

Code for Fit and Proper and Competency Standards



FINANCIAL SERVICES AUTHORITY

Bois De Rose Avenue
P.O. Box 991
Victoria
Mahé
Seychelles

Tel: +248 4380800
Fax: +248 4380888
Website: www.fsaseychelles.sc
Email: enquiries@fsaseychelles.sc

Version: 29th March, 2022

Table of Contents

1. Introduction.....	3
2. Scope.....	3
3. Interpretation.....	3
4. Fit and Proper Requirements.....	5
5. Consideration for Fit and Proper	6
5.1 Obligations of the licensee.....	6
5.2 Scope of business of the licensee	7
5.3 Application Documents	7
5.4 Determination of Fit and Proper Application.....	7
5.4.1.1 Probity, Honesty and Integrity	7
5.4.1.2 Competence and Capability.....	8
5.4.1.3 Financial Status	9
5.4.1.4 Withdrawal of Application for Fit and Proper Approval	9
6. Objection to an Appointment.....	9
7. Individuals ceasing to be Fit and Proper	9
8. Failure to comply with these Codes	10
9. Individuals currently Fit and Proper	10
Appendix 1	11
Appendix 2	12
Appendix 3	14
Appendix 4	15
Appendix 5	16

1. Introduction

This Code, which must be read in conjunction with the Securities Act, 2007, the Mutual Fund and Hedge Fund Act, 2008 and the Financial Services Authority Act, 2013 (“FSA Act”), is issued by the Financial Services Authority (“the Authority”) in accordance with section 33(1) of the FSA Act and shall be effective as from **6th October, 2020**.

It is important to note that this Code is legally binding and therefore, must be adhered to by all licensees under the Securities Act and the Mutual Fund and Hedge Fund Act.

2. Scope

This Code sets out the standards expected by the Authority from individuals required to be fit and proper and formalises the level of competencies required. It is the responsibility of the licensee not only to comply with this Code but also to implement such additional measures as it considers necessary to ensure that directors and officers are, and remain, fit and proper.

In accordance with section 33(1) of the FSA Act, the Authority may, after consultation with such persons or bodies as appears to be representative of the interests concerned, revise this Code by revoking, varying, amending or adding to its provisions.

3. Interpretation

In this Code:

“applicant” means a person applying for a licence under the Securities Act, 2007 or licence Mutual Fund and Hedge Fund Act, 2008;

“capability” means the capacity and the ability of an individual to carry out a given function;

“CISI” means the Chartered Institute for Securities & Investment;

“compliance officer” means an individual appointed by a licensee and approved by the Authority pursuant to section 23(2) of the FSA Act, to undertake the functions prescribed per section 23 of the FSA Act;

“competence” means the quality and state of knowledge, skills, and experience that is required to be applied by an individual in the performance of his/her duties;

“director” means a person who:

- (a) is appointed as such under the Companies Act, 1972;
- (b) is appointed in relation to a company incorporated under the International Business Companies Act, 2016 for the purpose of the licensee in question; or
- (c) is appointed as such, by whatever name called, under a relevant legislation from a recognised jurisdiction for the purpose of the licensee in question;

“financial status” means the status that indicates whether an individual is in a good financial situation or not;

“honesty” means acting truthfully;

“Integrity” means the soundness of moral character of the individual which establishes trust and thus provides the basis for reliance on their judgement;

“licensee” means a person holding a licence under the Securities Act, 2007 or the Mutual Fund & Hedge Fund Act, 2008;

“officer” means any key individual employed directly under continuous employment with the licensee or under a contract of employment and:

- (a) is a member of managerial staff;
- (b) is appointed to undertake or have responsibility for the operational function;
- (c) holds a position that requires him to be answerable to the board of directors of the licensee; and/or
- (d) has responsibilities that include direct involvement in the licensee’s management or may influence the policy decision-making process;

“operational function” means functions relating to the licensable business activities of the licensee and/or functions relating to those required for the day-to-day running of the licensee;

“probity” means the quality of having strong moral principles;

“relevant academic qualifications” includes qualifications in the following fields and/or in any other field as may be deemed relevant by the Authority:

- (a) Business including international business;
- (b) Economics;
- (c) Accounting;
- (d) Finance;
- (e) Law;
- (f) Strategic Management;
- (g) Risk Management;

