

Guidelines for Companies (Special Licence)



FINANCIAL SERVICES AUTHORITY

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1. Introduction

This guide to apply for a Special Licence under the Companies (Special Licences) Act, 2003 (“the Act”) has been prepared to ensure that information about the above licence is readily available to those interested. As well as outlining the process of applying for a “Special Licence”, the guide specifies the criteria against which the Financial Services Authority (FSA) conducts its assessment of applicant companies.

The guide provides a summary of the Act and also explanations to the application requirements expected from an applicant. For purposes of these guidelines, a company issued with a Special Licence is referred to as a “CSL”.

Should you have any queries, please direct them to:

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Attention: Director of Fiduciary Supervision

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2. Background

The Companies (Special Licences) Act allows companies to be incorporated under the Companies Act, 1972 with special provisions. The Special Licence does not “licence” the company to undertake any activity in or outside of Seychelles and therefore, the company must, where appropriate, acquire the relevant licences in the jurisdiction from which it operates.

3. Administration and Regulation of the Act

The Act is administered and regulated by the FSA, defined in the Act as the “Authority”. The Act empowers the FSA to assess and determine applications for a Special Licence and take enforcement actions against such companies.

4. Scope of the Act

Companies engaging in any lawful business activities under the laws of Seychelles may apply for a Special Licence. The Act allows:

- (a) new companies to be incorporated the Companies Act, 1972 as a CSL
- (b) existing companies under the Companies Act, 1972 to apply for a Special Licence

- (c) companies under the International Business Companies Act, 2016 to be converted into a company under the Companies Act, 1972 and apply for a Special Licence
- (d) companies incorporated under the laws of a jurisdiction outside Seychelles to continue in Seychelles as a CSL

5. Application Requirements

Part A: Application requirements for new companies, International Business Companies (IBCs) and foreign companies

When making an application for a Special Licence under the Act, the applicant company will have to submit the following documents and information:

- (a) Covering Letter
- (b) Completed Application Form
- (c) Application Fee (US\$200)
- (d) Name Reservation Certificate from the Registrar of Companies
- (e) At least 3 copies of the Memorandum and Articles of Association
- (f) At least 3 copies of the Declaration of Consent by the Directors
- (g) At least 3 copies of the Declaration of Consent by the Secretary
- (h) At least 3 copies of the Declaration of Registered Address
- (i) Articles of Continuation (in the case of a foreign company)
- (j) An extract of the special resolution under section 194(2) of the IBC Act (in the case of an IBC)
- (k) A Certificate of Good Standing issued under the IBC Act (in the case of an IBC)
- (l) A Declaration of Compliance¹ under section 194(3)(d) of the IBC Act (in the case of an IBC)

Part B: Application requirements for existing companies under the Companies Act, 1972

When making an application for a Special Licence under the Act, the applicant company will have to submit the following documents and information:

- (a) Covering Letter
- (b) Completed Application Form
- (c) Application Fee (US\$200)
- (d) A certified copy of the company's certificate of incorporation
- (e) A certified copy of the company's memorandum and articles of association
- (f) A certificate of good standing issued under the Companies Act, 1972
- (g) A certified copy of the particulars of directors of the company
- (h) A certified copy of the particulars of the secretary of the company
- (i) A certified copy of the notice of the situation of the registered office of the company

NOTE: For documents requiring the submission of at least 3 copies, applicants must ensure that at least one of the copies is original or has been certified as a true copy of the original by the ICSP.

5.1 Covering Letter

Every application for a Special Licence must be submitted with covering letter. This letter must state the documents being submitted and the number of copies of each.

¹ A declaration signed by a director that all the requirements of the IBC Act in respect of the conversion of a company have been fulfilled.

5.2 Application Form

Each application requires the completion and submission of the CSL Application Form which has been designed to fulfil the required information in accordance requirements of the Act.

5.3 Application Fee

When making an application for a Special Licence, the Application Fee (US\$200) must be submitted. The Authority will not process any application if the application fee has not been received. Note that this fee is not refundable.

