



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Specialized Companies Division
Policy, Regulation and Development Department

No. SCD/PRDD/Circular/ 803 /2013

December 06, 2013

CIRCULAR NO. 24 / 2013

Subject: Requirements for Delegation of Functions by Asset Management Companies in relation to Collective Investment Schemes

The Securities and Exchange Commission of Pakistan (the "Commission") in exercise of the powers conferred under Section 282B (3) of the Companies Ordinance, 1984 read with Regulation 38 (c) of the Non-Banking Finance Companies and Notified Entities Regulations, 2008 hereby prescribes the requirements for delegation of any functions (excluding distribution function) by an Asset Management Company (AMC). The requirements for delegation of functions by AMCs encompass the following:

- A. Definitions
- B. General
- C. Responsibilities of Board of Directors and Senior Management
- D. Risk Management and Controls
- E. Service Level Agreement (SLA) with Service Provider
- F. Confidentiality of clients
- G. Regulatory Obligations

(A) Definitions

Service Provider means a company to whom functions related to Collective Investment Scheme (CIS) are delegated by an AMC.

(B) General

1. An AMC may delegate to a third party ("Service Provider") any of its functions in relation to a CIS under its management, except its core functions which includes investment decision making, risk management and compliance functions. However, in case of investment abroad on behalf of CIS an AMC may appoint investment advisor for such investments.
2. An AMC shall ensure that a function delegated to a service provider is not sub-delegated by such service provider to another party.
3. An AMC may delegate its function in relation to accounting of a CIS to a Service Provider provided the Service Provider to which such function is delegated has a Chief Accounting Officer / Chief Financial Officer who is compliant with the criteria specified under rule 7(a)(vi)(c) of the Non-banking Finance Companies (Establishment and Regulation) Rules, 2003.

4. An AMC may delegate function(s) to a Service Provider, initially for a period not exceeding three years and subject to satisfactory performance of such Service Provider may extend term of contract for such period as it may deem appropriate.
5. An AMC may delegate function to its associates or group entities provided such associate or group entity has in place systems, infrastructure, manpower, decision-making, record keeping, etc. for avoidance of any conflict of interest and to ensure an arm's length dealing with the AMC and CIS under its management.

(C) Responsibilities of Board of Directors and Senior Management

6. An AMC shall obtain prior written approval of its Board of Directors for entering into an agreement with the Service Provider for delegation of any functions.
7. An AMC shall conduct due diligence of the Service Provider, prior to engaging it, to assess its capabilities and expertise in performing the functions being delegated. Such an assessment shall inter alia, include the following:
 - a. Capacity of the Service Provider to comply with its obligations under the service level agreement;
 - b. Adequacy of the resources and ability of the Service Provider to efficiently undertake the functions, especially in instances where the Service Provider performs services for multiple entities along with level of concentration of the outsourced arrangements with a single Service Provider;
 - c. Potential conflict of interest especially where the Service Provider operates within the same industry and mechanism to adequately address such conflicts;
 - d. Qualitative and quantitative financial and operational factors;
 - e. Reputation factors;
 - f. Insurance coverage by the Service Provider;
 - g. Ability of the Service Provider to adhere to high standard of care;
8. An AMC's Board of Directors and its management shall be responsible and accountable for effective due diligence and oversight of all delegation decisions, to the regulator, unit holders of the CIS and other stakeholders.
9. An AMC shall ensure that prior to appointment of a Service Provider, details of such an arrangement along with requisite disclosures, including AMC's assessment of the service provider's capacity to satisfactorily perform the delegated functions, are made in the offering document of a CIS for which the service provider is being appointed, subject to approval of the offering document by the Commission.

(D) Risk Management and Controls

10. An AMC and its Board of Directors shall be responsible for the effective management of any risks arising from delegation of functions and shall at the minimum ensure the following:

- a. Comprehensive due diligence of the nature, scope and complexity of the delegation of functions to identify key risks along with risk mitigation strategies;
 - b. Delegation is consistent with the overall business strategy and objectives of the AMC;
 - c. Periodic reviews of delegation arrangements and identification of new material outsourcing risks which arise or may arise;
 - d. Analysis of the impact of the arrangement on the overall risk profile of the AMC, and whether adequate internal expertise and resources are available to mitigate the risks identified; and
 - e. Analysis of the potential benefits of delegation against the weaknesses that may arise, including the impact of disruption or unexpected termination of the delegated services.
11. An AMC shall put in place adequate procedures to monitor and maintain overall control of the delegation arrangement in accordance with its Board's approved policy and ensure performance of AMC's primary obligation for the functions that are delegated.
12. An AMC shall ensure that its internal audit function conducts regular review of the functions performed by the Service Provider to ensure the continuous quality and integrity of the delegated functions.
13. An AMC shall have in place a contingency plan, approved by its board of directors, to mitigate any adverse impact arising from the discontinuity and disruption to the delegated function(s) in the event the service level agreement or part thereof is terminated, or the function cannot be performed by the service provider for any reason whatsoever. Such plan shall specifically cover detailed review of alternatives (i.e. whether the AMC will perform the function itself or appoint a new service provider).

