

Investment Advisor

Guidelines



FINANCIAL SERVICES AUTHORITY

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1. Introduction

These guidelines have been prepared to provide assistance in matters pertaining to the application and licensing and exemption of Investment Advisors under the Securities Act, 2007 (the Act) and the Securities Regulations, 2008. These guidelines also provide a summary of the Act, thus it is not intended to be comprehensive nor replace or override any legislative provisions. Applicants and licensees are therefore advised to read these guidelines in conjunction with the Act. Any question or queries may be directed to:

The Managing Director
Financial Services Authority
P.O Box 991
Roche Caiman, Mahé
Republic of Seychelles

Attn: Securities and Financial Markets Manager

All application forms and other documents are available from the Authority's website (www.fsaseychelles.sc).

2. Scope of the Act

2.1 Definition of Investment Advisor

The Securities Act, 2007 applies to a "Person" defined in the Act as a "Company and an Individual"

Per the definition of the Securities Act, 2007 an Investment Advisor:

- a. means a person who carries on business giving advice on securities, or
- b. who holds himself out as conducting such business described below:
 - i. Advises other persons concerning investment in securities
 - ii. Issues, analyses or reports concerning specific securitiesOr
- iii. Manages a portfolio of securities for another person –
 - without holding property of the other person; and
 - on terms that preclude him from doing so

A person is not regarded as carrying on business of giving advice on securities if that person:

- a. Is a securities dealer
- b. Is a bank in Seychelles
- c. Is a lawyer or a professional accountant who gives advice on securities as an incident to the practice of that person's profession
- d. Gives advice on securities only in a newspaper, magazine, journal or other periodical publication –
 - which is generally available to the public
 - which does not have as its principal or only object the provision of advice, or the issue of analyses or reports, concerning securities

2.2 Structure

Investment Advisors licensed in Seychelles may be structured as:

- Individuals who satisfy the requirements of the Act
or
- Companies incorporated or other body corporate wherever incorporated or constituted

3. Application and Licensing of Investment Advisors

To be able to engage in Investment Advisor business in Seychelles, a regulatory licence from the Authority is obligatory.

3.1 Application for an Investment Advisor Licence for Companies

An application submitted to the Authority for an Investment Advisor (company) Licence must comprise of the following documents:

- A completed Application Form
- The relevant application fee (i.e. US\$1000)
- Certified true copies of the constitutional documents of the applicant (Memorandum and Articles of Association, , Certificate of Incorporation, Certificate of good standing);
- Audited Financial statements of the applicant for the past 2 years in case of an applicant who was not incorporated within the last 12 months
- Personal Questionnaire completed by each director, general partner, trustee, shareholder and beneficial owner of the applicant (unless the relevant party is listed on a stock exchange in a recognised jurisdiction Personal Questionnaire Forms are not required).
- The last audited financial statements of the controlling owners of the applicant if the controlling owner is a non-individual
- The Representative Licence Application Form
- Details of each (prospective) representative showing full name, date of birth, residential address, academic qualification and experience;
- Notice of place at which the Register of Securities is to be kept as per Section 80(2)(a) of the Securities Act, 2007 and Schedule 1 Form 6 of the Securities (Forms and Fees), 2008
- A written notification from the representative in accordance with section 53 of the Securities Act, 2007
- A copy of the policy of insurance (appropriate to the proposed nature and size of the business) of the applicant

3.2 Application for an Investment Advisor License for Individuals

An application submitted to the Authority for an Investment Advisor (Individual) Licence must comprise of the following documents:

- A completed application form
- The relevant application fee (i.e. US\$ 1000)
- Certified proof of identity and residential address of the applicant
- A detailed statement of the applicant's assets and liabilities signed by the applicant
- Notice of the place at which the Register of Securities is to be kept as per Section 80(2)(a) of the Securities Act, 2007 and Schedule 1 Form 6 of the Securities (Forms and Fees), 2008
- Personal Questionnaire completed by the applicant.
- A detailed Business Plan

4. Representative

The Securities Authority shall not grant an Investment Advisor licence in the case of a company unless the applicant employs at least one individual who is licensed as a representative under section 52 of the Act. An Investment Advisor Representative means an individual in the employment of (including a Director of), or acting on behalf of or by arrangement with an investment advisor, who advises on securities on behalf of that investment advisor, whether he is paid salary, wages, commission or otherwise.

