

**Fund Administrator
And
Approved Foreign Administrator
Guidelines**



FINANCIAL SERVICES AUTHORITY

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Version: 29th March, 2022

Table of Contents

1.	Introduction	3
1.1	Enquiries	3
2.	Scope of the Act	3
3.	Types of Fund Administrator’s Licence	3
3.1	Seychelles Fund Administrator’s Licence.....	3
3.2	Restricted Seychelles fund administrator’s Licence	4
3.3	Approved Foreign Administrator	4
4.	Offences	4
5.	Application and licensing of Fund Administrators.....	4
5.1	Application requirements	4
5.2	Submission of Application.....	5
6.	Administrative processes of license applications	6
7.	Service Standard	6
8.	Approval in principle	7
9.	Granting of licence	7
10.	Application for exemption by foreign administrators	8
10.1	Application requirements	8
10.2	Granting of approval	8
11.	Renewal of licence and approval for exemption	9
12.	Audited accounts	10
13.	Change in ownership of a licensed Fund Administrator.....	10
14.	Appointment, resignation or removal a director or officer.....	10
15.	Change of Address of a licensed Fund Administrator	10
16.	Requirements and duties of licensed Fund Administrators	10
15.1	Notifications to the Authority.....	11
15.2	Identification of clients	11
15.3	Treatment of client assets	11
15.4	Agreement with clients.....	12
15.5	Complaints	12
15.6	Avoidance of Conflict of Interest	12
17.	Conditions to a Fund Administrator’s licence.....	12
18.	Requirements and duties of Approved Fund Administrators.....	12
19.	Official Search	13
20.	Exemptions and concessions	13
22.1	Business Tax Act.....	13
21.	Role of the Authority	14
	Appendix 1	15
	Appendix 2	16

1. Introduction

These guidelines have been prepared by the Financial Services Authority (“the Authority”) to provide assistance in matters pertaining to the application and licensing of Fund Administrators under the Mutual Fund and Hedge Fund Act, 2008 (“the Act”). These guidelines also provide a summary of the Act; thus it is not intended to be comprehensive nor replace or override any legislative provisions. Applicants and licensees are therefore advised to read these guidelines in conjunction with the Act.

1.1 Enquiries

Enquiries on licensing related matters should be forwarded to the Authority: -

By Post: Director of Capital Market & Collective Investment Scheme Supervision
Financial Services Authority
P.O. Box 991
Bois De Rose Avenue
Victoria
Mahé
Republic of Seychelles

By e-mail: capitalmarkets.supervision@fsaseychelles.sc

Tel: +248 4 380 800

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2. Scope of the Act

Per the requirements of the Act, any one of the following activities undertaken in relation to a mutual fund amounts to fund administration:

- (a) managing including controlling all or substantially all of the assets of the mutual fund
- (b) administering a mutual fund
- (c) providing a principal office to a mutual fund within Seychelles
- (d) providing an operator (director, trustee or general partner) to a mutual fund.

3. Types of Fund Administrator’s Licence

Applicants may apply for either a Seychelles Fund Administrator’s licence or a Restricted Seychelles Fund Administrator’s licence.

The Act also makes provision for an exemption from the licensing requirement in cases where the applicant is incorporated overseas and appropriately licensed in a Recognised Jurisdiction (referred to as “Approved Foreign Administrator”).

3.1 Seychelles Fund Administrator’s Licence

A Seychelles Fund Administrator’s licence allows its holder to administer an unlimited number of mutual funds.

3.2 Restricted Seychelles fund administrator's Licence

A Restricted Seychelles Fund Administrator's licence permits its holder to administer only the mutual funds specified in its licence.

3.3 Approved Foreign Administrator

An applicant incorporated overseas and holding a current licence or other authorisation from a regulatory body in a recognised jurisdiction may be exempted from the licensing requirement of section 8(1) of the Act. This allows such persons to administer outside Seychelles, a Seychelles' licensed fund without having to be licensed by the Authority.