(E) Service Level Agreement (SLA) with Service Provider

14. An AMC shall enter into a written and binding service level agreement with the Service Provider to formalize and document the delegation arrangement, which explicitly and carefully defines the roles, responsibilities and obligations of the Service Provider and the AMC.
15. An AMC shall ensure that the SLA adequately captures the nature and materiality of the delegation arrangement between the AMC and Service Provider and documents all its components. The terms and conditions governing the SLA shall at the minimum cover provisions dealing with:-
- a. Firm and client confidentiality
 - b. Payment arrangements with Service Provider



- c. Liability of the Service Provider to the AMC for unsatisfactory performance or other breach of the agreement
 - d. Guarantees and indemnities
 - e. Mechanisms to resolve disputes that might arise under the arrangement
 - f. Business continuity provisions
 - g. Conditions for termination of contract and exit strategies
 - h. Maintenance of books, records and documents for the time period stipulated in the law, rules and guidelines.
16. An AMC shall ensure that the SLA stipulates provisions for proper reporting and monitoring mechanisms from the Service Provider to the AMC and trustee of the CIS, including the AMC's right and access to prompt information and records in relation to the CIS and its delegated functions.
17. An AMC shall ensure that the SLA contains appropriate provisions that empower the Commission to have ongoing access to books, records and documents, and it has the right of examination and inspection of the Service Provider, with or without notice.
18. An AMC shall ensure that the service level contract is duly reviewed by a competent legal counsel with regards to its legal effect and enforceability.
19. An AMC shall ensure that copy of service level agreement is shared with the Trustee of CIS within seven working days of entering into delegation agreement.

(F) Confidentiality of Clients

20. An AMC shall procure, from the Service Provider, a written undertaking to maintain the secrecy and confidentiality of the documents and information of clients that the service provider shall have access to, from any intentional or inadvertent disclosure to any unauthorized person(s).
21. An AMC shall ensure that any requirements pertaining to the confidentiality of clients' information particularly in terms of the delegated functions, as stipulated under any laws, rules, regulations or guidelines are adhered to at all times.
22. An AMC shall review the service provider's security policies, procedures and controls to ensure protection of confidentiality and security of clients' information.

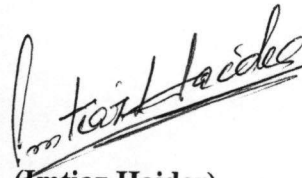
(G) Regulatory Obligations

23. An AMC shall have the primary obligation, accountability and responsibility for complying with any regulatory requirements at all times notwithstanding delegation of any function to a Service Provider.



24. An AMC shall ensure that delegation of the functions does not in any way interfere with the ability of the AMC to fulfill its legal and regulatory obligations, or in efficiently performing any of its activities.
25. An AMC shall establish internal policies and procedures to ensure compliance with all relevant securities laws, regulations, guidelines, licensing conditions and rules and in this respect shall specifically ensure through service level agreement that the Commission has at all times—
- a. Access to the books, records and documents of the service provider relating to the outsourced activities;
 - b. Be able to obtain copies of any books, records and documents whether from the AMC or the service provider; and
 - c. Be able to obtain promptly any other information concerning activities that are relevant for the performance of their regulatory oversight or supervisory functions.
26. An AMC shall ensure that appropriate measures are in place including specific provisions in the SLA that empower the Commission to:
- a. Conduct examination and/or inspection at the premises of the Service Provider, by any person appointed in this behalf and to obtain copies of any report and finding made on the service provider in conjunction with the service performed for the market intermediary; and
 - b. Have access to the Service Provider and the AMC's records and documents, data or information regarding transactions, and any other information of the AMC given to, stored at or processed by the service provider, and the right to access any report and finding made on the service provider.
27. An AMC shall procure a written undertaking from the Service Provider to the effect that the Commission shall, without any hindrance, reserve the right to conduct examination or inspection at the service provider's premises, including examining books and documents and having access to and obtain copies of the relevant books, records and documents as and when required.
28. An AMC shall submit following information in respect of its delegated functions to the Commission, within seven working days of entering into delegation agreement:-
- a. Objectives for delegations of functions;
 - b. Approval of the Board of Directors;
 - c. Scope of activities that are being delegated and the detailed arrangement between the AMC and the service provider;
 - d. Selection criteria of the service provider and the manner in which the AMC shall monitor the performance of the functions by the service provider;

- e. Evaluation of risks; and
 - f. Copy of the duly executed service level agreement
29. The Commission may at any time require or direct an AMC to perform the delegated function(s) itself internally or transfer the function to another Service Provider in the event that the Commission is not satisfied, for any reason whatsoever, with the performance of the service provider or the arrangement between AMC and the Service Provider, without any compensation whatsoever due to the AMC or the service provider.
30. This Circular shall come into force with immediate effect and all AMCs are required to ensure its meticulous compliance in letter and spirit. Any AMC which has outsourced any function prior to coming into force of this Circular, shall report such delegation of functions in accordance with the requirements of clause 28 of this Circular within three month from the date of issuance of this circular. Further, it shall conduct an assessment of its existing delegation of function arrangements not later than six months from the date of issuance of this circular and bring them in line with the requirements of the Circular.


(Imtiaz Haider)
Commissioner (SCD)

Distribution:

1. Chief Executives, Asset Management Companies.
2. Mutual Funds Association of Pakistan.
3. Trustees of Collective Investment Schemes.