“relevant professional qualifications” includes qualifications in the following fields and/or in any other field as may be deemed relevant by the Authority:

- (a) Anti-Money Laundering;
- (b) Compliance;
- (c) Capital Markets;
- (d) Collective Investment Schemes;
- (e) Company Direction;
- (f) Corporate Governance;
- (g) Counter Financing of Terrorism;
- (h) Financial Crime Compliance;
- (i) Financial Services;
- (j) International Finance and Administration;
- (k) Risk Management;

“relevant working experience” includes working experience in the following fields and or in any other field as may be deemed relevant by the Authority:

- (a) Banking;
- (b) Legal;
- (c) Capital markets;
- (d) Collective investment scheme business;
- (e) Financial services regulatory;

“relevant person” means an individual deemed fit and proper to occupy the position of director and/or officer and/or compliance officer of a licensee; and

“representative” means a person who deals in Securities on behalf of the Securities Dealer or a person who advises on securities on behalf of the Investment Advisor under the Securities Act, 2007.

4. Fit and Proper Requirements

- 4.1 Under the Securities Act, 2007, securities dealers, investment advisors, representatives and all directors and officers of licensees are required to be, and remain, fit and proper.
- 4.2 Under the Mutual Fund and Hedge Fund Act, 2008, the fund, promoters, operators, fund administrators and all directors and officers of the licensees are required to be, and remain, fit and proper.
- 4.3 The Authority exercises judgement and discretion in determining whether such persons are fit and proper, and shall have regards to the person’s:
 - (a) financial status;
 - (b) educational or other qualifications or experience having regard to the nature of his application;
 - (c) ability to perform his proposed function competently, honestly and fairly;
 - (d) reputation, character, financial integrity, and reliability;
- 4.4 The fit and proper assessment is restricted to persons who have significant powers and responsibilities in the management of the licensee’s business.
- 4.5 In the event of any change in the position of a fit and proper individual within a licensee, the change must be notified to the Authority and a new fit and proper application must be submitted to the Authority.
- 4.6 An individual who has been determined to be fit and proper by the Authority within a licensee is not automatically deemed fit and proper in another licensee. Therefore, in cases where a fit and proper individual wishes to be employed by another licensee, a new application must be made to the Authority for a fit and proper determination within the new licensee.
- 4.7 For the purpose of this section, “significant powers and responsibilities” are defined as, but not limited to:
 - (a) the management and oversight of the day-to-day operations of the licensee;
 - (b) advising the board of the licensee on material matters relevant to the licensee;

- (c) ensuring that staff and the board have sufficient, up-to-date and timely information concerning the operations and affairs of the licensee;
- (d) acting as an intermediary between the board and employees;
- (e) formulating policies and making recommendations to the board;
- (f) deciding or guiding courses of action in operations by staff;
- (g) conducting training for staff within the licensee;
- (h) analysing and overseeing operations of the licensee;
- (i) implementing policies and procedures of the licensee;
- (j) assisting in the identification and evaluation of other officers and board members as may be appropriate; or
- (k) making recommendations to support the board in ongoing assessments and evaluations.

5. Consideration for Fit and Proper

5.1 Obligations of the licensee

5.1.1 The licensee is responsible for the conduct of its directors, officers, compliance officers, and representatives, in the performance of their duties. It is therefore important to recommend suitably competent individuals to be approved for appointment as directors, officers, compliance officers and representatives. Therefore, the licensee shall ensure that the proposed director, officer, compliance officer and representative:

- (a) satisfies the criteria specified as per paragraph 5.4 and as per the relevant appendices to this Code; and
- (b) are familiar with the business activities of the licensee, the structure of internal controls within the licensee and the relevant legislation governing the conduct of the licensee.

5.1.2 The licensee is required to lodge a fit and proper application for the Authority's consideration prior to a formal appointment being made.

5.1.3 A formal appointment may only be made following the Authority's determination that the individual has been determined fit and proper for the role to be assumed. No individual shall hold a position of significant power and responsibility within the office of a licensee, unless approved by the Authority.

NOTE: The onus is on the applicant and the licensee to satisfy the Authority that an applicant is fit and proper, rather than on the Authority to prove that the applicant is not fit and proper. Therefore, the licensee shall ensure that, whenever it submits a fit and proper application to the Authority, it has conducted its own relevant checks on the

individual and is of the opinion that the individual will be found fit and proper by the Authority.