4. Offences

Any person who carries on the business of a Fund Administrator in or from the Seychelles or administer a licensed fund without a licence or exemption issued by the Authority or, other than in accordance with a licence or exemption granted by the Authority commits an offence and is liable on conviction to a fine of US\$75,000.

5. Application and licensing of Fund Administrators

A licence to carry on business as a Fund Administrator is obligatory under the Seychelles' laws, in order to carry on fund administration in or from Seychelles or to administer a fund licensed in Seychelles (unless an approval of exemption is given by the Authority).

5.1 Application requirements

An application for a Fund Administrator's Licence may be submitted by a company incorporated under the Companies Ordinance, 1972, or a company which is not incorporated in Seychelles (in which case, the company is required to have an agent for service in Seychelles).

An application submitted to the Authority for a Fund Administrator's Licence must comprise of the following documents:

- (a) A cover letter signed by the applicant
- (b) A completed Application Form;
- (c) The relevant application fee
 - (i) US\$1,500 for an unrestricted licence application
 - (ii) US\$1,000 for a restricted licence application.
- (d) Certified true copies of the constitutional documents of the applicant (refer to Appendix 2)
- (e) Personal Questionnaire forms completed by each Director, Compliance officer and key individuals of the applicant (refer to Appendix 1 for due diligence documents required)
- (f) Questionnaire form for Shareholders and Beneficial Owners completed by each shareholder and beneficial owner of the applicant (refer to Appendix 1 for due diligence documents required)
- (g) Proof of source of funds or wealth

- (h) Proof of Physical Place of Office (Title Deed of Premises or Lease Agreement for premises or Sub Leasing Agreement and consent letter from the owner of the premises stipulating that the lessee can sublease)
- (i) Audited accounts for the past 2 years of each shareholder which is a body corporate
- (j) In the case of an applicant not incorporated in Seychelles, the agent for service in Seychelles is licensed under the International Corporate Service Providers Act, 2003 or the Financial Institutions Act, 2004 or has been approved in writing by the Authority.
- (k) A detailed business plan¹
- (l) Certified true copies of the Auditor's certificate of membership and certificate of Good Standing as per section 2 of the Act
- (m) A copy of the policy of insurance (appropriate to the proposed nature and size of the business) of the applicant
- (n) Client Service Agreement or Terms of Business
- (o) Internal Procedures Manual
- (p) Compliance Manual
- (q) Anti-Money Laundering Manual
- (r) Complaints Handling Manual
- (s) Business Continuity Plan

In order to increase the efficiency of the application process, the Authority may pre-approve standard manuals and policies from service providers to be used in future applications.

Where pre-approved documents are submitted as part of an application, the service provider shall make a declaration on whether any changes have been made to each of the pre-approved document and indicating the relevant paragraph or section of the document where the changes have been made.

The Authority will only process an application if the application fee has been submitted. During processing of the application, the Authority may request for additional information or supporting documents for the purpose of determining the application.

A person who supplies, to the Authority, information in connection with an application which he knows or reasonably knows is false or misleading, is guilty of an offence and liable to conviction to a fine of US\$25,000.

5.2 Submission of Application

All application seeking the approval of the Authority must be addressed and either hand-delivered or mailed to:

¹ The Business Plan should include:

- (a) Business objectives: Previous experiences fund administration and the reason for identifying these objectives as activities to be pursued in Seychelles.
- (b) Services, business and infrastructural details (Office Space, Office Equipments, Office Furniture, Office Facilities (Telephone, Facsimile, IT Infrastructure), Vehicles)
- (c) The nature of work being targeted including marketing plans (marketing potentials and strategies)
- (d) Competency of the directors and other officers who will administer the business (needs to give guidelines regarding the compliance function, who is the proposed compliance officer, is it to be the director, this must be detailed in the business plan)
- (e) Human Resources: Organizational Chart (including description of key management roles), Job descriptions of all staffs, Training Requirements.

The Chief Executive Officer
Financial Services Authority
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Bois De Rose Avenue
Victoria
Mahé
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6. Administrative processes of license applications

The Authority will initiate the processing of a complete application, only upon payment of the required application fee. The following steps will then be implemented:

Step 1: Acknowledge receipt of the application.

