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**CONSOLIDATED TO 31<sup>ST</sup> JANUARY, 2020**

**THE MUTUAL FUND AND HEDGE FUND ACT, 2008**

*(Act 10 of 2008)*

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## PART 1 – PRELIMINARY

### Short title

1. This Act may be cited as the Mutual Fund and Hedge Fund Act, 2008.

### Interpretation

2. In this Act—

“accountant” means—

- (a) a person who has qualified as an accountant by an examination conducted by any one of the following bodies—
  - (i) Institute of Chartered Accountants in England and Wales;
  - (ii) Association of Chartered Certified Accountants (United Kingdom);
  - (iii) Institute of Chartered Accountants in Ireland;
  - (iv) Institute of Certified Public Accountants in Ireland;
  - (v) Institute of Chartered Accountants in Scotland;
  - (vi) Institute of Chartered Accountants in Australia;
  - (vii) Institute of Certified Public Accountants in Singapore;
  - (viii) Hong Kong Institute of Certified Public Accountants;
  - (ix) South African Institute of Chartered Accountants;
  - (x) American Institute of Certified Public Accountants; or the
  - (xi) Canadian Institute of Chartered Accountants,
- (b) A member of any other accountancy body recognized by the Authority as such for the purposes of this Act, and who is a current member in good standing of that body;

“auditor” means an accountant or a person with any other analogous accounting qualification approved by the Authority;

“approved foreign administrator” means a person holding a current licence or other authorisation to conduct mutual fund administration issued under the laws of a recognised jurisdiction, exempted pursuant to section 8(2);

“Authority” means the Financial Services Authority established under the Financial

Services Authority Act;<sup>1</sup>

“company” means a body corporate wherever incorporated or constituted;

“constitutional documents” means —

- (a) in the case of a company, the certificate of incorporation and the memorandum and articles of association or other instrument of incorporation;
- (b) in the case of a partnership, the agreement or other instrument by which the partnership is formed and governed;
- (c) in the case of a unit trust, the trust deed or other instrument by which the unit trust is organised or governed;

“Court” means the Supreme Court of Seychelles;

“custodian” means every person who holds the property of a mutual fund in safe keeping;

“debt” means an obligation of a company, unit trust or partnership to repay a principal amount either without interest or with interest calculated at a fixed, floating or variable rate and together with or without any other entitlement, but payable in the event of the liquidation, termination or dissolution of the company, unit trust or partnership otherwise than in respect of, and, unless otherwise provided for by its terms, in priority to any payment relating to a share, a trust unit or a partnership interest of that company, unit trust or partnership as the case may be;

“document” means a document in any form and includes:

- (a) any writing on any material;
- (b) a book, graph, drawing or other pictorial representation or image;
- (c) information recorded or stored by any electronic or other technological means and capable, with or without the aid of any equipment, of being reproduced;

“dollar” or “\$” means the United States dollar;

“equity interest” means a share, trust unit or partnership interest that —

- (a) carries an entitlement to participate in the profits or gains of the company, unit trust or partnership; and
- (b) is redeemable or re-purchasable at the option of the investor before commencement of the winding up, termination or dissolution of the company, unit trust or partnership, but does not include a debt;

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<sup>1</sup> Definition of “Authority” repealed and substituted by s 47(2) of Act 19 of 2013 with effect from 1 March 2014.

“exempt foreign fund” means a fund, holding a current licence or other authorisation to operate as a mutual fund issued under the laws of a recognised jurisdiction, exempted pursuant to section 3(14);

“fund administrator” means a licensed fund administrator or an approved foreign administrator, as the case may be;

“fund licence” means a private fund licence or a public fund licence or a professional fund licence, as the case may be;

“general partner” means —

- (a) in relation to a limited partnership registered under the Limited Partnership Act, 2003, a general partner; or
- (b) in relation to a partnership constituted under the laws of a jurisdiction other than Seychelles, a person who would be a general partner of the partnership if the partnership were constituted under the Limited Partnership Act, 2003;

“investor”, in relation to a mutual fund, means the holder of record or of a legal instrument representing an equity interest in the mutual fund but does not include a promoter or operator;

“licensed fund” means a mutual fund which holds a current private fund licence or a public fund licence or a professional fund licence, as the case may be;

“licensed fund administrator” means any person holding a Seychelles fund administrator's licence or restricted Seychelles fund administrator's licence;

“licensed private fund” means a mutual fund which holds a current private fund licence;

“licensed public fund” means a mutual fund which holds a current public fund licence;

“licensed professional fund” means a mutual fund which holds a current professional fund licence;

“Minister” means the Minister of Finance;

“mutual fund” —

- (a) means a company, unit trust or partnership that collects and pools investor funds for collective investment purposes including hedge fund purposes or with the aim of spreading investment risks, and issues equity interests enabling investors in the mutual fund to receive or have the right to receive a portion of profits or gains derived from the investments, and

- (b) includes —
  - (i) an umbrella fund whose equity interests are split or segregated into different funds or sub-funds;
  - (ii) a hedge fund;

“mutual fund administration”, in relation to a mutual fund, means to manage (including to control all or substantially all of the assets of the mutual fund) or to administer the mutual fund, or to provide the principal office of the mutual fund in Seychelles or to provide an operator to the mutual fund, but does not include —

- (a) the provision of a registered office to a mutual fund with or without company secretarial services and ancillary corporate services (including, without limitation, acting as a registered agent under the International Business Companies Act, 1994);
- (b) in relation to a mutual fund, the maintenance of any register of equity interests or the filing and payment of fees under the International Business Companies Act, 1994, Companies Act, 1972, the Companies (Special Licence) Act, 2003, the International Trusts Act, 1994 or the Limited Partnership Act, 2003 as the case may be;
- (c) custodian services;

“offering document”, in relation to a mutual fund, means a document or series of documents by which equity interests in the mutual fund are offered for sale or persons are invited to subscribe for or purchase equity interests in the mutual fund, but does not include any other notice, circular, advertisement, letter or other communication used in relation to the offer for sale of any equity-interest in the mutual fund or the invitation to any person to subscribe for or purchase any equity interest in the mutual fund if, before the offer or invitation is taken up or accepted, the prospective investor is given the opportunity to consider an offering document containing the information required by section 7(2);

“officer” means —

- (a) where the relevant entity is a company, a director of that company or an alternate director and any other person designated an officer of that company by its constitutional documents, by resolution of directors or other instrument;
- (b) where the relevant entity is a unit trust, a trustee of that trust;
- (c) where the relevant entity is a partnership, a general partner in that partnership;

“operator”, in relation to a mutual fund, means —

- (a) where the mutual fund is a company, a director of that company or an alternate director and any other person designated an officer of that company by its constitutional documents, by resolution of directors or other instrument;
- (b) where the mutual fund is a unit trust, a trustee of that trust;
- (c) where the mutual fund is a partnership, a general partner in that partnership;

“partnership” means a limited partnership registered under the Limited Partnership Act, 2003 or a limited partnership constituted under the laws of a jurisdiction other than Seychelles;

“person” includes an individual, a mutual fund, any company, partnership, unit trust, trustee or other legal entity recognised as such under the laws of another country or jurisdiction;

“private fund” or “private mutual fund” means a mutual fund —

- (a) the constitutional documents of which specify that it will have no more than 50 investors; or
- (b) the constitutional documents of which specify that an invitation to the public to subscribe for or purchase equity interests in the mutual fund is prohibited, and provide that an invitation to the public shall not have been made:
  - (i) if it is made to a specified person or specified ascertainable class of persons and is not calculated to result in equity interests becoming available to other persons; or
  - (ii) by reason of a private client relationship or other private business connection between the person making or causing the invitation and the investor; or
- (c) which is designated as a private fund by regulations;

“private fund licence” means a licence granted under section 3(4) for a private fund;

“professional investor” means a person —

- (a) whose ordinary business or employment involves, whether for his own account or the accounts of others, the acquisition or disposal of property of the same kind or substantially the same kind as the property of the relevant fund;
- (b) who has a net worth, whether individually or jointly with his spouse,



exceeding \$1,000,000 or its equivalent in any other convertible currency, and has signed a declaration to such effect and consenting to be treated as a professional investor;

- (c) a bank licensed under the Financial Institutions Act, 2004 or under the corresponding law of a recognised jurisdiction;
- (d) a mutual fund licensed under this Act or under the corresponding law of a recognised jurisdiction;
- (e) an insurance company licensed in Seychelles or under the corresponding law of a recognised jurisdiction; or
- (f) a securities dealer or stock broker licensed in Seychelles or under the corresponding law of a recognised jurisdiction;

“professional fund” means a mutual fund the equity interests of which can only be acquired by professional investors and in respect of which the initial minimum investment per investor is not less than \$100,000 or its equivalent in any other convertible currency;

“professional fund licence” means a licence granted under section 3(4) for a professional fund;

“promoter”, in relation to a mutual fund or proposed mutual fund, means any person whether in or outside Seychelles who causes the preparation or distribution of an offering document in respect of the mutual fund or proposed mutual fund but does not include a lawyer or accountant acting for or on behalf of such a person;

“public fund” or “public mutual fund” means any mutual fund which is not a private fund or a professional fund;

“public fund licence” means a licence granted under section 3(4) for a public fund;

“recognised jurisdiction” means a recognised jurisdiction listed in Schedule 6 to this Act;

“restricted Seychelles fund administrator's licence” means a licence granted under section 11 (1)(b);

“Seychelles fund administrator's licence” means a licence granted under section 11 (1)(a)

“share” means a share in the capital of a mutual fund and includes an interest in a mutual fund partnership and a trust unit in a mutual fund unit trust, and in each such case includes any equity interest;

“trust unit” means a unit of participation in a unit trust;

“unit trust” means a trust established by a trustee which, for valuable consideration, issues trust units in profits or gains arising from investments made by the trustee of the trust, and includes an international trust formed under the International Trusts Act, (Cap 102A) or a trust formed under the law of a recognised jurisdiction which recognises trusts;

“underwriter” means a person who —

- (a) as principal, agrees to purchase shares issued by a mutual fund with a view to offering them to the public; or
- (b) as agent of a mutual fund, offers for sale or sells to the public shares issued by the mutual fund.