5.2 Scope of business of the licensee

In respect of the assessment of competency and capability of an applicant, the minimum criteria may vary subject to the:

- (a) significance of the proposed duties and responsibilities to be assumed; and
- (b) nature, size, complexity, structure and diversity of the licensee's business.

The expectation will be particularly higher for applicants applying in connection to a licensee with a wider scope of operation.

5.3 Application Documents

- 5.3.1 A fit and proper application must comprise of a cover letter from the licensee in respect of the appointment of the proposed individual and a completed Personal Questionnaire Form, accompanied by the relevant supporting documents.
- 5.3.2 All licensees must ensure that any fit and proper application lodged with the Authority is submitted in its entirety. If the information provided is inaccurate or incomplete, the Authority will deem the application as incomplete, in which case it would not be accepted. Missing information will, almost certainly, lengthen the application process. The Authority may reject and close such applications.

5.4 Determination of Fit and Proper Application

- 5.4.1 When considering whether an individual is fit and proper, the Authority shall have regard to the following criteria:
 - (a) Probity, Honesty and Integrity;
 - (b) Competence and Capability;
 - (c) Financial status; and
 - (d) any other considerations including, but not limited, to the outcome of interviews conducted with an individual.

NOTE: The appendices to this Code further explain the criteria above for each licence category (i.e. for each "key position". For example, director, compliance officer) aside from the below general explanation.

5.4.1.1 Probity, Honesty and Integrity

In assessing probity, honesty and integrity, the Authority will consider among other things, whether the individual:

- (a) has been dismissed or asked to resign from employment;
- (b) has been disqualified from acting as a director or from any managerial capacity;

- (c) is the subject of any proceeding of a disciplinary or criminal nature, or has been notified of any potential proceedings or investigations which might lead to such proceedings;
- (d) has been charged or convicted of an offence in Seychelles or elsewhere or is being subject to any pending proceedings which may lead to such a conviction, under any law in any jurisdiction;
- (e) has been the subject of any complaint made reasonably and in good faith, relating to activities that are regulated by the Authority or under any law in any jurisdiction;
- (f) has been the subject of an investigation conducted by a regulatory or criminal investigative body;
- (g) has been untruthful or provided false or misleading information to the Authority or been uncooperative in any dealings with the Authority or any other regulatory authority in any jurisdiction;
- (h) has been refused, or is connected to a person who has been refused, any kind of authorisation to carry out a trade, business or profession or has had such an authorisation revoked, withdrawn or terminated, or has been expelled by a regulatory or government body;

5.4.1.2 Competence and Capability

In assessing competence and capability, the Authority will consider among other things, whether the individual:

- (a) has satisfactory academic and/or professional qualification;
- (b) has adequate skills and work experience in a related field;
- (c) would have sufficient time and commitment to undertake the proposed duties diligently;
- (d) has satisfactory past performance or expertise, having regard to the nature of the individual's previous roles and responsibilities, whether in Seychelles or elsewhere; and
- (e) where the individual would be assuming concurrent responsibilities, whether such responsibilities would give rise to a conflict of interest, whether actual or apparent or otherwise impair the individual's ability to discharge the proposed duties in relation to any activity regulated by the Authority under the relevant legislation.

In making a successful determination of the fitness and propriety of an individual by the Authority, note that an applicant holding academic qualifications may not be sufficient, unless it can be established that the individual has the requisite working experience.

In assessing the fit and proper application of a director, compliance officer, officers and representatives in respect of competency and capability, regard shall be given to the criteria set out in Appendix 1 to Appendix 5 of this Code, respectively.

5.4.1.3 Financial Status

In assessing financial status, the Authority will consider among other things, whether the individual:

- (a) is or has been unable to fulfil any financial obligations, whether in Seychelles or elsewhere;
- (b) is or has been the subject of a bankruptcy petition, whether in Seychelles or elsewhere;
- (c) has been adjudicated a bankrupt and the bankruptcy is undischarged, whether in Seychelles or elsewhere; or
- (d) is or has been subject to any other process outside of Seychelles that is similar to those referred above.

5.4.1.4 Withdrawal of Application for Fit and Proper Approval

A licensee may withdraw a fit and proper application at any time before the Authority has reached a decision, provided that written notification is provided to the Authority.