Step 2: Carry out an initial review of the application to assess whether the application is complete according to the requirements detailed herein (refer to Fund Administrator Application Checklist in the document Checklist for Licensees under the Mutual Fund and hedge Fund Act, 2008).

Step 3: Begin to process the application if the application is deemed to be complete; or return the application to the applicant if the application is deemed to be incomplete, highlighting the area(s) of deficiencies. Please note that the Authority may provide general and brief guidance on the area(s) of deficiencies, but it is the responsibility of the applicant to engage suitable professionals or service providers to ensure the completeness of the application.

Step 4: Request for additional information or supporting documents for consideration of the application, if necessary.

Step 5: Inform the applicant on whether the application has been approved for licensing or not.

Note that a person who supplies, to the Authority, information in connection with an application which he knows or reasonably knows is false or misleading, is guilty of an offence.

7. Service Standard

The Authority's current Service Standard for processing application, from receipt of a completed application for consideration by the Authority, is as follows:

- (a) Seychelles Fund Administrator's Licence: 30 working days
- (b) Restricted Seychelles fund administrator's Licence: 30 working days
- (c) Approved Foreign Administrator: 30 working days

It is important to note that this service standard will only be achievable if all the requisite information/documents are provided at the time the application is lodged. The Authority is not responsible for delays arising from the submission of incomplete applications. The following is to be noted further;

- (i) The Authority will only process complete application. Applications that are deemed to be incomplete will be returned to the applicants. Applicants will have a period of 3 months for resubmission of the application.
- (ii) Applications not submitted within the 3-months cut-off period will be considered as void and a new application would have to be lodged along with payment of the required application fee should the applicant remains interested in proceeding further with the application.

This service standard is not exhaustive or binding on the Authority. The licensing regime requires the Authority to exercise discretion. How it does this will depend on the applicant's particular circumstances.

8. Approval in principle

If the only outstanding matters in respect to the Fund Administrator application are:

- (a) Principal office address and
- (b) Compliance Officer,

provided that all other matters are to the Authority's satisfaction, an "approval in principle" will be recommended to the Board of the Authority in relation to the application.

Upon approval of the Board, the Authority will issue the applicant an approval in principle letter which states the conditions which the applicant has to adhere to before the expiry date of 60 days. Upon expiration of this approval in principle, the Fund Administrator application license shall stand as rejected. If the conditions of the approval in principal letter has been adhered to within the respective timeframe, then the Authority will issue the licence (with any conditions stated at the back of the licence) upon payment of the relevant annual licence fee as follows:

- (i) a Seychelles fund administrator's licence: US\$2,000;
- (ii) a restricted Seychelles fund administrator's licence: US\$1,500.

9. Granting of licence

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

- (a) the applicant has a registered office or a principal place of business in Seychelles;
- (b) the applicant company has not less than two natural persons as directors;
- (c) the applicant and each of its directors are fit and proper persons;
- (d) the applicant has adequate expertise, resources and facilities necessary to properly administer mutual funds;
- (e) the applicant's name is not likely to be deceiving or misleading.

In addition to the above legal requirements, the Authority must be satisfied that:

- (i) the applicant has an adequate paid-up share capital and insurance coverage;

- (ii) all managerial staff holds amongst their qualifications those equivalent to the CISI's Investment Operations Certificate (IOC).
- (iii) all staff to engage in fund administration holds qualification equivalent to the CISI's Introduction to Investments or equivalent, if not then that all staff will need to complete the prescribed course within one year of the applicant being issued a licence;
- (iv) in cases where relevant staff has not attained the level of qualification required, the applicant will need to demonstrate adequate experience and control systems during the initial training period.

Note: The Authority has discretion in granting or refusing a licence. The Authority may, in dealing with an application, take into consideration matters other than those mentioned above including, but not limited to, ensuring that all other parties to an application (e.g. legal advisors and company secretaries) are of satisfactory repute.