## **PART 2 - LICENSING OF FUNDS**

### **Licensing**

3. (1) No mutual fund shall, unless exempted under subsection (14), operate in or from Seychelles except under the authority of, and in accordance with, a fund licence.

(2) A fund licence may be granted to—

- (a) a company incorporated in Seychelles or a recognised jurisdiction, including without limitation, a company incorporated under the International Business Companies Act, 1994, a company incorporated under the Companies Act, 1972, including a company incorporated in accordance with the Companies (Special License) Act, 2003 or a company incorporated under the Protected Cell Companies Act, 2003;
- (b) a limited partnership registered in Seychelles or a recognised jurisdiction including, without limitation, a limited partnership registered under the Limited Partnership Act, 2003;
- (c) a unit trust registered in Seychelles or a recognised jurisdiction, including, without limitation, a unit trust registered under the International Trusts Act, 1994.

(3) An application for a fund licence shall be made in such form as the Authority may provide in accordance with Schedule 7 and shall be accompanied by—

- (a) a current or latest draft offering document in relation to the mutual fund, which document shall include —
  - (i) a description of the equity interests of the fund in all material respects and contain such other information as is necessary to enable a prospective investor in the fund to make an informed decision as to whether or not to subscribe for or purchase the equity interests;

- (ii) in the case of a public fund, all the information required under section 7(2);
- (b) certified true copies of the constitutional documents of the applicant or such other proof as may be satisfactory to the Authority that the applicant is lawfully constituted under the laws of Seychelles or the laws of a recognised jurisdiction;
- (c) unless the Authority receives satisfactory proof that the equity interests in the applicant or its controlling shareholder or beneficial owner are listed on a stock exchange in a recognised jurisdiction, a personal questionnaire, in such form as the Authority shall require by each —
  - (i) director of an applicant fund company, if applicable;
  - (ii) general partner of a mutual fund partnership (or directors of the general partner if it is a company), if applicable;
  - (iii) trustee of a mutual fund unit trust (or directors of the trustee if it is a company), if applicable;
- (d) written consent by the proposed fund administrator for the fund, stating, inter alia, its consent to act and the name of the fund;
- (e) written consent by the proposed auditor for the fund, stating, inter alia, its consent to act as auditor of the fund and the name of the fund;
- (f) any other supporting information or documents as the Authority may require for the purpose of determining the application;
- (g) payment of such application fee as set out in Schedule 1.

(4) Upon receiving an application under subsection (3), the Authority may, at its discretion, grant or refuse the licence applied for.

(5) Without limiting the Authority's discretion in respect of granting a licence, the following shall be considered by the Authority in dealing with an application —

- (a) whether the applicant is a fit and proper person;
- (b) whether each operator, promoter and administrator of the applicant is a fit and proper person;
- (c) whether the administration of the fund will be undertaken by persons who have sufficient expertise to administer the fund;
- (d) whether the business of the fund and any offer of equity interests in it will be carried out in a proper manner;

- (e) whether the fund is in compliance with this Act;
- (f) whether the fund is fit and proper to be approved as a licensed fund;
- (g) that the custodian of the fund is a licensed bank under the Financial Institutions Act, 2004 or a licensed trustee services provider under the International Corporate Service Providers Act, 2003, or such other financial institution or person in or outside Seychelles as may be approved by the Authority;
- (h) that the fund's fund administrator is separate from and independent of the custodian;
- (i) that the investors of the fund are entitled to have their equity interests redeemed or purchased by the fund in accordance with the constitutional documents of the fund.

(6) For the purposes of subsection (5) and in determining whether a person is a fit and proper person, regard shall be had to—

- (a) the person's probity, competence, experience and soundness of judgment for fulfilling the responsibilities of the relevant position;
- (b) the diligence with which the person is fulfilling or is likely to fulfil those responsibilities;
- (c) the person's educational and professional qualifications and membership of professional or other relevant bodies;
- (d) the person's knowledge and understanding of the legal and professional obligations to be assumed or undertaken;
- (e) any evidence that the person has committed any offence involving dishonesty or violence or contravened any law designed to protect members of the public from dishonesty, incompetence, malpractice or conduct of discharged or undischarged bankrupts or otherwise insolvent persons.

(7) The Authority may grant a fund licence subject to such conditions as it deems fit and the Authority shall have power at any time to —

- (a) alter or waive or revoke a licence or impose additional conditions in a licence as it deems fit;
- (b) subject to the provisions of this Act, to convert one type of fund licence into another type of fund licence.

(8) the operator of a licensed fund shall ensure that in carrying on business in or from Seychelles the mutual fund complies with the conditions contained in its fund licence, and a person who contravenes this provision is guilty of an offence and liable on conviction to a fine of \$50,000.

(9) A person shall not, in relation to an application for a fund licence, supply to the Authority information that the person knows or should reasonably know is false or misleading, and a person who contravenes this provision is guilty of an offence and liable on conviction to a fine of \$25,000.

(10) The Authority may refuse to grant a fund licence in respect of a mutual fund with a name that—

- (a) is identical to that of any company, firm or other entity, whether in or outside Seychelles, or which so nearly resembles the name of such company, firm or other entity as is likely to deceive;
- (b) is likely to suggest, falsely, patronage of or connection with some person or authority, whether in or outside Seychelles;
- (c) is likely to suggest, falsely, that the fund has a special status in relation to or derived from a government; or
- (d) is otherwise, in the opinion of the Authority, misleading or objectionable.

(11) If, in the Authority's opinion, a mutual fund is carrying on or attempting to carry on business in or from Seychelles using any name or part thereof in breach of subsection (10)(a) to (d) or that the Authority would have refused under subsection (10), the Authority may direct the mutual fund to change its name to a name approved by the Authority.

(12) The operator of a mutual fund shall ensure that the fund complies with any direction given under subsection (11), and a person who contravenes this provision is guilty of an offence and liable on conviction to a fine of \$25,000 and \$100 in respect of each day during the period in which the mutual fund fails to comply with the direction.

(13) No person, other than a person granted a fund licence or an exempt foreign fund or a person otherwise approved in writing by the Authority shall —

- (a) use the words “mutual fund”, “hedge fund” or “unit trust”, either in English or any other language in the name, description or title under which that person is carrying on business in or from Seychelles; or
- (b) make any representation in any advertisement, circular, letter, e-mail or other document that the person is carrying on business as a mutual fund in or from Seychelles,

and any person who contravenes this subsection is guilty of an offence and liable on conviction to a fine of \$100,000.

(14) A mutual fund—

- (a) which is administered by a person holding a Seychelles fund administrator's licence; and
- (b) which is incorporated or otherwise established and domiciled outside

Seychelles; and

- (c) in respect of which —
  - (i) the initial minimum investment per investor is not less than \$100,000 or its equivalent in any other convertible currency; or
  - (ii) the equity interests are listed on a stock exchange of a recognised jurisdiction; and
- (d) which has provided evidence satisfactory to the Authority showing —
  - (i) that the fund is in good standing and holds a current licence or other required authorisation to operate as a mutual fund issued under the laws of a recognised jurisdiction; and
  - (ii) compliance with paragraph (c); and
- (e) which has received written notification from the Authority that the Authority has approved the fund's application for exemption from section 3(1) of this Act, shall be exempted from subsection (1).

(15) An approval of exemption by the Authority under subsection (14)(e) shall be valid for a period of one year from the date of the notification unless it is sooner revoked by the Authority under the provisions of this Act.

(16) When an application is made under subsection (14) for exemption from section 3(1), the applicant shall, in addition to fulfilling the requirements of subsection (14) —

- (a) pay an exemption application fee set out in Schedule 1;
- (b) inform the Authority in writing of the name of the fund, the address of the fund's registered office overseas and the address of the fund's principal place of business overseas.

(17) An exemption granted by the Authority to an exempt foreign fund under subsection (14) shall be renewed annually upon —

- (a) the payment of an annual exemption renewal fee as set out in Schedule 1; and
- (b) the lodgement with the Authority of—
  - (i) a declaration of compliance by it in the form specified in Schedule 4; and
  - (ii) up to date evidence of regulation as a foreign fund as referred to in subsection 14(d).

(18) The provisions of section 5(5) to (7) shall apply *mutatis mutandis* in relation to late payment of any fees payable to the Authority by an exempt foreign fund under subsection

(17).

**Authority to keep registers**

4. (1) The Authority shall keep separate registers for —

- (a) licensed private funds;
- (b) licensed public funds;
- (c) licensed professional funds; and
- (d) exempt foreign funds.

(2) The registers kept under subsection (1)(a) to (c) shall contain in respect of each licensed fund —

- (a) the name of the fund;
- (b) if the licensed fund is incorporated or otherwise established in Seychelles, the registered office in Seychelles;
- (c) if the licensed fund is not incorporated or otherwise established in Seychelles—
  - (i) the name and address of the fund's agent for service in Seychelles;
  - (ii) the address of the fund's registered office overseas;
- (d) the name and address of—
  - (i) each director of the fund, if the fund is a company;
  - (ii) each trustee of the fund, if the fund is a trust;
  - (iii) each general partner of the fund, if the fund is a limited partnership;
- (e) the date of commencement of the fund licence;
- (f) the status of the fund, with reference to whether the fund has a current fund licence or not, and, if the fund has had its fund licence cancelled, the date of cancellation.

(3) The register kept under subsection (1)(d) shall contain in respect of each exempt foreign fund —

- (a) the name of each fund;
- (b) the address of the fund's registered office overseas;

- (c) the address of the fund's principal place of business overseas;
- (d) the jurisdiction in which the fund holds a licence or other required authorisation to operate as a mutual fund and, if the Authority is aware that the fund has had such licence or other required authorisation cancelled, the date of cancellation;
- (e) the status of such fund, with reference to whether the fund has a current approval by the Authority in respect of exemption from section 3(1) of this Act or not, and, if the fund has had such exemption cancelled, the date of cancellation.

(4) The registers kept under subsection (1) shall be in such form as the Authority may determine and shall be open to public inspection during ordinary office hours on payment of a fee as set out in Schedule 1.