NOTE: The application documents submitted for Fit and Proper shall not be returned to the licensee upon withdrawal of an application.

6. Objection to an Appointment

- 6.1 In the event that the Authority determines an individual not to be fit and proper, the Authority shall object in writing to the appointment of the proposed individual.
- 6.2 In cases where an objection has been raised by the Authority in respect of a proposed appointment, the Authority may make certain recommendations to the licensee where it shall take such steps or actions as recommended.

7. Individuals ceasing to be Fit and Proper

- 7.1 A relevant person may cease to be a fit and proper if he or she fails to continue to satisfy the fit and proper criteria set out in the Acts and in this Code.
- 7.2 Where the Authority has reasonable cause to believe that a relevant person fails to continue to satisfy the criteria set for fit and proper, the Authority shall give written notice to the licensee of its intention to suspend or revoke the fit and proper status, stating the grounds upon which it intends to take such action.
- 7.3 Unless the relevant person, by written notice submitted to the Authority, gives good reasons as to why the fit and proper status should not be revoked, the fit and proper status shall be suspended or revoked on a date not less than 14 working days after the date of the notice.

8. Failure to comply with these Codes

A licensee or a relevant person that contravenes this Code, presents grounds for the Authority to take relevant enforcement action against the licensee or the relevant person as provided under the relevant legislation. It is therefore pertinent that necessary guidance is sought from the Authority in the event of any concern or uncertainty in respect of the provisions of this Code.

9. Individuals currently Fit and Proper

For individuals that have been determined fit and proper by the Authority during the past 6 months' immediate period, prior to making a new fit and proper application and continues to be fit and proper on the Authority's records, the Authority may employ a more flexible procedure in relation to the submission of relevant documents. However, the submission of the Personal Questionnaire Form is mandatory in all cases.

Appendix 1

COMPETENCE AND CAPABILITY OF DIRECTORS

1. The application for the position of director will be assessed by the Authority on a case-by-case basis, where regard shall be given to the criteria specified under paragraphs 5.4.1.1, 5.4.1.2 and 5.4.1.3 in relation to the individual's:
 - (a) probity, honesty and integrity;
 - (b) competence and capability;
 - (c) financial status; and
 - (d) any other considerations including, but not limited, to the outcome of interviews conducted with an individual.

2. The Authority notes that it is at the discretion of the applicant and licensee to satisfy the Authority that the applicant is fit and proper as a director, by demonstrating a combination of relevant:
 - (a) knowledge and understanding of the roles and duties of Directors (knowledge can be assessed by the submission of the applicant's CV and the duties can be assessed by using the proposed job description of the individual);
 - (b) managerial experience;
 - (c) industrial working experience;
 - (d) academic and professional qualifications;
 - (e) regulatory knowledge (which can be demonstrated in the CV of the applicant, if the applicant has undertaken any training which covered relevant regulatory aspects); and
 - (f) traits to support the board as a member.

Appendix 2

COMPETENCE AND CAPABILITY OF COMPLIANCE OFFICERS

1. The Authority will consider the following criteria in respect of a person proposed as compliance officer of the licensee:

(a) Core Competencies

- (i) Possess a clear understanding of the role and responsibilities associated with the role of compliance officer;
- (ii) Has the ability and experience to take overall responsibility for implementation and maintenance of compliance policy and procedures;
- (iii) Understands the business and how the company's compliance framework applies to it;
- (iv) Has the appropriate level of maturity and experience to demonstrate independence from colleagues, clients and the Board;
- (v) Has a thorough understanding of the industry and the regulatory framework applicable to the industry; and
- (vi) Ability to read and understand the law, codes, guidelines, circulars, directives or practice directions that may be issued by the Authority from time to time in order to ensure effective interaction with the Authority regarding the licensee's compliance with the aforementioned legislative and administrative documents. .

(b) Minimum academic/professional qualification and work experience

- (i) A relevant academic qualification at a degree level from an internationally accredited institution;
 - (ii) A relevant professional qualification in compliance at diploma level from an internationally accredited institution; and
 - (iii) 2 years of relevant working experience within 4 years immediately prior to the date of the application.
2. The Authority may consider applicants that have the following combination of qualifications and experience:
 - (a) A relevant academic qualification and 2 years relevant working experience within 4 years immediately prior to application; or
 - (b) A relevant professional qualification in compliance at diploma level and 3 years relevant working experience within 5 years immediately prior to application.