10. Application for exemption by foreign administrators

An application for exemption from the licensing requirement of section 8(1) may be submitted by a foreign administrator which does not conduct fund administration in Seychelles. This allows a foreign administrator to administer outside Seychelles, mutual funds licensed in Seychelles.

10.1 Application requirements

An application for exemption submitted to the Authority for an "approved foreign administrator" must comprise of the following documents:

- (a) A completed Application Form;
- (b) The application fee of US\$1,500.
- (c) Certified true copies of the constitutional documents of the applicant;
- (d) Certified true copies of the current licence or other authorisation granted by the regulatory body in the recognised jurisdiction;
- (e) Certificate of good standing from an overseas regulatory authority in a recognised jurisdiction;
- (f) Questionnaire form for Shareholders and Beneficial Owners completed by each shareholder and beneficial owner of the applicant (unless the relevant party is listed on a stock exchange in a recognised jurisdiction).
- (g) Personal Questionnaire Form completed by each Director and key individuals of the applicant.

10.2 Granting of approval

To qualify as an approved foreign administrator, the applicant:

- (a) must not conduct fund administration business in Seychelles²;
- (b) must prove that it is in good standing and holds a current authorisation to conduct fund administration in a recognised jurisdiction;
- (c) is subject to a legal requirement in the recognised jurisdiction to prepare annual audited accounts.

² The administration outside of Seychelles of a mutual fund licensed in Seychelles does not constitute fund administration in Seychelles.

Should the application be successful, the Authority will issue a certificate of exemption to the applicant.

11. Renewal of licence and approval for exemption

10.1 Validity Period of a Licence

The validity period of a licence is one year following the date of first issuance of the licence and licence is renewable annually upon:

- (a) the submission to the Authority of a declaration of compliance in accordance with Schedule 3 of the Act:
 - **omitting the statement** “To: The Central Bank of Seychelles”
and replacing with “To: The Financial Services Authority”
- (b) payment of the annual licence fee:
 - (i) Fund Administrator: US\$2,000
 - (ii) Restricted Fund Administrator: US\$500

10.2 Validity Period of an Exemption

The validity period of an exemption granted under the Act is one year following the date of first issuance of the certificate of exemption and must be renewed annually upon:

- (a) the submission to the Authority of a declaration of compliance in accordance with Schedule 5 of the Act:
 - **omitting the statement** “To: The Central Bank of Seychelles”
and replacing with “To: The Financial Services Authority”
- (b) the submission of up to date evidence of regulation as a foreign Fund Administrator as required by section 8(2)(a) of the Act;
- (c) payment of the annual fee of US\$1,000.

A licensed Fund Administrator or an Approved Foreign Administrator must ensure that formalities for the renewal are undertaken well ahead of the expiry date of the licence or exemption. It is an offence to operate as a Fund Administrator or administer Seychelles licensed funds without a valid licence or exemption.

Failure to renew the licence or exemption on time will attract an additional fee equivalent to one-twelfth of that annual fee for each month or part thereof during which the annual fee remains unpaid. Further action may be taken under section 24 (3) the Act for failure to renew the licence or approval.

12. Audited accounts

A Fund Administrator must have its accounts audited annually according to the International Financial Reporting Standards. The Act allows for licensees registered under the Companies Act, 1972 to appoint a foreign auditor subject to obtaining the necessary approval from the Authority.

Both a licensed Fund Administrator and an Approved Fund Administrator must submit to the Authority its audited accounts within 4 months of the end of each financial year or within such an extension period allowed by the Authority.

Under section 21(1), the Authority has the power, at any time, to direct a licensed Fund Administrator to have its accounts audited and submitted to the Authority.

13. Change in ownership of a licensed Fund Administrator

Section 12 of the Act provides that the shares of a licensed Fund Administrator must not be transferred, disposed or dealt with unless the Authority has given its written approval. Similarly, an administrator cannot issue shares without the Authority's approval.