5.4 Name Reservation Certificate

Prior to submitting the application, the ICSP must make a formal request directly to the Registrar of Companies to reserve the proposed company name as per the procedures under Companies Act, 1972 (unless the company has already been incorporated under the Companies Act, 1972). Proof of the name approval must be submitted along with other application documents. The name reservation should also be performed for any Seychelles' IBC being converted as a company under the Companies Act, 1972 and applying for a Special Licence. The contact details of the Registrar of Companies appointed under the Companies Act, 1972 are as follows:

Registration Division
Independence House
P.O. Box 142Victoria, Mahé
Seychelles
Tel: (+248) 4280900
Fax: (+248) 4225764

5.5 Declaration of Compliance

Where the applicant is an IBC, section 194(3)(d) requires the applicant to submit a declaration of compliance (or an extract thereof), signed by a director of the applicant, declaring that all the requirements of the International Business Companies Act in respect of the conversion of a company have been fulfilled.

5.6 Declaration Certificate by the Directors, Secretary and of Registered Address

In accordance with section 6 of the Companies (Special Licences) Act, the directors and the secretary have to consent in writing that they are willing to act in the capacity of directors and secretary of the Special Licence Company respectively. Furthermore, the directors and secretary must declare that they are not disqualified to conduct their duties and responsibilities, as per section 165 of the Companies Act, 1972.

5.7 Articles of Continuation

In the case of a foreign company continuing in Seychelles, the applicant must submit its Articles of Continuation containing:

- (a) The name of the company and the name under which it is to be continued
- (b) The jurisdiction under which it is incorporated
- (c) The date on which it was incorporated
- (d) The amendments to its memorandum and articles, or their equivalent, are to be effective upon the registration of the articles of continuation

6. Approval Process

Once the Authority receives the application documents, it will assess the application and accordingly contact the ICSP should it require any further clarification about a particular matter. The Authority will then notify the ICSP whether the application has been approved and if applicable, request the ICSP to submit payment for the licence fee.

7. Submission of documents to Registrar of Companies²

In the case of an application by new companies under the Companies Act, 1972, IBCs or foreign companies (i.e. Part A of section 5 above), should the application be successful, the Authority will issue a written notice of its approval, confirming that the application is to its satisfaction. Thereafter, the Authority will send the following documents to the Registrar of Companies for processing:

- (a) Memorandum and Articles of Association
- (b) Notice of Approval issued by the Authority in respect of the Special Licence
- (c) Name reservation certificate
- (d) Declaration of Consent by Directors
- (e) Declaration of Consent by Secretary
- (f) Declaration of Consent for Registered Address
- (g) Articles of Continuation (if applicable)
- (h) Certificate of good standing issued under the IBC Act (if applicable)
- (i) Extract of the special resolution passed under section 194(2) of the IBC Act (if applicable)
- (j) Declaration of compliance under section 194(3)(d) of the IBC Act (if applicable)

Upon registration, the Registrar will issue a Certificate of Incorporation, Continuation or Conversion as appropriate. This certificate and the registered documents will be collected from the Registrar by FSA.

8. Issue of Special Licence

Where the Authority approves an application for an existing company under the Companies Act, 1972 or when the Registrar of Companies has issued the Certificate of Incorporation, Continuation or Conversion, subject to receipt of annual licence fee (US\$ 1,000), the FSA will issue a Special Licence to the applicant. A Special Licence issued by the Authority is valid unless revoked by, or surrendered to, the Authority.

The Authority will inform the Registrar of Companies of any existing company that is issued with a special licence.

² This section does not apply to applications made by existing companies under the Companies Act, 1972.

9. Annual Licence Fee

A CSL must pay an annual licence fee (US\$ 1,000) to the Authority on or before the date of each anniversary of grant of its Special Licence.

Where the annual licence fee is not paid by the specified timeframe, the amount of the annual licence fee shall increase by 10% if paid within the first 3 months from the due date or 25% if paid after 3 months from the due date. The below table illustrates the annual licences fees payable to the Authority.

Description	Annual Licence Fee
Annual licence fee paid on or before anniversary date	US\$ 1,000
Annual licence fee paid within 3 months after anniversary date	US\$ 1,100 (i.e. 1,000 + 10%)
Annual licence fee paid after 3 months from the anniversary date	US\$ 1,250 (i.e. 1,000 + 25%)

Fees payable to the Registrar of Companies as of 1st January, 2021 are as follows:

- (a) Registration Fee³ Items 1 to 5 of the Seventh Schedule of the Companies Act, 1972
- (b) Annual Fee SCR500 (Section 330A(1) of the Companies Act, 1972)

10. Members, Secretary and Directors of CSLs

A CSL shall at all times have one or more members and one or more individual (i.e. natural person) directors.

