevant Section of Securities Act 2005	Processing fee (US \$)	Fixed Annual Fee (US \$)
SEC-7.1	Remote custodian	S 155(2)(xc)	(\$ 1,000)	(\$ 1,500)

11. Commencement

These Rules shall come into operation on 19 October 2013.

Made by the Financial Services Commission on 16 October 2013.