14. Appointment, resignation or removal a director or officer

A licensed Fund Administrator must not appoint any officer unless the Authority has given its approval to the appointment or an exemption to this requirement has been granted to the administrator. Failure to comply with this requirement is an offence and is liable on conviction to a fine of \$10,000.

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

15. Change of Address of a licensed Fund Administrator

A licensed Fund Administrator must notify the Authority in writing within 14 days:

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

16. Requirements and duties of licensed Fund Administrators

The Act sets out the requirements to be fulfilled by a licensed Fund Administrator and these requirements should also be included and outlined in the licensee's Compliance Manual. Licensees are advised to read carefully the conditions described on the reverse of their licence as they may impose on the licensee's obligations in addition to those specifically mentioned in the Act.

15.1 Notifications to the Authority

(a) A licensed Fund Administrator with knowledge or belief that a licensed fund for which it provides services:

- (i) is or is likely to become unable to meet its obligations or
- (ii) is in breach of the Act or any other law or
- (iii) is carrying on business in a manner that is likely to be harmful to investors or creditors of the fund,

must forward written notice of its knowledge or belief to the Authority. Failure to do so constitutes an offence and liable to conviction to a fine of US\$10,000.

(b) A licensed Fund Administrator must promptly notify the Authority if it becomes aware of:

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

(c) A licensed Fund Administrator must promptly notify the Authority if:

- (i) it is no longer able to continue in operation as a going concern
- (ii) if an action is commenced to wind up the fund administrator
- (iii) if a liquidator, receiver or administrator is appointed in respect of a fund administrator
- (iv) if a composition or arrangement is made with its creditors
- (v) it has outsourced any functions of the company to third parties

15.2 Identification of clients

A licensed Fund Administrator must at all times be able to identify their clients and the ultimate beneficial owners of its clients in the case where its clients are not the ultimate beneficial owner. Fund administrators must comply with the Anti-Money Laundering Act, 2006 and are therefore required to have in place anti-money laundering procedures to establish the identity, address and source of funds of its clients or ultimate beneficial owners, provide appropriate training for employees and establish internal reporting procedures.

The Financial Intelligence Unit (FIU) has issued guidelines to be used by reporting entities. A copy of the guideline can be obtained from the FIU's website.

15.3 Treatment of client assets

Monies or other assets held by a licensed Fund Administrator for or on behalf of any entity for which it provides fund administration services or other client entities must be 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.

Client funds which are held for more than 30 days must be kept separate from the administrator's own funds in an account designated as a client account. Separate accounts must also be maintained in the administrator's books of accounts in respect of any client funds.

15.4 Agreement with clients

Every licensed Fund Administrator must have a written agreement with each of its clients setting out the terms and conditions on which it provides fund administration services including the charging and the calculation of fees.

15.5 Complaints

A licensed Fund Administrator must 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 must be recorded.

15.6 Avoidance of Conflict of Interest

A licensed Fund Administrator must use its best endeavours to avoid any conflict of interest between itself and its clients and between one client and another.

Any conflict of interest must be notified to the client(s) concerned and the Fund Administrator must cease the provision of services to the clients concerned unless the client(s) agree to the administrator continuing its service to the other client(s).

17. Conditions to a Fund Administrator's licence

A licensed Fund Administrator must comply with the conditions contained in its licence. Failure to do so constitutes an offence and is liable on conviction to a fine of \$50,000.

18. Requirements and duties of Approved Fund Administrators

- (a) An Approved Foreign Administrator with knowledge or belief that a licensed fund for which it provides an office, or a promoter or operator of such fund:
 - (i) is or is likely to become unable to meet its obligations
 - (ii) is in breach of the Act or any other law
 - (iii) is carrying on business in a manner that is likely to be harmful to investors or creditors of the fund,

must forward written notice of its knowledge or belief to the Authority. Failure to do so constitutes an offence and is liable to conviction to a fine of US\$10,000.