The secretary of a CSL must be a licensed International Corporate Service Provider (ICSP) in Seychelles who is responsible for submitting and authenticating signatures on all documents which are submitted to the Authority. The ICSP is responsible to conduct all enquiries and due diligence checks under the Anti-Money Laundering and Countering the Financing of Terrorism Act. Acceptance by the ICSP of any document is considered acceptance by the company.

11. Change in Members

In the event that a CSL changes its members (shareholding), the CSL must submit to the Registrar of Companies the Share Transfer Form (duly signed and dated by the transferor and the transferee) accompanied by a copy of its Special Licence Certificate (certified as a true copy by the secretary) and the Authority's letter confirming the validity of the Special Licence. The CSL must file a certified true

³ Upon receipt of the incorporation documents from the Authority, the Registrar will contact the secretary of the proposed CSL to make payment of the registration fee.

copy of the stamped document with the Authority within 14 days. Note that the CSL shall only be exempted from stamp duty if it holds a valid Special Licence.

12. Change in Directorship

In the event that a CSL changes its directorship, the CSL must submit to the Registrar of Companies the relevant particulars for the change in directors. Upon registration of the change by the Registrar of Companies, the secretary must file a copy of the registered particulars of directors with the Authority within 14 days.

13. Change of Secretary

In the event that a CSL changes its secretary, prior to registration with the Registrar of Companies, the outgoing secretary must notify the Authority by submitting the following documents:

- (a) A covering letter from the outgoing secretary
- (b) A copy of the change in particulars for secretary

The CSL must register the particulars for secretary with the Registrar of Companies and file a copy of the registered document with the Authority within 14 days.

14. Resignation of Secretary

Where a secretary (i.e. an ICSP) discontinues its services to a client company for any reason, paragraph 21 of Schedule 2 of the International Corporate Service Providers Act requires the ICSP to:

- (a) inform the CSL in writing
- (b) preserve the client's company records until such time as they are handed over to a successor, and
- (c) cooperate with the client and such successor to ensure a smooth transition.

15. Meetings of shareholders and directors

Subject to the Companies Act, a CSL must at a minimum once every year hold one board meeting and one annual general meeting. Subject to any limitation in the memorandum or articles, meetings may be held by telephone or other electronic means provided that participants are able to hear and recognise each other's voice.

16. Amendments to Memorandum and Articles of Association

Any amendments to the Memorandum or Articles of Association of a CSL must be made in accordance with the Companies Act, 1972. The CSL must submit the following documents to the Registrar of Companies:

- (a) Shareholders' resolution (or certified extract of resolution)
- (b) Notice of change of Memorandum or Articles of Association

- (c) Updated Memorandum and Articles of Association, if any

Upon registration of any amendment, the secretary must file a copy of the registered document with the Authority.

17. Certificate of Good Standing

Any person may request for a Certificate of Good Standing directly from the Registrar of Companies under section 333A of the Companies Act, 1972. However, the Registrar will only proceed to issue the Certificate of Good Standing if the Authority confirms⁴ that:

- (a) the CSL has paid all fees and penalties due and payable under the CSL Act, and
- (b) the CSL is in compliance with the CSL Act.

18. Filing of Annual Returns and Accounts

Every CSL must submit its annual returns to the Authority accompanied by the filing fee (i.e. US\$200) within 6 months of the end of its financial year. The documents relating to the accounts of the CSL must be annexed to the annual return. The annual returns and accounts, which must be prepared in accordance with the Companies Act, 1972, may be signed by one or more directors on behalf of all the directors if so authorised by a resolution of directors.

Section 119 of the Companies Act, 1972 stipulates that a company must hold its first AGM within 18 months of its incorporation and therefore the company's first annual return does not need to be submitted within 6 months from end of the first financial year. Section 15(1) of the Act shall apply for the annual returns submitted thereafter, allowing a CSL 6 months after the end of each of its financial year to submit its annual returns.