(5) Any person, on payment of a fee as set out in Schedule 1, may request the Authority for a declaration of official search under the seal of the Authority in respect of any licenced fund, which shall contain the information referred to in subsection (2)(a) to (f).

(6) Any person, on payment of a fee as set out in Schedule 1, may request the Authority for a declaration of official search under the seal of the Authority in respect of any exempt foreign fund, which shall contain the information referred to in subsection (3)(a) to (e).

#### **Duration of licence and annual fees**

**5.** (1) A fund licence shall be valid for a period of one year from the date of issue, unless it is sooner revoked by the Authority under the provisions of this Act.

(2) An annual licence fee as specified in Schedule 1 shall be payable to the Authority in respect of each fund licence, from the date on which the licence is issued.

(3) A fund licence shall be renewable annually upon —

- (a) the payment of the annual licence fee referred to in subsection (4); and
- (b) the lodgement with the Authority of a declaration of compliance by the licensee in the form specified in Schedule 2.

(4) Upon the expiration of a fund licence, there shall be payable to the Authority the annual licence fee as set out in Schedule 1.

(5) If the annual licence fee is not paid on or before the due date in each year, there shall be payable an additional fee equal to one twelfth of that annual licence fee for each month or part thereof during which the annual licence fee and any additional fee imposed by this subsection remains unpaid.

(6) The Authority may, for good cause, waive any additional fee imposed by virtue of subsection (5).

(7) Any unpaid fees may be sued for by the Authority as a civil debt and the Authority may require, and the Court may order, the payment of any additional fees accrued in



respect of late payment.

### **Special requirements, accounts and other duties**

6. (1) A licensed fund which is not incorporated or otherwise established in Seychelles shall have an agent for service in Seychelles, which agent shall be a person licensed under the International Corporate Service Providers Act, 2003 or under the Financial Institutions Act, 2004 or otherwise approved in writing by the Authority.

(2) Every licensed public fund shall have not less than —

- (a) two natural persons as directors, in the case of a company, which is resident in or outside Seychelles;
- (b) two natural persons as general partners or two natural persons as directors of one or more corporate general partners, in the case of a partnership which is resident in or outside Seychelles;
- (c) two natural persons as trustees or two natural persons as directors of corporate trustees, in the case of a unit trust, which is resident in or outside Seychelles.

(3) A licensed fund shall notify the Authority in writing of any of the following changes within fourteen days of any such change occurring—

- (a) in the case of a licensed fund incorporated or otherwise established in Seychelles, a change in the address of its registered office in Seychelles;
- (b) in the case of a licensed fund which is not incorporated or otherwise established in Seychelles, a change of its agent for service or of the address of such agent in Seychelles;
- (c) in the case of a licensed fund which is not incorporated or otherwise established in Seychelles, a change of the address of the fund's registered office overseas;
- (d) a change of name or address of—
  - (i) each director of the fund, if the fund is a company;
  - (ii) each trustee of the fund, if the fund is a trust;
  - (iii) each general partner of the fund, if the fund is a limited partnership.

(4) Every licensed fund shall —

- (a) maintain adequate accounting records and prepare financial statements in respect of each financial year in accordance with generally accepted accounting principles; and

(b) make such accounting records and financial statements available for examination by the Authority or any person duly authorised by the Authority.

(5) Every licensed public fund shall ensure that copies of its annual audited financial statements are provided to, or made available for examination by, all its investors.

(6) Each licensed fund shall have its accounts audited annually by an auditor.

(7) Notwithstanding any other written law, a licensed fund which is incorporated under the Companies Act may, instead of appointing an auditor licensed in Seychelles, appoint a foreign auditor and file its accounts audited by the foreign auditor provided that such foreign auditor has been approved by the Authority in writing.

(8) A licensed fund shall send its audited accounts in respect of each financial year to the Authority within four months of the end of that financial year or within such extension of that period as the Authority may allow.

(9) A licensed fund shall at all times know and be able to identify its investors and be able to identify the beneficial owners of its investors which are companies or other entities.

(10) Each operator shall ensure that the fund complies with subsections (1) to (9), and a person who contravenes this provision is guilty of an offence and liable on conviction to a fine of \$25,000.

(11) An exempt foreign fund shall notify the Authority in writing of any of the following changes within fourteen days of its occurrence—

(a) a change of the address of the fund's principal place of business overseas;

(b) a change of the address of the fund's registered office overseas.

(12) An exempt foreign fund shall send its audited accounts in respect of each financial year to the Authority within four months of the end of that financial year or within such extension of that period as the Authority may allow, unless the Authority, having received satisfactory evidence that the exempt foreign fund is not required by the law of the recognized jurisdiction in which it is authorised to operate to submit such accounts, exempts by written notice the exempt fund from the application of this subsection.

(13) An exempt foreign fund shall immediately notify the Authority in writing if its licence or other required authorisation to operate as a mutual fund in a recognised jurisdiction is revoked or otherwise terminated.

(14) The operator of an exempt foreign fund shall ensure that the fund complies with subsections (11) to (13), and a person who contravenes this provision is guilty of an offence and liable on conviction to a fine of \$50,000.

## **Public Funds' Offering Document etc**

7. (1) Without prejudice to the provisions of section 3(3)(a), a licensed public fund

which intends at any time —

- (a) to make an invitation to the public or any section thereof to subscribe for or purchase equity interests in the mutual fund; or
- (b) to make a material change to an offering document previously approved by the Authority,

shall, prior to making such invitation or material change as the case may be, file the proposed offering document or amended document as the case may be, with the Authority for approval and, except for any offering document filed with an initial application for a public fund licence, pay to the Authority the applicable fee as set out in Schedule 1.

(2) Every offering document published under subsection (1) shall contain —

- (a) the name and registered address of the fund, the address of the fund's principal office in Seychelles and, where applicable, the fund's principal office outside of Seychelles;
- (b) the jurisdiction and date of formation of the fund, with an indication of its duration if limited;
- (c) particulars of the fund's investment objectives and policy;
- (d) particulars of any investment restrictions;
- (e) particulars of the risk factors of the fund;
- (f) if any area of investment of the fund may reasonably be considered to be a high risk area, a warning to that effect, and a description of the risks involved;
- (g) the names and registered addresses of the following persons —
  - (i) the directors or resident trustee or general partner of the fund, as the case may be;
  - (ii) the fund administrator;
  - (iii) the investment or trading manager or managers;
  - (iv) each agent, distributor or underwriter if any, authorised to process or receive applications to buy an equity interest in the fund;
  - (v) each investment or trading advisor, if any;
  - (vi) custodian;
  - (vii) the auditors;
- (h) if the fund is listed or proposed to be listed, the relevant stock exchange;

- (i) the following characteristics of the equity interests in the fund—
  - (i) maximum and minimum aggregate amount of offering;
  - (ii) minimum investment, if any, and maximum investment, if any, for each investor;
  - (iii) description of the different types of equity interests, including their currency of denomination and rights;
  - (iv) frequency of valuation;
  - (v) redemption timings and requirements;
- (j) the procedure for subscribing for and redeeming of equity interests;
- (k) the circumstances in which redemption of equity interests may be Suspended;
- (l) the distribution policy and the approximate dates on which distributions, if any, will be paid;
- (m) the amounts of all fees and charges payable by an investor, including charges levied on subscription and redemption and, in the case of umbrella funds, switching;
- (n) the financial year of the fund;
- (o) particulars of what reports and or statements will be sent to investors and when;
- (p) a warning to the effect that the value of fund investments and the income from them, where income is distributed, may go down as well as up;
- (q) a recommendation to the effect that a prospective investor obtains expert and independent legal advice and taxation and investment advice in relation to the contemplated investment and on the content of the offering document before applying to acquire an equity interest in the fund;
- (r) a list of the fund's constitutional documents and an address in Seychelles where they can be inspected free of charge or purchased from the fund;
- (s) the date of publication of the offering document;
- (t) a statement to the effect that the directors or trustees or general partner, as the case may be, of the fund, accept that to the best of their knowledge, information and belief, the information contained in the offering document is accurate as at the date of application.

(3) Where in an offering document any of the disclosures required under section 7(2)

cease to be accurate in a material particular, the licensed fund shall within 21 days of the change occurring publish an amendment to the offering document giving accurate disclosures and provide a copy of such amendment to each of its investors and to the Authority.

### **PART 3 – FUND ADMINISTRATION**

#### **Licensable activity**

**8.** (1) Subject to subsection (2), no person shall carry on mutual fund administration in or from Seychelles or administer a licensed fund unless authorised to do so by a fund administrator's licence issued under this Act, and a person who contravenes this provision is guilty of an offence and liable on conviction to a fine of \$75,000.

(2) An approved foreign administrator which does not conduct mutual fund administration business in Seychelles and—

- (a) has provided evidence satisfactory to the Authority, establishing that it is in good standing and holds a current licence or other required authorisation to conduct mutual fund administration issued under the laws of a recognised jurisdiction;
- (b) is subject to a legal requirement in a recognised jurisdiction to prepare annual audited accounts; and
- (c) has received a written notification from the Authority that the Authority approves its application for exemption from subsection (1),

shall be exempted from subsection (1). For the purpose of this subsection, administration outside Seychelles of a mutual fund licensed in Seychelles does not constitute conducting mutual fund administration business in Seychelles.

(3) An exemption under subsection (2) shall be valid for a period of one year from the date of issue of the notification, unless it is sooner revoked by the Authority under the provisions of this Act.

(4) When an application is made under subsection (2) for exemption from subsection (1), the applicant shall, in addition to fulfilling the requirements of subsection (2), pay an exemption application fee as set out in Schedule 1.

(5) An exemption granted under subsection (2) shall be renewed annually upon —

- (a) the payment of an annual exemption fee as set out in Schedule 1; and
- (b) the lodgement with the Authority of—
  - (i) a declaration of compliance by the approved foreign administrator in the form specified in Schedule 5; and
  - (ii) up to date evidence of regulation as a foreign fund administrator as

required by subsection (2) (a).

(6) The provisions of section 13(4) to (6) shall *mutatis mutandis* apply in relation to late payment of any fees payable to the Authority by an approved foreign administrator under subsection (5).