5. Granting of licence

When dealing with an application, The Authority will not grant a licence unless it is satisfied that the applicant:

- In the case of a company, employs at least one individual who is licensed as a representative under the Act
- Complies with any prescribed minimum paid-up capital requirement,
 - The current prescribed minimum issued and paid-up capital required is US\$25,000

- Complies with the insurance requirement under section 73
- Satisfies the Authority that it is a fit and proper person to be licensed as an advisor
- Will be able, if licensed, to comply with any financial resources regulations that may apply to it
- Has specified premises under section 50(c) that are suitable for keeping records or other documents

It should however be noted that the Authority has discretion in granting or refusing a licence. The Authority may in dealing with an application take into consideration matters other than those mentioned above.

6. Auditor

An Investment Advisor is required to have its accounts audited annually by an auditor. The Auditor has to be a member and in good standing of an accountancy body in compliance with section 2(1)(a) of the Act or a member of any other accountancy body as approved by the Authority.

The Investment Advisor must appoint an Auditor who is acceptable to the Securities Authority within 30 days of becoming licensed under the Act. A Director, Officer, Employee, Shareholder or Partner of the licensee or, a partner or employee of such a person shall not be eligible for appointment as an auditor.

Upon application the applicant must notify the Authority of their proposed Auditor.

7. Conditions to an Investment Advisor Licence

Activities permitted under the Investment Advisor Licence are only those that are contained within the license and are limited to only such business as stated. The Investment Advisor must comply with the conditions contained in its licence.

The Authority may impose conditions on a licensee which includes:

- Limiting the nature and scope of the business that may be carried by the Investment Advisor.
- Specifying whether or not client's assets can be held
- Requiring the Investment Advisor or senior officer or manager to acquire and maintain membership of a recognized overseas securities exchange.

Failure to comply with the conditions constitutes an offence and is liable in the case of an individual, to a fine of US\$100,000 or the equivalent in Seychelles rupees or the imprisonment of two years or both.

As for a company, failure to comply will result in a fine of US\$200,000 or the equivalent in Seychelles rupees.

Should the offence continue the individual or company would be liable to a fine of up to US\$500 or the equivalent in Seychelles rupees for each day that the offence continues.

8. Renewal of licence

The Investment Advisor Licence granted under the Act is valid for a period of one year and must be renewed annually.

The Authority will only renew a licence upon:

- (a) the payment of the annual licence fee
- (b) submission to the Authority of a declaration of compliance in accordance with Form 10, Schedule 1 of the Securities (Forms and Fees) Regulations, 2008
 - o omitting the statement "To: The Central Bank of Seychelles" and replacing with "To: The Financial Services Authority"

An Investment Advisor must ensure that formalities for the renewal are undertaken well ahead of the expiry date of the licence. It is an offence to operate as an Investment Advisor without a valid licence.

Failure to renew the licence or approval for exemption on time will attract an additional fee equivalent to one twelfth of that annual fee for each month or part thereof during which the annual fee remains unpaid. Further action may be taken under section 56(2) of the Act for failure to renew the licence or exemption.

9. Audited Accounts

An Investment Advisor must have its accounts audited annually according to the International Financial Reporting Standards.

An Investment advisor must submit to the Authority its financial statements within 4 months of the end of each financial year or within such extension period allowed by the Authority.

Under Section 75(3) of the Act, the Authority has the power, at any time, to direct an Investment Advisor to have its accounts audited and submitted to the Authority.