Such applications will be considered on a case by case basis, dependent on the nature, size and complexity of the business operations of the licensee.

Where appropriate, the Authority may issue the licensee a direction under section 32(1)(a) of the FSA Act for the individual to undertake a relevant professional qualification in order to ensure that the individual meets the minimum criteria set herein.

Appendix 3

COMPETENCE AND CAPABILITY OF OFFICERS

The Authority will consider the following criteria in respect of a person proposed as an officer of the licensee:

(a) Core Competencies

- (i) Possess a clear understanding of the role and responsibilities associated with the role of an officer;
- (ii) Has the ability and experience to take on responsibility for the implementation of compliance policy and procedures;
- (iii) Has the appropriate level of maturity and experience to demonstrate independence from colleagues, clients and the Board;
- (iv) Has a thorough understanding of the business of the licensee, industry and the regulatory framework applicable to the industry; and
- (v) Possess knowledge and understanding of the legal and professional obligations to be assumed or undertaken.

(b) Minimum academic/professional qualification and work experience

- (i) A relevant academic qualification at degree level and/or a relevant professional qualification at diploma level from an internationally accredited institution; and
- (ii) 2 years of relevant working experience within 4 years immediately prior to the date of the application.

(c) Individuals having no minimum academic/professional qualification

The Authority will generally not consider any applicant who does not meet the criteria set for fit and proper as an officer. However, the Authority may consider and assess such application on a case by case basis only, where both the applicant and licensee is required to satisfy the Authority that the applicant is fit and proper.

In such cases, where appropriate, the Authority shall issue the licensee a direction under section 32(1)(a) of the FSA Act for the individual to undertake a relevant professional qualification in order to ensure that the individual meets the minimum criteria set herein.

Appendix 4

COMPETENCE AND CAPACITY OF SECURITIES DEALER'S REPRESENTATIVE

The Authority will consider the following criteria in respect of a person proposed as Securities Dealer's Representative of the licensee:

(a) Core Competencies

- (i) Possess a clear understanding of the role and responsibilities of a Securities Dealer's Representative;
- (ii) Has the appropriate level of maturity and experience to demonstrate independence from colleagues, clients, and the board;
- (iii) Has a thorough understanding of the business of the licensee, industry, and the regulatory framework applicable to the industry; and
- (iv) Possess knowledge and understanding of the legal and professional obligations to be assumed or undertaken.

(b) Minimum academic/professional qualification

- (i) A bachelor's or higher degree in Economics, Accounting, or Business related subjects; or
- (ii) A recognized professional qualification from an accredited institution (e.g. a Diploma in Investment Operations from the Chartered Institute for Securities and Investment, or a Diploma in Capital Markets from the Chartered Institute for Securities and Investment);

(c) Minimum work experience

- (i) A minimum of 2 years of experience working in the securities industry as a representative;
or
- (ii) A minimum of 2 years of experience working in the securities industry.

Appendix 5

COMPETENCE AND CAPACITY OF INVESTMENT ADVISOR'S REPRESENTATIVE

The Authority will consider the following criteria in respect of a person proposed as Investment Advisor's Representative of the licensee:

(a) Core Competencies

- (i) Possess a clear understanding of the role and responsibilities of an Investment Advisor's Representative;
- (ii) Has the appropriate level of maturity and experience to demonstrate independence from colleagues, clients, and the board;
- (iii) Has a thorough understanding of the business of the licensee, industry, and the regulatory framework applicable to the industry; and
- (iv) Possess knowledge and understanding of the legal and professional obligations to be assumed or undertaken.

(b) Minimum academic/professional qualification

- (i) a bachelor's or higher degree in Economics, Accounting, or Business related subjects; or
- (ii) a minimum of a recognized professional qualification from an accredited institution (e.g. a Diploma in Investment Operations from the Chartered Institute for Securities and Investment, or a Diploma in Investment Advice from the Chartered Institute for Securities and Investment).

(c) Minimum work experience

- (iii) A minimum of 2 years of experience working in the securities industry as a representative;
or
- (iv) A minimum of 2 years of experience working in the securities industry.