### **Types of Fund Administrator's licence**

9. (1) Subject to subsection (2), a Seychelles fund administrator's licence authorises the holder of the licence to carry on mutual fund administration in respect of an unlimited number of mutual funds.

(2) A restricted Seychelles fund administrator's licence authorises the holder of the licence to carry on mutual fund administration solely in respect of the specific mutual funds specified for the time being in the licence.

### **Fund Administrator's licence application**

10. An application for a Seychelles fund administrator's licence or a restricted Seychelles fund administrator's licence shall be in such form as the Authority shall provide, shall state the particulars as required by Schedule 8, and shall be accompanied by—

- (a) certified true copies of the constitutional documents of the applicant or such other proof as may be satisfactory to the Authority that the applicant is lawfully constituted under the laws of Seychelles or the laws of a recognised jurisdiction;
- (b) unless the Authority receives satisfactory proof that the equity interests in the applicant or its controlling shareholder or beneficial owner are listed on a stock exchange in a recognised jurisdiction, a personal questionnaire, in such form as the Authority shall require from time to time, by —
  - (i) each shareholder and beneficial owner of the applicant;
  - (ii) each director of the applicant;
- (c) any other supporting information or documents as the Authority may require for the purpose of determining the application;
- (d) payment of such application fee as set out in Schedule 1.

### **Power to grant licence**

11. (1) Upon receiving an application under section 10, the Authority may, at its discretion, grant or refuse to grant —

- (a) a Seychelles fund administrator's licence; or
- (b) a restricted Seychelles fund administrator's licence, as the case may be.

(2) In dealing with an application for a licence, the Authority shall take into consideration the following matters —

- (a) whether the applicant and each of its directors are fit and proper persons;
- (b) whether the applicant has adequate expertise, resources and facilities necessary to properly administer mutual funds.

(3) For the purposes of subsection (2) and in determining whether a person is a fit and proper person, regard shall be had to the matters specified in paragraphs (a) to (e) of section 3(6).

(4) The Authority shall not grant a licence under this section unless it is satisfied that—

- (a) the applicant has, in the case of a Seychelles fund administrator's licence, either its registered office or a principal place of business in Seychelles;
- (b) in the case of an applicant which is not incorporated in Seychelles, the applicant has an agent for service in Seychelles, which agent is licensed under the International Corporate Service Providers Act, 2003 or the Financial Institutions Act, 2004 or is otherwise approved in writing by the Authority;
- (c) an applicant company has not less than two natural persons as directors;
- (d) the applicant's name is not—
  - (i) identical to that of any other company, firm or entity, whether in or outside Seychelles, or which so nearly resembles the name of the other company, firm or other entity as is likely to deceive;
  - (ii) likely to suggest, falsely, patronage of or connection with some person or authority, whether in or outside Seychelles; or
  - (iii) likely to suggest, falsely, that the fund has a special status in relation to or derived from a government;
  - (iv) otherwise, in the opinion of the Authority, misleading or objectionable.

(5) The Authority may grant a Seychelles fund administrator's licence or a restricted Seychelles fund administrator's licence subject to such conditions as it deems fit and the Authority shall have power at any time to alter, waive or revoke any condition or impose any additional condition as it deems fit.

(6) Where the Authority grants a licence, it shall enter the particulars of the applicant in the register maintained by it under subsection (9) and issue a Seychelles fund administrator's licence or a restricted Seychelles fund administrator's licence, as the case may be, showing the date on which the licence is granted.

(7) A licensed fund administrator shall, in carrying on the business of mutual fund administration, comply with the conditions contained in its licence, and a person who contravenes this provision is guilty of an offence and liable on conviction to a fine of \$50,000.

(8) A person shall not, in connection with an application for a licence under this section, supply to the Authority information he knows or should reasonably know is false or misleading, and a person who contravenes this provision is guilty of an offence and liable on conviction to a fine of \$25,000.

(9) The Authority shall keep separate registers of—

- (a) persons holding Seychelles fund administrator's licences;
- (b) persons holding restricted Seychelles fund administrator's licences; and
- (c) approved foreign administrators.

(10) The registers required under subsection (9)(a) and (b) shall contain in respect of each licensed fund administrator —

- (a) the name of each licensee;
- (b) in the case of a licensed fund administrator incorporated or otherwise established in Seychelles, the licensee's registered office in Seychelles;
- (c) in the case of a licensed fund administrator which is not incorporated or otherwise established in Seychelles —
  - (i) the name and address of the licensee's agent for service in Seychelles; and
  - (ii) the address of the licensee's registered office overseas;
- (d) the name and address of each director and alternate director;
- (e) the date of commencement of the relevant fund administrator's licence;
- (f) the status of such licensed fund administrator, namely, whether it has a current fund administrator's licence or not, and, if it has had its fund administrator's licence cancelled, the date of cancellation.

(11) The register required under subsection (9)(c) shall contain in respect of each approved foreign administrator —

- (a) its name;
- (b) the address of its registered office overseas;
- (c) the address of its principal place of business overseas;



- (d) the jurisdiction in which it holds a licence or other required authorisation to operate as a mutual fund administrator and, if the Authority is aware that the approved foreign administrator has had such licence or other required authorisation cancelled, the date of cancellation;
- (e) the status of such approved foreign administrator, namely, whether it has a current approval by the Authority in respect of exemption from section 8(2) or not, and, if the approved foreign administrator has had such exemption cancelled, the date of cancellation.

(12) The registers kept by the Authority under subsection (9) shall be in such form as the Authority may determine and shall be open to public inspection during office hours on payment of the fee specified in Schedule 1.

(13) Any person may, on payment of the fee specified in Schedule 1 obtain from the Authority for a declaration of official search under the seal of the Authority in respect of any licensed fund administrator, containing the information referred to in subsection (10).

(14) Any person may, on payment of the fee as specified in Schedule 1, obtain from the Authority for a declaration of official search under the seal of the Authority in respect of any approved foreign administrator, containing the information referred in subsection (11).

#### **Fund Administrator change of ownership etc.**

**12.** (1) Subject to subsection (2), a licensed fund administrator shall not issue shares and a person owning or having an interest in shares in such licensed fund administrator shall not transfer or otherwise dispose of or deal in those shares or that interest, unless the Authority has given its written approval to the issue, transfer, disposal or dealing, as the case may be, and any conditions of the approval are complied with.

(2) The Authority may, in respect of a licensed fund administrator whose shares are publicly traded on a stock exchange in a recognised jurisdiction, waive the obligation to obtain approval under subsection (1), and any such waiver—

- (a) shall be subject to the condition that the licensed fund administrator shall, as soon as reasonably practicable, notify the Authority of—
  - (i) any change in the control of the licensed fund administrator;
  - (ii) the acquisition by any person or group of persons of shares representing more than ten percent of the issued share capital or total voting rights in the licensed fund administrator;
  - (iii) the acquisition by any person or group of persons of shares representing more than ten percent of the issued share capital or total voting rights of the parent company of the licensed fund administrator;
- (b) shall be subject to the condition that the licensed fund administrator shall, as soon as reasonably practicable, provide such information to the Authority,

and within such period of time as the Authority may require for the purpose of enabling an assessment as to whether persons acquiring control or ownership of the licensed fund administrator in any of the circumstances set out in subsection (2)(a) are fit and proper persons to have such ownership and control; and

- (c) shall be subject to such other requirements as the Authority may deem necessary.

(3) Any person who contravenes subsection (1) or (2) is guilty of an offence and liable on conviction to a fine of \$ 10,000.

(4) A licensed fund administrator shall notify the Authority in writing of any of the following changes, within fourteen days, of any such change occurring —

- (a) change of the address of its registered office or business office in Seychelles;
- (b) in the case of a company which is not incorporated in Seychelles, change of its agent for service in Seychelles or a change in the address of its agent for service in Seychelles.

(5) A licensed fund administrator shall not appoint an officer unless the Authority has given its written approval to the proposed appointment or the Authority has exempted the licensed fund administrator from the duty to comply with this subsection, and a person who contravenes this subsection is guilty of an offence and liable on conviction to a fine of \$10,000.

### **Fund Administrator's licence renewal**

**13.** (1) A Seychelles fund administrator's licence and a restricted Seychelles fund administrator's licence, shall each be valid for a period of one year from the date of issue unless it is sooner revoked by the Authority under the Act.

(2) There shall be payable to the Authority in respect of the period of one year from the date on which a Seychelles fund administrator's licence or restricted Seychelles fund administrator's licence is granted, an annual licence fee specified in Schedule 1.

(3) A Seychelles fund administrator's licence or restricted Seychelles fund administrator's, licence, shall be renewable annually upon —

- (a) the payment of the annual licence fee, specified in Schedule 1; and
- (b) the lodgement with the Authority of a declaration of compliance by the licensee in the form specified in Schedule 3.

(4) If an annual licence fee referred to in subsection (3) is not paid on or before the day of the expiration of the licence, there shall be payable an additional fee equal to one twelfth of that annual licence fee for each month or part thereof during which the annual licence fee and any additional fee imposed by this subsection remains unpaid.

(5) The Authority may, for good cause, waive any additional fee imposed pursuant to subsection (4).

(6) Any unpaid fees may be sued for by the Authority as a civil debt and the Authority may require, and the Court may order, the payment of any additional fee accrued in respect of late payment of the annual licence fee referred to in subsection (3).

### **Audited accounts**

**14.** (1) A licensed fund administrator shall have its accounts audited annually by an auditor.

(2) Notwithstanding any other written law, a licensed fund administrator which is incorporated under the Companies Act, 1972 may, instead of appointing an auditor licensed in Seychelles, appoint a foreign auditor and file its accounts so audited provided the foreign auditor has been approved by the Authority.

(3) A licensed fund administrator shall send its audited accounts in respect of each financial year of the fund to the Authority within four months of the end of that financial year or within such extension of that period as the Authority may allow.

(4) An approved foreign administrator shall send its audited accounts in respect of each financial year of the fund to the Authority within four months of the end of that financial year or within such extension of that period as the Authority may allow.