10. Change of ownership of a licensed investment advisor

Section 60 (1) of the Act provides that no shares in a licensee which is a company shall be issued, and no issued shares shall be voluntarily transferred or disposed of (including the transfer or disposal of the legal; or the beneficial interest in the shares or interests) without the Authority's approval.

11. Notifications to the Authority

Licensees are advised to read carefully the conditions described on the reverse of their licence as they may impose on the licensee's obligations in addition to those specifically mentioned in the Act.

The Authority must be notified, in writing, within 7 days of

- a) Any change of:
 - i. name and address of the licensee
 - ii. name and address of any accredited representative
 - iii. name and address of every Director, company secretary and shareholder
 - iv. location of the premises at which records or other documents of the licensed business are kept
- b) Any disciplinary action taken against the licensee including an order of suspension or revocation
- c) Appointment, Removal or Resignation of an Auditor
- d) Any change in the business of the licensee which causes it to cease its business as a securities dealer or exempt overseas securities dealer

Any person who carries on the business of a securities dealer or an exempt overseas securities dealer without a licence or exemption issued by the Authority or, other than in accordance with a licence or exemption granted by the Authority commits an offence and is liable on summary conviction

- a) In the case of an individual to a fine of US\$100,000 or the equivalent in Seychelles Rupees or to imprisonment for two years or both
- b) In the case of a company, to a fine of US\$200,000 or the equivalent in Seychelles Rupees

12. Appointment, resignation or removal of Director or officer

A licensed investment advisor must notify the Authority of the resignation or removal of any director or officer and such notification should include a description of the circumstances of the departure.

13. Registers

13.1 Investment Advisor's Registers

Per section 79 of the Act a licensed investment advisor shall maintain a register of the securities for which that person has an interest as prescribed in Schedule 1, Form 5 of the Securities (Forms and Fees) Regulations, 2008.

13.2 The Authority's Registers

The Authority maintains separate registers for each type of investment advisor licensed under the Act. The registers are open to public inspection during ordinary office hours upon payment of the relevant fees set out in Schedule 2 of the Securities (Forms and Fees) Regulations, 2008.

14. Role of the FSA (The Authority)

The FSA is conferred powers of supervision over the Investment Advisors and Securities Exchange by the Act and may in carrying out its supervisory functions:

- (a) issue directions
- (b) request information or documents from licensees
- (c) revoke an Investment Advisor Licence
- (d) impose further conditions on the Investment Advisor Licence
- (e) appoint a person to advise a licensed Investment Advisor on the proper conduct of its business
- (f) appoint a person to assume the control of the affairs of the licensee relating to the licensed business
- (g) suspend a licence granted under the Act for a period of time, or until the happening of an event, as the Authority considers appropriate

The Act also imposes duties on the FSA, most notably, the duty not to disclose any information to a third party except where authorised under the written law.

15. Exemptions and concessions

Schedule 3 of the Act grants exemptions and concessions from the applicability of certain legislative enactments

15.1 Business Tax Act

A tax rate of 1.5% will be applicable on the assessable (gross) income of the licensee.

No withholding tax is payable on dividends and/or interest payable.

15.2 Immovable Property Transfer Restriction Act

The restriction in Section 4 of the Immovable Property Transfer Restriction Act, the effect of which it requires a non Seychellois to seek sanction from the Ministry of National Development prior to leasing an immovable property in Seychelles, does not apply to investment advisors.

15.3 Social Security Act

The Social Security Act was replaced in 2010 by the Income and Non-Monetary Benefits Tax Act, 2010.

Under the Income and Non-Monetary Benefits Tax Act, 2010:

- The rate of Income Tax Payable by an employed person (citizen and non-citizen of Seychelles) in respect of emoluments is 15% of the gross amount of emoluments.
- The rate of tax payable by employers is 20% of the value of a non-monetary benefit provided to an employed person. Non-monetary benefits are described under the Fourth Schedule of the Income and Non-Monetary Benefits Tax Act, 2010.