Where a CSL fails to submit its annual returns, audited accounts and filing fee within the 6-month timeframe, hence contravening Section 15 (1) of the Act, it shall be liable to a penalty fee of US\$ 500 plus US\$ 50 per day for continued non-compliance, provided that the accumulated penalty fee shall not exceed US\$ 10,000.

Moreover, the Authority may take enforcement action under section 117 of the Companies Act, 1972 (i.e. wherever the word "Registrar" is used under section 117, it is replaced by the word "Authority") against a director or secretary of a CSL who signs an annual return which contains any statement which is false, deceptive or misleading, or which omits any matter required to be included therein by Companies Act, 1972.

Upon submission of the annual return and audited accounts, the CSL must also notify the Authority whether it has derived any assessable income in Seychelles during the last financial year end. The notification must be made by the directors of the CSL.

Any person may inspect the annual returns and audited accounts of a CSL which has derived any assessable income in Seychelles following payment of the inspection fee of SCR200.

⁴ The Registrar will contact the Authority directly (via email) to obtain the confirmation.

Note that the Authority will not provide any extension for submission of annual return and audited accounts. Therefore, CSL must ensure that these documents are submitted to the Authority within the specified timeframe in order to avoid penalties.

19. Taxation

As of 1st January 2019, CSLs are taxed in accordance with the prevailing tax rates specified under the Business Tax Act.

However, CSLs which have been issued with a Special Licence on or before the 16th October, 2017 can still benefit from the repealed concessionary tax rates stipulated below, unless they decide otherwise, until 30th June, 2021.

- (a) In respect of a Company (Special Licences) global taxable income is 1.5%
- (b) The rates of withholding tax on payments made by the Company (Special Licence) are:
 - (i) In respect to dividend paid to a resident – 0 %
 - (ii) In respect to dividend paid to a non-resident – 0%
 - (iii) In respect to interest paid to a resident – 0 %
 - (iv) In respect to interest paid to a non-resident – 0%
 - (v) In respect to royalty paid to a non-resident for the use of or the right to use, any copy right, patent, design or model or plan or trademark – 0%
 - (vi) In respect to royalty paid to a non-resident for the use of or the right to use, any secret formula, process or know-how whether the know how is technical, managerial or otherwise and any other intellectual property or right – 0%
 - (vii) In respect to royalty paid to a non-resident for the use of, or the right to use, any industrial, commercial or scientific equipment – 0%

If a CSL which has been issued with a special licence on or before the 16th October, 2017 no longer wish to benefit from the concessionary tax rates, the CSL must notify the Authority in writing, indicating the financial year the concessionary tax rates will cease to apply. Such CSLs which has opted out, will be liable to the prevailing tax rates specified under the Business Tax Act as follows (note that, depending on the business activity of the CSL, a lower tax rate may apply):

Businesses with taxable income of R 0 – R 1,000,000	1.5% on turnover, or 15% on taxable income
Businesses with taxable income on the first R 1,000,001 and above	25% on taxable income

The Authority will send a copy of the written notice to the Seychelles Revenue Commission (SRC).

20. Exemptions

A CSL is exempted from the payment of stamp duty except where the instrument relates to an interest in immovable property situated in Seychelles. Note that the exemption is only in relation to the payment of stamp duty and not an exemption from Stamp Duty Act itself.

21. Conversion of a CSL into an IBC

The conversion of a CSL into an IBC must be made in accordance with Part X of the International Business Companies Act, 2016.

A CSL wishing to be converted in to an IBC must file the following documents with the Registrar of IBCs:

- (a) an extract of the special resolution passed under section 192(3) of the IBC Act
- (b) its proposed altered memorandum and articles
- (c) a declaration of compliance (or an extract thereof)⁵
- (d) evidence satisfactory to the Registrar that it is in good standing under the Companies Act, 1972
- (e) a copy of the non-objection letter of the Seychelles Revenue Commission under section 192(2) of the IBC Act.

Upon receipt of the documents and payment of the specified fee (US\$130), the Registrar of IBC will issue a certificate of conversion to the company and notify the Registrar of Companies of the conversion who will strike the name of the company off the register of companies registered under the Companies Act, 1972.

In view that the CSL will no longer be a company under the Companies Act 1972 after the conversion, the company must also surrender its special licence to the Authority, where the surrender should be effective on the date that the CSL is converted into an IBC.