### **Fund Administrators requirements and duties**

**15.** (1) If a licensed fund administrator or an approved foreign administrator knows or has good reason to believe that a licensed fund for which it provides an office, or a promoter or operator of such fund—

- (a) is or is likely to become unable to meet its obligations as they fall due;
- (b) is in breach of this Act or any other law; or
- (c) is carrying on business in a manner that is or is likely to be harmful to investors in or creditors of the fund,

the fund administrator shall give the Authority written notice of its knowledge or belief giving its reasons for that knowledge or belief, and a person who contravenes this provision is guilty of an offence and liable on conviction to a fine of \$ 10,000.

(2) If a licensed fund administrator or an approved foreign administrator is carrying on business in or from Seychelles using any name or part thereof in breach of section 11 (4)(d) or that the Authority would have refused by virtue of that section, the Authority may direct the fund administrator to change its name to a name approved by the Authority.

(3) The fund administrator and its officers shall ensure that it complies with any direction given to it under subsection (2), and a person who contravenes this provision is guilty of an offence and liable on conviction to a fine of \$ 10,000 and of \$ 100 in respect of each day during which the fund administrator fails to comply with the direction.

(4) A licensed fund administrator shall at all times know and be able to identify its clients and be able to identify the beneficial owners of its clients which are companies or other entities.

(5) A licensed fund administrator shall ensure that—

- (a) monies or other assets that it holds for or on behalf of any entity for which it provides mutual fund administration services or other client entities are designated and clearly identified as “client funds”, excluding any monies paid to the licensee for services rendered, products sold or expenses incurred by the licensee;
- (b) where any client funds are held for a period exceeding 30 days, they are kept separate from the licensed mutual fund administrator's own monies in an account designated as a client account;
- (c) it maintains separate accounts in its books of account in respect of any client funds distinguishing same from its own monies.

(6) Every licensed fund administrator shall have a written agreement with each of its clients setting out the terms and conditions on which it provides fund administration services. Such agreement shall include, without limitation, provisions relating to charging and calculation of fees.

(7) A licensed fund administrator or an approved foreign administrator shall promptly notify the Authority if it becomes aware of—

- (a) any criminal action or proceedings having been commenced against it or any of its officers;
- (b) any civil action or proceedings, where the amount claimed exceeds \$100,000, having been commenced against it or any of its officers;
- (c) a conviction of the fund administrator or any of its officers of any offence relating to—
  - (i) mutual fund administration;
  - (ii) any business activity;
  - (iii) insolvency;
  - (iv) fraud or dishonesty.

(8) A licensed fund administrator or an approved foreign administrator shall promptly notify the Authority of any of the following events —

- (a) it is no longer able to continue in operation as a going concern;

- (b) action is commenced to wind up the fund administrator;
- (c) a liquidator, receiver or administrator is appointed in respect of the fund administrator;
- (d) a composition or arrangement is made with its creditors.

(9) Every licensed fund administrator shall ensure that any complaint received by it relating to the conduct of its business is —

- (a) acknowledged;
- (b) registered;
- (c) investigated promptly and thoroughly;
- (d) dealt with by appropriate action which shall be recorded.

(10) A licensed fund administrator shall use its best endeavours to avoid any conflict of interest between itself and its clients and between one client and another.

(11) If a conflict of interest does arise, the licensed fund administrator shall notify the client or each of the clients concerned of this fact. Unless all clients with conflicting interests in any matter agree to the fund administrator continuing its services to the other client or clients concerned, the fund administrator shall cease providing services to all the clients concerned.

(12) An approved foreign administrator shall notify the Authority in writing of any of the following changes, within fourteen days of any such change occurring—

- (a) a change of the address of its principal place of business overseas;
- (b) a change of the address of its registered office overseas.

(13) An approved foreign administrator shall immediately notify the Authority in writing if its licence or other required authorisation to operate as a mutual fund administrator in a recognised jurisdiction is revoked or otherwise terminated.

## **PART 4 – THE AUTHORITY AND IT POWERS**

### **The Authority**

**16.** (1) The Authority—

- (a) shall regulate licensed funds and licensed fund administrators in accordance with this Act;
- (b) shall otherwise be responsible for the administration of this Act;
- (c) may, for the proper administration of this Act or any regulations made there

under, issue directions to any licensee.

(2) The Authority may delegate any of its functions to an officer of the Authority subject to any conditions that it may specify.

(3) The Authority may engage the services of any expert or competent person for the purpose of performing any of its functions.

### **Right to request audited accounts**

**17.** (1) The Authority may, at any time, direct a licensed fund to have its accounts audited and to submit them to the Authority within such time as the Authority may specify.

(2) The operator of a licensed fund shall ensure that a direction under subsection (1) is complied with, and any person who contravenes this provision commits an offence and is liable on conviction to a fine of \$20,000.

### **Right to request information and carry on inspection**

**18.** (1) The Authority may require a licensed fund to give the Authority such information, documents or explanation as the Authority may reasonably need to carry out its duties under this Act.

(2) A person who fails unreasonably to comply with a requirement notified to him by the Authority under subsection (1) commits an offence and is liable on conviction to a fine of \$50,000.

(3) A person who, in response to a requirement under subsection (1), gives the Authority information or an explanation that the person knows or should reasonably know is false or misleading, commits an offence and is liable on conviction to a fine of \$50,000.

(4) Where a licensed fund or its operator fails or refuses to submit to the Authority any information, document or explanation pursuant to subsection (1), the Authority, or a person duly authorised by the Authority for that purpose, may carry out an inspection of the licensed fund.

(5) A licensed fund shall afford the Authority or a person duly authorised by the Authority carrying out an inspection under subsection (4) access to —

- (a) the books and accounts of the licensed fund;
- (b) all documents and records, including documents of title to fund assets;
- (c) all securities and other assets held by the licensed fund or any officers or nominees;
- (d) such other information and facilities as may be reasonably necessary to carry out the inspection.

(6) A person who contravenes subsection (5) commits an offence and is liable on

conviction to a fine of \$50,000.

### **Court relief**

**19.** If it appears to the Authority that a mutual fund is carrying on business in or from Seychelles in breach of section 3(1), the Authority may make an application to the Court together with an affidavit for such order as it thinks necessary to preserve the assets of the investors in the mutual fund and the Court may order accordingly.

### **Authority's powers relating to Funds**

**20.** (1) The Authority may take all or any of the actions specified under subsection (3) if it is satisfied that—

- (a) a licensed fund or an exempt foreign fund is or is likely to become unable to meet its debts and obligations as they fall due;
- (b) a licensed fund or an exempt foreign fund is carrying on business or is winding up its business voluntarily in a manner that is prejudicial to investors or creditors;
- (c) a licensed fund is carrying on business without complying with a condition of its fund licence contrary to section 3(8);
- (d) the direction and management of a licensed fund or an exempt foreign fund has not been conducted in a fit and proper manner;
- (e) a person holding a position as an officer of a licensed fund or an exempt foreign fund is not a fit and proper person to hold the position; or
- (f) an exempt foreign fund's licence or other authorisation to operate as a mutual fund in a recognised jurisdiction is revoked or otherwise terminated.

(2) For the purpose of ascertaining whether an event referred to in subsection (1) has occurred or is likely to occur, the Authority shall promptly enquire into any failure by —

- (a) a licensed fund to change its name in accordance with a direction given to it under section 3(11);
- (b) a licensed fund to have its accounts audited in accordance with section 6(6) or to send its audited accounts to the Authority in accordance with section 6(8);
- (c) a licensed fund to pay its prescribed annual licence fee in accordance with section 5(4);
- (d) a licensed fund to have its accounts audited or to submit the audited accounts to the Authority when instructed to do so under section 17(1);
- (e) an exempt foreign fund to send its audited accounts to the Authority in accordance with section 6(12), unless the Authority has exempted the exempt foreign fund from the requirement to lodge audited accounts under that

subsection;

- (f) an exempt foreign fund to pay its prescribed annual exemption fee in accordance with section 3(17).

(3) For the purpose of subsection (1), the actions the Authority may take in respect of a licensed mutual fund or an exempt foreign fund, as the case may be, are to —

- (a) revoke any mutual fund licence the mutual fund holds;
- (b) impose conditions or further conditions on any mutual fund licence the mutual fund holds and amend or revoke those conditions;
- (c) require the replacement of any promoter or operator of a licensed mutual fund;
- (d) appoint a person to advise a licensed mutual fund on the proper conduct of its affairs;
- (e) appoint a person to assume control of the affairs of a licensed mutual fund;
- (f) revoke the approval given to an exempt foreign fund by the Authority under section 3(14)(e) in respect of exemption from section 3(1).

(4) Where the Authority intends to take action under subsection (3), it may apply to the Court for an order to take such other action as the Court considers necessary to protect the interests of the investors in, or creditors of, the mutual fund, and thereafter take any other action provided for in subsection (3).

(5) Where the Authority considers it necessary or appropriate to do so, it may inform the investors in a mutual fund of any action it is taking or intending to take in respect of the mutual fund under subsection (3) or (4).

(6) A person appointed under subsection (3)(d) or (e) is appointed at the expense of the relevant mutual fund, and any expense incurred by the Authority in connection with the appointment shall be an amount due and payable to the Authority by the relevant mutual fund.

(7) A person appointed under subsection (3)(e) shall have all the powers necessary, to the exclusion of any operator, to administer the affairs of the mutual fund in the best interests of the investors in and creditors of the mutual fund including the power to terminate the business of the mutual fund. .

(8) A person appointed under subsection (3)(d) or (e) shall —

- (a) when requested to do so by the Authority, supply the Authority with such information in respect of the mutual fund as may be required by the Authority;
- (b) within three months of the appointment, or within such longer period as the Authority may specify, prepare and supply to the Authority a report on the



affairs of the mutual fund making appropriate recommendations in respect of the mutual fund; and

- (c) if the appointment is not terminated after supplying the report referred to in paragraph (b), subsequently supply to the Authority such other information, reports and recommendations as the Authority may specify.

(9) If a person appointed under subsection (3)(d) or (e) fails to comply with any obligation under subsection (8) or, in the Authority's opinion, is not carrying out the person's functions in respect of the relevant mutual fund satisfactorily, the Authority may revoke the appointment and appoint any other person.