15.4 Stamp duty Act

An investment advisor is exempt from the payment of stamp duty on

- i. all instruments evidencing transactions in respect of shares or debt obligations
- ii. all transfers of other property to or by the licensee
- iii. all instruments constituting, evidencing or related to securities or transfer of or other dealings in listed companies or other listed securities
- iv. all instruments constituting, evidencing or relating to loan or loan security in respect of a licensee or a listed company

provided that the exemptions granted above shall not include exemption from stamp duty in respect of transfers or other dealings in immovable property

15.5 Trades Tax Act

The Act grants exemption from the payment of trades tax (customs duty) on all furniture, stationery and equipment imported, for the exclusive use in an office of the licensee, in connection with the business of investment advisor

Appendix 1 is a list of furniture and equipment to be exempt under the Act. It should be noted that some of the goods on the list may already attract 0% tax rate.

15.6 Goods and Services Tax Act

The Act grants exemption from the payment of Goods and Services Tax on

- i. all furniture, stationery and equipment imported, for the exclusive use in an office of the licensee, in connection with the business of investment advisor
- ii. all fees charged by the licensee

15.7 Immigration Decree

The Act allows an investment advisor to employ expatriate employees up to 50% of its total number of employees and the gainful occupation permit fee for expatriate employees is set at SR 375 per month.

15.8 Exchange Control Act

The provisions of the Exchange Control Act do not apply to investment advisor

15.9 The Companies Act

The Act grants exemption from all fees in respect of an increase in the licensee's authorized share capital

15.10 Foreign Earnings Act

The Foreign Earnings Act is not applicable to an investment advisor in its entirety.

16. Administrative procedures with regards to Schedule 3

This section provides administrative procedures in relation to the concessions and exemptions provided for in Schedule 3 of the Act.

16.1 Conditions for Duty Concession

- An Investment Advisor must submit to the Authority, a list of office equipment, furniture and stationery requirements of its office.
- The Authority shall approve a quota limit for each Investment Advisor based on the expected volume of activities and type of service offered following consultation with the Investment Advisor.
- Orders in excess of the quota limit will only be considered for approval if justifiable reasons are provided to the Authority.
- An updated list of the office requirements must be lodged with the Authority on an annual basis before consideration for exemptions can be given.

- Office equipment and furniture are replaceable when they have reached their economic useful life, are beyond reasonable repair or not meeting the quality standard desired by the Investment Advisor:

Economic Useful Life means that the asset has fully depreciated and the depreciation method used is in line with the Business Tax Act.

Beyond Reasonable Repair means that the asset has had frequent breakdown and/or servicing during a month and actual costs of repair are substantial.

- An Investment Advisor has to provide justification to the Authority for replacement of office equipment, stationary and furniture, which have reached their economic useful lives, are beyond reasonable repair, their quality of output is not to the required standard and/or out of stock.
- Disposal of office equipment, furniture have to be lodged with the Authority and once approved, all tax liabilities must be paid before the asset is disposed (refer to procedures in relation to disposal).

- An Investment Advisor has to maintain an asset register for all assets purchased.
- The Authority shall approve duty concession only if the goods are consigned to the Licensee and/or separate invoices and BOE are presented in the case of group orders.

NOTE: An Investment Advisor shall not comply with the provisions of the Trades Tax Act in relation to obtaining an Import Permit and other requirements set out by the Ministry of Finance in relation to importation of goods. It is important to consult on tax/duty concessions prior to confirming an order, if in doubt. All tax-exempt items must be located in offices and/or premises and are subject to inspection by the Authority or the Tax Division.