22. Continuation outside Seychelles

A CSL may, subject to the limitations in the Memorandum and Articles of Association, continue outside Seychelles.

A CSL wishing to continue outside Seychelles must submit the following documents to the Authority:

- (a) Covering letter informing its intention to continue in a jurisdiction outside of Seychelles
- (b) Certified copy of the company's resolution of directors approving the outward continuation
- (c) Certified copy of the company's resolution of members approving the outward continuation
- (d) A certificate of Good Standing
- (e) A certificate from the Directors certifying that the laws of the foreign jurisdiction permit such continuation and that the company has complied with those laws

Upon continuation of the company in the jurisdiction outside of Seychelles, the secretary must inform FSA and the Registrar of the fact in writing. Following the striking-off of the name of the company from the Register by the Registrar of Companies, the secretary must submit a copy of the striking-off in the Gazette to the FSA.

Where a company continues in a jurisdiction outside of Seychelles, the company continues to be liable for all of its debts, liabilities and obligations that existed prior to its continuation.

⁵ A declaration signed by a director that all the requirements of the IBC Act in respect of the conversion of a company have been fulfilled.

In view that the CSL will no longer be a company under the Companies Act 1972 after the continuation, the company must also surrender its special licence to the Authority, where the surrender should be effective on the date that the company is continued outside Seychelles.

23. Revocation of Special Licence

The Authority has the ability to revoke a Special Licence in the event of any misconduct of any director, officer, manager or agent of a company, or if the business being conducted by the company is found to be illegal or likely to cause harm to the good repute of Seychelles. Other grounds for revocation include failure to comply with conditions of a Special Licence, payment of annual licence fees and appointment of secretary.

In such an event, the Authority will serve unto the CSL a written notice of its intention to revoke the Special Licence, giving the reason for the revocation. The CSL will be given one month to make representation to the Authority as to why its special licence should not be revoked.

Where a Special Licence is revoked by the Authority, the provisions of the CSL Act shall no longer apply to the company and the company shall remain a body corporate registered under the Companies Act, 1972. The former CSL shall deliver up its Special Licence to the Authority within 3 working days from the effective date of revocation of the Special Licence.

24. Surrender of Special Licence

A CSL may, at any time, surrender its Special Licence to the Authority in accordance with section 30 of the Financial Services Authority Act, 2013 provided that it has paid all fees and penalty fees due under the Act. The secretary must notify the Authority of the CSL's intention to surrender its Special Licence by submitting the following documents:

- (a) Covering letter informing the Authority of the CSL's intention to surrender its Special Licence
- (b) Certified copy of the company's resolution of directors approving the surrender of its Special Licence

Where the CSL is being struck-off or dissolved, the notice for the surrender of the Special Licence must state that the effective date of the surrender shall be the date that the company is struck-off or dissolved under the Companies Act, 1972. A copy of the Authority's letter of non-objection to the surrender must be submitted to Registrar of Companies. Upon publication of the striking-off or dissolution, the secretary must submit a copy of the striking-off in the Gazette to the Authority within 14 days.

Once a Special Licence is surrendered to the Authority, the provisions of the CSL Act shall no longer apply to the company and the company shall remain a body corporate registered under the Companies Act, 1972. The former CSL shall deliver up its Special Licence to the Authority within 3 working days from the effective date of the surrender of the Special Licence.

25. Winding up and dissolution of CSL

The winding up and dissolution of a CSL must be made in accordance with the Companies Act, 1972. However, prior to initiating the winding up and dissolution procedures, the secretary must notify the

Authority. Following the dissolution of the CSL, the secretary must submit a copy of the relevant document confirming that the CSL has been dissolved.

In view that the CSL will no longer be a company under the Companies Act 1972 after the dissolution, the company must also surrender its special licence to the Authority.

26. Other obligations under Companies Act, 1972

Unless stated otherwise under the Companies (Special Licences) Act, 2003, the CSL must comply with all the requirements of the Companies Act, 1972.

27. Tax Certificates and Tax Returns

The Seychelles Revenue commission is responsible for issuing tax certificates and assessing the taxable income of a CSL. For enquiries relating to taxation, please contact:

Seychelles Revenue Commission
P.O. Box 50
Victoria, Mahé
Seychelles

Tel: +248 4293737
Fax: +248 4225565
Email: advisory.center@src.gov.sc