(10) On receipt of any information or report under subsection (8) in respect of a mutual fund, the Authority may —

- (a) require the mutual fund to reorganise its affairs in a manner notified by the Authority;
- (b) if the mutual fund is a company, apply to the Court for an order for the company to be wound up in accordance with the Act under which the company is incorporated;
- (c) if the mutual fund is a unit trust governed by the laws of Seychelles, apply to the Court for an order directing the trustee to wind up the fund;
- (d) if the mutual fund is a limited partnership governed by the laws of Seychelles, apply to the Court for an order to dissolve the partnership,

and may take such action in respect of the appointment or continued appointment of the person appointed under subsection (3)(d) or (e) as it considers appropriate.

(11) Where the Authority intends to take action under subsection (10), it may apply to the Court for an order to take such other action as the Court considers necessary to protect the interests of investors in and creditors of the mutual fund, and thereafter take any action provided for in subsection (10).

(12) Where a licensed fund is a partnership formed under the laws of Seychelles and the Authority revokes any fund licence of the mutual fund in accordance with subsection (3) (a), the partnership shall be deemed to have been dissolved.

(13) Where the Court makes an order on an application made in accordance with subsection (10)(c), the Court may grant the trustee such indemnity as it considers appropriate out of the assets of the mutual fund.

(14) Without prejudice to any other power of the Authority, the Authority may at any time revoke a fund licence or revoke the approval given to an exempt foreign fund by the Authority under section 3 (14)(e), as the case may be, if—

- (a) the Authority is satisfied that the holder of the licence has ceased to carry on business as a mutual fund; or

- (b) the holder of the licence is wound up or otherwise dissolved.

## **PART 5 – SUPERVISION OF FUND ADMINISTRATORS**

### **Right to request audited accounts**

**21.** (1) The Authority may, at any time, direct a licensed fund administrator to have its accounts audited and to submit them to the Authority within such time as the Authority may specify.

(2) A licensed fund administrator shall comply with an instruction given to it by the Authority under subsection (1) and whoever contravenes this provision is guilty of an offence and liable on conviction to a fine of \$20,000.

### **Right to request information and carry on inspection**

**22.** (1) The Authority may direct a licensed fund administrator or its officers to give to the Authority such information, documents or explanation as the Authority may reasonably require to enable the Authority to discharge its functions under this Act.

(2) A person who fails to comply with a direction under subsection (1) or gives the Authority information or an explanation that he knows or should reasonably know is false or misleading is guilty of an offence and liable on conviction to a fine of \$50,000.

(3) Where a licensed fund administrator or its officers fail or refuse to submit to the Authority any information or documents or explanation pursuant to subsection (1), the Authority, or a person duly authorised by the Authority for that purpose, may carry out an inspection of the licensed fund administrator.

(4) For the purposes of an inspection under subsection (3), a licensed fund administrator shall afford the Authority or a person duly authorised by the Authority carrying out the inspection access to—

- (a) the books and accounts of the licensed fund administrator;
- (b) all documents and records, including documents of title to fund assets;
- (c) all securities and other assets held by the licensed fund administrator or any officers or nominees;
- (d) such other information and facilities as may be required to carry out the inspection.

(5) The licensed fund administrator and its officers shall ensure, at the premises where the inspection is to be performed, the production to the Authority or a person duly authorised by the Authority carrying out the inspection, of such books, accounts, documents, records, securities, other assets and information as may be required by the Authority or such authorised person and any person who contravenes this subsection is guilty of an offence and liable on

conviction to a fine of \$50,000.

### **Court relief**

**23.** If it appears to the Authority that a person is acting or carrying on business as a mutual fund administrator in breach of section 8(1), the Authority may apply to the Court for such orders as the Court thinks fit to protect the equity interests of the investors in any mutual fund being administered by that person, and the Court may make such orders.

### **Authority's powers relating to fund administrators**

**24.** (1) The Authority may take action under subsection (3) if it is satisfied that —

- (a) a licensed fund administrator or, an approved foreign administrator is or is likely to become unable to meet its obligations as they fall due;
- (b) a licensed fund administrator or an approved foreign administrator is carrying on business in a manner that is prejudicial to investors in any mutual fund it is administering or to its creditors or to the creditors of any such mutual fund;
- (c) a licensed fund administrator is carrying on or attempting to carry on the business of mutual fund administration without complying with any condition of its fund administrators licence, contrary to section 11 (7); or
- (d) the direction and management of the business of a licensed fund administrator or an approved foreign administrator has not been conducted in a fit and proper manner;
- (e) a person holding a position as an officer of a licensed fund administrator or an approved foreign administrator is not a fit and proper person to hold the respective position;
- (f) a person acquiring control or ownership of a licensed fund administrator in the circumstances set out in section 12(2)(a) is not a fit and proper person to have such control or ownership; or
- (g) an approved foreign administrator's licence or other required authorisation to operate as a mutual fund administrator in a recognised jurisdiction is revoked or otherwise terminated.

(2) For the purpose of being alerted as to whether or not an event referred to in subsection (1) has occurred or is likely to occur, the Authority shall immediately enquire into and ascertain the reason for—

- (a) any failure by—
  - (i) a licensed fund administrator to pay the prescribed annual fees in accordance with section 13(3);

- (ii) a licensed fund administrator or an approved foreign administrator to give the Authority written notice as required by section 15(1);
  - (iii) a licensed fund administrator to change its name in accordance with a direction under section 15(2);
  - (iv) a licensed fund administrator to have its accounts audited, and to submit the audited accounts to the Authority under section 14(1) or to send its audited accounts to the Authority under section 14(3);
  - (v) a licensed fund administrator to have at least two directors as required by section 11(4)(c); or
  - (vi) a licensed fund administrator to have its accounts audited and to submit the audited accounts to the Authority when directed to do so under section 21 (1);
  - (vii) an approved foreign administrator to send its audited accounts to the Authority under section 14(4);
  - (viii) an approved foreign administrator to pay its prescribed annual exemption fee under section 8(5);
- (b) the issue by a licensed fund administrator of shares without the Authority's approval, contrary to section 12(1);
  - (c) the appointment of an officer of a licensed fund administrator without the Authority's written approval, contrary to section 12(5); or
  - (d) any shares in a licensed fund administrator being disposed of or dealt in contrary to section 12(1).

(3) The Authority may take in respect of a licensed fund administrator or approved foreign administrator, as the case may be, any of the following actions —

- (a) revoke any fund administrator's licence which the mutual fund administrator holds;
- (b) impose conditions or further conditions on its fund administrator's licence and amend or revoke those conditions;
- (c) require the replacement of any officer of a licensed fund administrator;
- (d) appoint a person to advise a licensed fund administrator on the proper conduct of its mutual fund administration business;
- (e) appoint a person to assume control of the affairs of a licensed fund administrator relating to mutual fund administration;
- (f) revoke the approval given to an approved foreign administrator by the

Authority under section 8(2)(c).

(4) The Authority may, in addition to action it takes under subsection (3), apply to the Court for an order for other measures necessary to protect the interests of investors in the mutual funds administered by the administrator and its creditors and the creditors of any such mutual fund.

(5) A person appointed under subsection (3) (d) or (e) is appointed at the expense of the relevant licensed fund administrator, and any expenses incurred by the Authority in connection with the appointment shall be an amount due and payable to the Authority by such licensed fund administrator.

(6) A person appointed under subsection (3) (e) has all the powers necessary, to the exclusion of any other person other than a liquidator or receiver, to administer the affairs of the licensed fund administrator relating to mutual fund administration in the best interests of investors in the mutual funds administered by such licensed fund administrator and its creditors and the creditors of any such mutual funds.

(7) The powers referred to in subsection (6) include the power to terminate the business of the licensed fund administrator in so far as it relates to mutual fund administration.

(8) A person appointed in respect of a licensed fund administrator under subsection (3)(d) or (e) shall—

- (a) when requested to do so by the Authority, supply the Authority with such information in respect of the person's administration of mutual funds as is specified by the Authority;
- (b) within three months of the appointment, or within such longer period as the Authority may specify, prepare and supply to the Authority a report on the administrator's administration of the mutual fund making, where appropriate, recommendations in respect of the administrator; and
- (c) if his appointment is not terminated after supplying the report referred to in subsection 8(b), supply to the Authority such other information, reports and recommendations as the Authority may specify.

(9) If a person appointed under subsection (3) (d) or (e) —

- (a) fails to comply with an obligation under subsection (8); or
- (b) in the Authority's opinion, is not carrying out his obligations in respect of the mutual fund administrator satisfactorily, the Authority may revoke the appointment and appoint any other person.

(10) On receipt of any information or a report under subsection (8) in respect of a licensed fund administrator, the Authority may —

- (a) require the administrator to reorganise its affairs in a manner specified by the

Authority; or

- (b) if the administrator is a company, apply to the Court for the company to be wound up by the Court in accordance with the law,

and may take such action in respect of the appointment of the person appointed under subsection (3)(d) or (e) as the Authority considers appropriate.

(11) The Authority may, in addition to taking action under subsection (10), apply to the Court for an order for such measures as the Court considers necessary to protect the interests of investors in the mutual funds administered by the relevant licensed fund administrator and its creditors or the creditors of any such mutual funds.

(12) Where a licensed fund administrator is a partnership formed under the laws of Seychelles and the Authority revokes its fund administrator's licence in accordance with subsection (3) the partnership shall be deemed to have been dissolved.

(13) Without prejudice to any other power of the Authority, the Authority may at any time revoke a licensed fund administrator's licence or revoke the approval given to an approved foreign administrator by the Authority under section 8(2)(c), if—

- (a) the Authority is satisfied that the licensed fund administrator or approved foreign administrator, as the case may be, has ceased to carry on business as a mutual fund administrator; or
- (b) the licensed fund administrator or approved foreign administrator, as the case may be, is wound up or otherwise dissolved.