16.2 Processing of Goods for Duty Concession

- 1) A set of 5 documents each containing the Bills of Entry (BOE), invoices, shipping documents must be submitted to the Authority for "Endorsement" for Duty Exemption prior to presentation of document to the Trades Tax Division. A full set of the BOE is kept by the Authority. The remaining 4 copies are given to the Investment Advisor for processing at Trades Tax Custom Office at the Airport or New Port.
- 2) During clearance of goods, a designated officer of the licensee must be physically present and must ensure that the Custom Officer declares any short landing and/or damage of goods.
- 3) When the goods enter the licensee's premises after being cleared by the Trades Tax Custom office, a designated officer must inspect the goods again and any items that have gone missing during transit should be reported to the Authority, immediately. Trades Tax shall apply on any missing items thereafter and the Investment Advisor will be liable.
- 4) After the Goods have been cleared and delivered to the Investment advisor's office, a copy of the Processed Trades Tax Bill of Entry and any variation order made by Trades Tax Division should be forwarded to the Authority by the next working day.

NOTE: An Investment Advisor is required to keep well documented and updated records of the items exempted from Taxes. These records should include inventory of fixed assets, stationery imported and goods disposed of, and must be available at all times for inspection. Tax will apply for any item unaccounted for.

16.3 Processing Disposal of Duty Concession Goods

Disposal of office equipment and furniture have to be lodged with the Authority and once approved, all tax liabilities must be paid before the asset is disposed of.

Investment Advisors must observe the following guidelines:

- (a) Submit their request for disposal to the Authority in typed format indicating the item, the quantity, the cost value, present market value, reasons for disposal, and manner in which they are going to dispose the item.
- (b) The Authority will consider the application and may inspect the items to be disposed of in the process.
- (c) If the approval is being considered positively, the licensee must prior to disposal settle the Duty payable with Tax Office and forward a copy of duty payment to the Authority. The Authority will then give the final approval.

NOTE: A licensee must not destroy or dispose any office equipment, furniture, or stationery exempted from customs duty unless written approval is given by the Authority.

16.4 Payment of Business Tax

The tax payable by a licence holder in respect of its income shall be collected at source by the Authority and remitted to the Seychelles Revenue Commission.

16.5 Guide to Recruitment

- 1) A foreign worker should be recruited outside Seychelles.
- 2) The person making an application for a Gainful Occupation Permit (GOP) must undergo a compulsory Medical Examination. This should be done prior to entering into Seychelles. However, if the person is already in Seychelles, an appointment with the Occupational Health Unit of the Health Authority can be obtained for the person to undergo all relevant tests.

The medical fitness test is required to be submitted in the form contained in Appendix A. Other information required to be submitted are tests for the following:

- HB%
- HIV Test
- Hepatitis B Test
- VDRL Test
- Urine-Routine and Microscopic Exam
- X-ray chest PA view

All of the original copies of laboratory and x-ray results must be submitted to the Occupational Health Unit to certify that the person has passed the medical fitness test.

A fee of SR 350 is payable to the Occupational Health Unit for processing and medical endorsement.

If the medical test is conducted at the Occupational Health Unit a fee of SR 1175 is payable to the Occupational Health Unit.

- 3) The Authority must be informed of the employment of foreign workers 28 days prior to entry of the employee into Seychelles.
- 4) Request for foreign employment must be lodged to the Authority and upon approval. The following documents and information would be required:
 - Medical fitness certificate presented in the format prescribed by the Ministry of Health, plus original test result of the following:
 - HIV, PPR, Hepatitis B, HB WBC DC, urine, stool & chest X-ray
 - Contract & condition of employment unless defers from the standard conditions/contract
 - Passport number, date of birth, nationality, marital status and date of arrival into Seychelles.
 - Statistical information on employees (local and foreign)
 - Signed GOP Application Form
- 5) In addition to the above, the investment advisor should liaise with the Occupational Health Unit of the Health Authority in respect of the prospective employee to enter into Seychelles on the basis of the Medical fitness certificate presented. Based on Unit's recommendation, the Authority will extend approval for entry of the employee into Seychelles to the Immigration Division.
- 6) Notwithstanding the above, the licensee has to ensure that employees present themselves to the Occupational Health Unit of the Ministry of Health for a medical fitness test within one month of arrival into the country.