### **Search, inspection etc.**

**25.** (1) Without derogating from sections 18 and 22, if a magistrate or Judge of the Court is satisfied on an application made by the Authority or a police officer of the rank of inspector or above that there are reasonable grounds for suspecting that an offence under this Act has been, is being or is about to be committed on certain premises, the magistrate or Judge may issue a warrant authorising the Authority or a police officer and such other persons as it or he may reasonably need to assist it or him—

- (a) to enter those premises, using force if necessary;
- (b) to search the premises and any person on the premises;
- (c) if necessary, to break open and search anything on the premises in which a document or other record may be stored or concealed;
- (d) to take possession of, and secure against interference, any document or other record that appears to indicate that any offence under this Act has been, is being or is about to be committed; and
- (e) to inspect and take copies of any such document or other record referred to in paragraph (d), or if this is not practical, to take away or deliver any such

document or other record to the Authority.

(2) If a document or other record is taken away by, or delivered to, the Authority in accordance with subsection (1), the Authority may retain it for as long as it is necessary to allow a person to inspect it and take copies of or abstracts from it and shall cause it to be returned to the premises from which it was taken.

(3) While a document or other record is in the possession of the Authority in accordance with subsection (2) the Authority shall allow any person who would be entitled to inspect it if it were not in the possession of the Authority to inspect it or take copies of and abstracts from it at any reasonable time.

(4) Nothing done under this section in relation to a document or other record in respect of which any person has a lien shall be deemed to prejudice the lien.

(5) Nothing in this section authorises a person to search a person of the opposite sex.

(6) In this section “premises” includes —

- (a) land, whether or not covered by buildings;
- (b) any structure, whether or not attached to land; and
- (c) any means of transport.

### **Obstruction an offence**

**26.** No person shall hinder or obstruct the Authority in the exercise of any of its powers under this Act, and a person who contravenes this provision is guilty of an offence and liable on conviction to a fine of \$50,000.

## **PART 6 – MISCELLANEOUS**

### **Auditor's duties**

**27.** (1) If an auditor, in the course of carrying out an audit of the accounts of a licensed fund, becomes aware or has reason to believe that the mutual fund—

- (a) is or is likely to become unable to meet its debts as and when they fall due;
- (b) is carrying on business or is winding up its business voluntarily in a manner that is prejudicial to its investors or creditors; or
- (c) is carrying on business without keeping any or sufficient accounting records to allow its accounts to be properly audited,

the auditor shall promptly give the Authority written notice of his knowledge or belief and his reason for such knowledge or belief.

(2) If an auditor, in the course of carrying out an audit of the accounts of a licensed fund administrator, becomes aware or has reason to believe that the mutual fund administrator—

- (a) is or is likely to become unable to meet its debts as and when they fall due;
- (b) is carrying on business or is winding up its mutual fund administration business voluntarily in a manner that is prejudicial to its creditors or the investors in or creditors of any mutual fund it is administering; or
- (c) is carrying on business without keeping any or sufficient accounting records to allow its accounts to be properly audited,

the auditor shall promptly give the Authority written notice of his knowledge or belief and his reason for such knowledge or belief.

(3) A reference in this section to an auditor includes an auditor who is engaged to carry out an audit or who in the course of carrying out an audit resigns before completing the audit or whose contract to carry out or complete an audit is otherwise terminated.

### **Confidentiality**

**28.** (1) Subject to subsection (2), neither the Authority nor any agent of the Authority shall disclose to a third party any information or document acquired in the performance of their duties under this Act.

(2) Subsection (1) shall not apply to any disclosure:

- (a) lawfully required by any court of competent jurisdiction in Seychelles;
- (b) in respect of the affairs of any licensed fund or exempt foreign fund or fund administrator or approved foreign administrator or of any investor in any licensed fund or exempt foreign fund, with the consent of such person;
- (c) where the information disclosed is in statistical form or is otherwise disclosed in a manner that does not enable the identity of any licensed fund or exempt foreign fund or fund administrator or approved foreign administrator or of any investor in any licensed fund or exempt foreign fund to which the information relates, to be ascertained; or
- (d) pursuant to any lawful disclosure under any written law of Seychelles;

### **Offences**

**29.** (1) Any person who contravenes any provision of this Act commits an offence and if no penalty is specially provided for such offence is liable on conviction to a fine of \$25,000.

(2) Where an offence under this Act is committed by a body corporate, and any of its directors or other officers, knowingly authorises, permits or acquiesces in the commission of the offence, the director or other officer shall also be guilty of the offence.



## **Judicial review**

**30.** Any decision of the Authority is subject to judicial review before the Court, including a decision to suspend, revoke or refuse to grant or renew any licence under this Act.

## **Exemptions and concessions: Funds**

**31.** (1) The laws specified in column 1 of Schedule 9, to the extent specified in column 2 of that Schedule shall not apply to licensed funds and exempt foreign funds.

(2) The exemptions and concessions provided under subsection (1) shall remain in force for a period of twenty years from the date of commencement of this Act and shall continue in force thereafter unless or until expressly repealed or amended by a written law.

## **Exemptions and concessions: Fund Administrator**

**32.**(1) Subject to subsection (2) and subsection (3), the laws specified in column 1 of Schedule 10, to the extent specified in column 2 of that Schedule, shall not apply to a licensed fund administrator.

(2) The exemptions and concessions provided under subsection (1) shall not apply to any person only holding a restricted Seychelles fund administrator's licence, except to the extent that such person's Seychelles business tax liability in respect of income from mutual fund administration services rendered under such licence shall be as specified in paragraph 1 of column 2 of Schedule 10.

(3) The concession relating to the Business Tax Act specified in Schedule 10 shall only apply if the licensed fund administrator meets the substantial activity requirements as may be prescribed.

## **Immunity**

**33.** No civil or criminal proceedings shall be brought against the Minister, the Authority or an officer of the Authority or any other person in respect of any acts or matters done or omitted to be done by any of them in good faith in the proper discharge of their functions under this Act.

## **Regulations**

**34.** The Minister may make regulations for the purpose of carrying out and giving effect to the provisions of this Act and may by regulations amend any Schedule.

## **Repeal of Mutual Fund Act, 1997**

**35.** The Mutual Fund Act, 1997 is hereby repealed.

## **SCHEDULE 1**

### **Fees**

#### **1. Application fees**

- (a) an application for a private fund licence: \$750;
- (b) an application for a professional fund: \$1000;
- (c) an application for a public fund licence: \$1500;
- (d) an exemption application for an exempt foreign fund under section 3(14) from the requirement to obtain a fund licence: \$2000;
- (e) an application for a mutual fund administrator licence: \$ 1500;
- (f) an application for a restricted mutual fund administrator's licence: \$1000;
- (g) an exemption application under section 8(2) from the requirement to obtain a fund administrators licence: \$1500.

#### **2. Annual licence fees and other fees**

- (a) Private Fund: \$1000;
- (b) Professional Fund: \$1250;
- (c) Public Fund: \$1500;
- (d) annual renewal of exemption for an exempt foreign fund under section 3(17) from the requirement to obtain a fund licence (payable as from the expiry of one year from the date of issuance of approval to the initial exemption application and annually thereafter): \$2000;
- (e) annual fund administrator's licence fee: \$2000;
- (f) annual restricted fund administrator: \$1500;
- (g) annual exemption renewal under section 8(5) from the requirement to obtain a fund administrator's licence (payable as from the expiry of one year from the date of issuance of approval to the initial exemption application, and annually thereafter): \$2000

#### **3. Miscellaneous fees**

- (a) application by public fund for approval under section 7(1) of a proposed offering document or amended offering document, as the case may be: \$500;

- (b) Fee for search under section 4(4) of the public register (licensed funds or exempt foreign funds): \$150;
- (c) Fee for search under section 11(12) of the public register (licensed fund administrators or approved foreign administrators): \$150;
- (d) Fee per page for obtaining a copy of any document available on the public search of the register: \$2.5 per page;
- (e) Fee per official search under section 4(5) or 4(6): \$200;
- (f) Fee per official search under section 11(13) or 11(14): \$200.

## **SCHEDULE 2**

### **Fund licence renewal**

#### **Declaration of compliance**

To: Central Bank of Seychelles

We, [full name and address of licensee], declare that we are not in breach of any duties or other obligations imposed on us under the Mutual Fund and Hedge Fund Act,

We undertake to continue to comply with our duties and other obligations under the Act. Dated:

Signature [name]

Director/Trustee/General Partner For and on behalf of [name of licensee fund]

### **SCHEDULE 3**

#### **Fund administrator licence renewal Declaration of compliance**

To: Central Bank of Seychelles

We, [full name and address of licensee], declare that we are not in breach of any duties or other obligations imposed on us under the Mutual Fund and Hedge Fund Act.

We undertake to continue to comply with our duties and other obligations under the Act.

Dated:

.....

Signature

[name]

Director

For and on behalf of

[name of licensee company]

**SCHEDULE 4**

**Foreign fund exemption renewal**

**Declaration of compliance**

To: Central Bank of Seychelles

We, [full name and address of exempt foreign fund], declare that we are not in breach of any duties or other obligations imposed on us under the Mutual Fund and Hedge Fund Act.

We undertake to continue to comply with our duties and other obligations under the Act.

Dated:

.....

Signature

[name]

Director / Trustee / General Partner

For and on behalf of

[name of fund]

**SCHEDULE 5**

**Approved foreign administrator exemption renewal Declaration of compliance**

To: Central Bank of Seychelles

We, [full name and address of approved foreign fund administrator], declare that we are not in breach of any duties or other obligations imposed on Us under the Mutual Fund and Hedge Fund Act.

We undertake to continue to comply with our duties and other obligations under the Act,

Dated:

.....