- 7) Please note that the issuance of a visa upon arrival of the employee does not automatically constitute residency in Seychelles. An application for a GOP should be made. Approval to reside in Seychelles during the period of employment is the prerogative of Immigration Division.

16.6 Application of Gainful Occupation Permit (GOP or Work Permit)

- 1) After the Health Authority has endorsed health clearance of the prospective employee, the licensee must submit the following document to the Authority for GOP concession as per the Securities Act, 2007.
 - Health Clearance letter
 - 2 copies of employee's passport, (one copy to be retained by the Authority)
 - 4 passport size photographs, (one to be retained by the Authority)
 - A Copy of the Investment Advisor's licence and other relevant document
 - Completed GOP Application Form
- 2) The Authority will then issue a formal letter to Immigration Division through the licensee whereby same letter should be forwarded to Immigration Division along with a set of documents as specified in par 9.6.1 above. The Investment Advisor must submit to Immigration along with the documents above, a processing fee of SCR1000.
- 3) Please note that employee can enter into Seychelles unless he/she is in possession of a copy of the GOP for presentation on his arrival to immigration officers.
- 4) A copy of the GOP should be forwarded to the Authority once approved by Immigration Division.
- 5) Same process is applied for Renewal of a GOP. Please note that the expired GOP certificate should be forwarded with the renewal application.

16.7 Surrender of Work Permit- Termination of Employment or End of Contract

The Authority must be notified in writing of the termination of employment or end of contract of foreign employees and the Work Permit of these employees must be surrendered to the Authority.

17. Seychelles Pension Fund Contribution

A licensee shall pay Seychelles Pension Fund Contribution in respect of an employee who is a citizen of Seychelles.

As from 1 January 2012, the 1% pension contribution payable by employer and 1% contribution by employee have been revised to 1.5% by employee and 1.5% by employer or SR50 whichever is the greater to add up to 3% of the total contribution.

The mandatory contribution should be deducted from the employee's monthly salary and remitted to the Fund through the Seychelles Revenue Commission.

For more information contact the Seychelles Pension Fund on:

Chief Executive Officer
Seychelles Pension Fund
Caravelle House
PO Box 576 ,
Victoria ,

Mahe ,
Seychelles

Tel (248) 294699

Fax (248)224740

E-mail addresses: spsdir@seychelles.net

Appendix 1

List of Equipment and Furniture

Office Equipment

- Photocopier
- Fax Machine
- Table or Electric Emboss Seal
- Binding Machine
- Franking Machine
- Laminating Machine
- Shredders
- Guillotine/Trimmers
- Air-condition (1 per office) unless Office has Centralised air-condition
- Air Humidifier
- Telephone Set (Fixed)
- Heavy Duty Punch
- Heavy Duty Staplers

Security Equipment

- Security Camera
- Security lock and other office Security Devices

IT Equipment

- Personal Computers
- Laptop (limited to one per managerial staff)
- Printers
- Scanners
- Computer Servers
- Network Cables
- Wireless Network Devices
- Network Switches
- Network Routers
- Computer Peripheral such as diskette, CD, backup tapes, Keyboard, Screen
- CD/DVD Writers
- Modems

Conferencing Equipment

- TV, DVD
- Projector LCD/Overhead,
- Projector Screen,
- Video Camera/Recorder
- Video conferencing Equipment
- Small HI Set
- Carry Case for Above

Office Furniture

- Office Desk
- Office Chares
- Side Table

- Conference Table & Chairs
- Rubber Chair Mat
- Reception chair/table
- Filing Cabinet/Cupboards
- Office Storage Cupboard
- Desk end Pedestals
- Book shelves
- Rotary Filing units
- Calculators
- Desk Trays
- Date stamps and other office stamps
- Blinds/Curtain
- Carpets
- White Board
- Year Planner
- Flip Chart
- Advertising Panel stand and display units
- Literature/Brochure stand