Signature

[name]

Director

For and on behalf of

[name of foreign fund administrator]

## **SCHEDULE 6**

### **Recognised jurisdictions**

Austria  
Australia  
Belgium  
Bahamas  
Bahrain  
Bermuda  
British Virgin Islands  
Canada  
Cayman Islands  
Cyprus  
Denmark  
France  
Germany  
Gibraltar  
Guernsey  
Holland  
Hong Kong  
Isle of Man  
Ireland  
Japan  
Jersey  
Luxembourg  
Malaysia (including Labuan)  
Mauritius  
New Zealand  
Singapore  
South Africa Switzerland  
United Arab Emirates  
United Kingdom  
United States of America



## **SCHEDULE 7**

### **Fund licence**

#### **Application form particulars**

(Section 3(3))

(Application to be accompanied by the supporting documents  
and fee referred to in section 3(3))

1. The proposed type of fund (public or private or professional fund).
2. Type of fund entity (i.e. company, partnership or unit trust).
3. Country of incorporation or establishment, and the law under which it is incorporated or established.
4. Proposed name of the fund.
5. Address of the fund's registered office in Seychelles or, if it is not incorporated in Seychelles, the fund's registered office overseas and the fund's service address (and, if different, its business address) in Seychelles, as the case may be.
6. Name and address of the person resident in Seychelles who is authorised, under section 6(1), to accept service of documents on behalf of the fund.
7. Address of each place of business that the fund has or will have outside of Seychelles.
8. If applicable (where the fund is already operating outside Seychelles), the date the fund commenced business as a mutual fund.
9. If the fund (or another fund controlled by the same promoters or operators) is already operating outside Seychelles as a mutual fund, please give full particulars of all past and current overseas licensing or registration as a mutual fund or collective investment scheme, stating the relevant regulatory body or bodies and providing documentary evidence of any such current licence or registration.
10. Please provide the full name and address of each:
  - (a) director, if a company;
  - (b) trustee, if a trust; or
  - (c) general partner, if a limited partnership (please list the directors of a general partner which is a corporate entity).
11. Proof of fund classification—

- (1) Private fund (this question is not applicable to other types of funds)
    - (a) Does the fund's constitutional documents limit it to no more than 50 investors? (yes or no);
    - (b) If the answer is yes, please state the relevant provision in the constitutional documents;
    - (c) If the answer is no, please state the provision in the fund's constitutional documents which specify that an invitation to the public to subscribe for or purchase equity interests in the mutual fund is prohibited;
    - (d) Please explain the method of making such an invitation and an indication of how many invitations will be made.
  - (2) Professional fund (this question is not applicable to other types of funds) - please provide particulars of the steps the fund will take to ensure each investor in the fund is a professional investor and how the fund will ensure the initial minimum investment per each investor is not less than \$ 100,000 or its equivalent in any other convertible currency.
12. Please state the full name, jurisdiction of incorporation (if applicable), address of place of business and business activity of the following persons in respect of the fund —
- (a) fund administrator;
  - (b) (where different from the fund administrator) manager;
  - (c) custodian;
  - (d) promoter(s);
  - (e) investment or trading manager(s);
  - (f) investment or trading adviser(s)
  - (g) underwriter (if any).
13. State the name and address of the auditors of the fund.
14. If the fund is listed, identify stock exchange and provide evidence of listing,

DECLARATION

I declare that to the best of my knowledge and belief the information provided above and in the accompanying documents is true and correct.

Dated:

Signed:

By director or other duly authorised person  
For and on behalf of

Name of applicant:

## **SCHEDULE 8**

### **Fund administrator's licence**

#### **Application form particulars**

(Application to be accompanied by the supporting documents and fee referred in section 10(1))

1. Name of applicant.
2. Type of administrator's licence (i.e. restricted or unrestricted).
3. Registered office of the applicant.
4. Applicant's business office address in Seychelles.
5. If the applicant is incorporated overseas, principal place of business overseas.
6. Contact person from the applicant entity for the purposes of this application including full name, address, telephone and fax number and email address.
7. If the applicant is incorporated overseas, name and address of the person(s) resident in Seychelles who is/are authorized, pursuant section 1 l(4)(b), to accept service of documents on behalf of the applicant.
8. Applicant's date of incorporation and company registration number.
9. Particulars of the law under which the applicant is incorporated or established.
10. If the applicant (or another company owned or controlled by the same owners) is already operating outside Seychelles as a mutual fund administrator, please give full particulars of all past and current overseas licensing or registration as a mutual fund administrator, stating the relevant regulatory body or bodies and providing documentary evidence of any such current licence or registration.
11. State the date of the end of the applicant's financial year.
12. Name and address of the applicant's auditor.
13. State the authorised capital of the applicant.
14. State the issued and paid-up capital of the applicant.
15. (If applicable) state the amount and nature of debt funding in respect of the applicant and its operations.
16. State the name and address and number of shares held by each registered shareholder of the applicant.

17. State the name and address of each beneficial owner of the applicant, with reference to their percentage of beneficial ownership.
18. State the name and address of each director / officer of the applicant.
19. State the name and address of the company secretary.
20. State the name and address of the main bank with which the applicant will maintain clients' money accounts.
21. Has the applicant or any of its officers been the subject of—
  - (a) refusal of an application for registration, licensing or other authorisation to carry on business as a mutual fund administrator or manager by any authority in any jurisdiction? If yes, please provide full particulars;
  - (b) suspension, cancellation or revocation of its registration, licence or other authorisation to carry on business as a mutual fund administrator or manager by any authority in any jurisdiction? If yes, please provide full particulars;
  - (c) regulatory or enforcement action by any authority in any jurisdiction? If yes, please provide full particulars.
22. Has any judgment or order or conviction been made, or are any legal proceedings, actions or other claims pending, against the applicant or any of its directors, whether civil or criminal in nature, involving alleged or proven —
  - (a) fraud or dishonesty or theft or misrepresentation or misappropriation or similar conduct? If yes, please provide full particulars;
  - (b) fraud or dishonesty or theft or misrepresentation or misappropriation or similar conduct arising out of or relating to dealings in mutual funds, mutual fund administration, investment schemes or funds, or securities or finance business activities? If yes, please provide full particulars.
23. Has a director of the applicant, in any jurisdiction, been declared bankrupt or insolvent or, if a company, dissolved or wound up or the subject of winding up proceedings or proceedings relating to creditors arrangements or receivership? If yes, please provide full particulars.
24. Please provide particulars of directors' relevant qualifications and experience and any other matter you think relevant to the assessment of the fit and proper status of the applicant and its directors.
25. Each applicant which is formed overseas or foreign owned, please state —
  - (a) if you already administer overseas mutual funds or collective investment schemes and, if so, how many and what is the approximate total net asset value of such funds;

- (b) your estimate of the total number of Seychelles licensed mutual funds you anticipate administering in the next 3 years.

DECLARATION

I declare that to the best of my knowledge and belief the information provided above and in the accompanying documents is true and correct.

Dated:

Signed:

By its director or other duly authorised person  
For and on behalf of  
Name of applicant:

## SCHEDULE 9

### Exemptions and concessions applicable to licensed funds and exempt foreign funds

(section 31)

Column 1 Law	Column 2 Extent of exemption and non-applicability
1. Business Tax Act	1. The whole Act (except in respect of companies under the Companies (Special Licence) Act 2003 which, as regards business taxation, shall be subject to the provisions of the Companies (Special Licence) Act 2003)
2. Immovable Property (Transfer Restriction) Act	2. Section 4, in so far as it prohibits a non-Seychellois from leasing immovable property in Seychelles or entering into an agreement to lease immovable property.
3. Social Security Act	3. Section 3(1)(b) in so far as it subjects a mutual fund as an employer to pay contributions to the Social Security Fund in respect of its employees.
4. Stamp Duty Act	4. The following shall be exempt from the payment of stamp duty: (a) all instruments evidencing a transfer or other transaction in respect of an equity interest or debt obligation in respect of licensed funds and exempt foreign funds; and (b) all transfers of other property to or by a licensed fund or exempt foreign fund, except for transfers of or interests in immovable property within Seychelles.
5. Trades Tax Act	5. All furniture, stationery and equipment (including computer and communications equipment), for use by each licensed fund and exempt foreign fund in its Seychelles office solely for its own mutual fund business purposes shall be exempt from payment of any trades tax.
6. Goods and Services Tax Act	6. The whole Act.
7. Immigration Decree	7. Each licensed fund and exempt foreign fund shall be entitled to employ expatriate employees up to 50% of its total number of employees in Seychelles and there shall be an exemption from the requirement for payment of fees in respect of gainful occupation permits for expatriate employees.

## SCHEDULE 10

### Exemptions and concessions applicable to licensed fund administrators

(Section 32)

Column 1 Law	Column 2 Extent of exemption and non-applicability
1. Business Tax Act	<p>1. The Act shall apply only to the extent that the business tax payable by a licensee in respect of its income shall be the aggregate of the following amounts paid by it or another party to the Authority in respect of any licensed fund or exempt foreign fund to or for which the licensee is providing services:</p> <ul style="list-style-type: none"><li>(a) 10% of fees in respect of new mutual fund licences;</li><li>(b) 5% of fees in respect of annual renewal of mutual fund licences and of all other fees under this Act</li></ul> <p>The licensee shall be subject to no further business tax on its income from provision of mutual fund administration services.</p>
2. Immovable Property (Transfer Restriction) Act	<p>2. Section 4, in so far as it prohibits a non-Seychellois from leasing immovable property in Seychelles or entering into an agreement to lease immovable property.</p>
3. Social Security Act	<p>3. The whole Act in respect of the licensee which is not incorporated in Seychelles or has no employees in Seychelles.</p> <p>In respect of a licensee which is incorporated in Seychelles and has employees in Seychelles, the licensee shall only pay employer's contribution at the rate of 5% of each employee's emoluments</p>
4. Stamp Duty Act	<p>4. The following shall be exempt from the payment of stamp duty:</p> <ul style="list-style-type: none"><li>(a) all instruments evidencing a transfer or other transaction in respect of an equity interest or debt obligation in respect of a licensee; and</li><li>(b) all transfers of other property to or by a license, except for transfers of or interests in immovable property within Seychelles.</li></ul>



5. Trades Tax Act	5. All furniture and equipment (including computers and communication equipment), for use by the licensee in its Seychelles office solely for its licensed business purposes, shall be exempt from payment of any trades tax.
6. Goods and Services Tax Act	6. The whole Act.
7. Immigration Decree	7. A licensee shall be entitled to employ expatriate employees up to 50% of its total number of employees in Seychelles and there shall be an exemption from the fees in respect of gainful occupation permits of expatriate employees.