- (b) An Approved Foreign Administrator must promptly notify the Authority if it becomes aware of:

- (i) any criminal action or proceedings having been commenced against it or any of its officers
 - (ii) any civil action or proceedings, where the amount claimed exceeds \$100,000, having been commenced against it or any of its officers
 - (iii) a conviction of the Fund Administrator or any of its officers of any offence relating to fund administration, any business activity, insolvency or fraud or dishonesty.
- (c) An Approved Foreign Administrator must promptly notify the Authority if:
- (i) it is no longer able to continue in operation as a going concern
 - (ii) if an action is commenced to wind up the fund administrator
 - (iii) if a liquidator, receiver or administrator is appointed in respect of a fund administrator
 - (iv) if a composition or arrangement is made with its creditors.
- (d) An Approved Foreign Administrator must, within 14 days, notify the Authority in writing, of any change of address of its principal place of business or registered office overseas.
- (e) An Approved Foreign Administrator must immediately notify the Authority in writing if its licence or other required authorisation to operate as a Fund Administrator in the recognised jurisdiction is revoked or terminated.

19. Official Search

Any person may, on payment of the prescribed fee (i.e. US\$75), obtain from the Authority a declaration of official search under the seal of the Authority in respect of any licensed Fund Administrator containing the information referred to in Section 11(10).

20. Exemptions and concessions

Schedule 10 of the Act grants exemptions and concessions from the applicability of certain legislative enactments to Unrestricted Seychelles Fund Administrators. Note however that, section 32(2) of the Act provides for the exemptions and concessions applicable to a restricted Seychelles Fund Administrator which is limited only to the Business Tax Act.

22.1 Business Tax Act

Business tax payable by a Fund Administrator is subject to whether the core income generating activities are undertaken in Seychelles as prescribed by the Mutual Fund and Hedge Fund (Substantial Activity Requirements) Regulations.

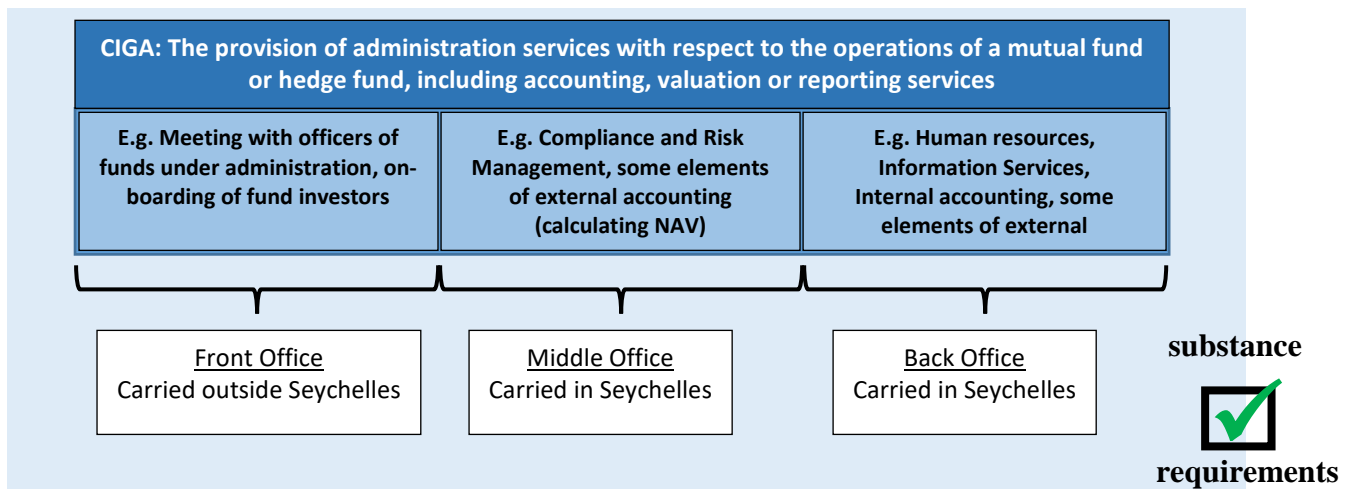
If the substantial activity requirements are met the aggregate of the following amounts paid by it or another party, in respect of a fund administered by the licensee:

- (a) 10% of fees in respect of new mutual fund licences;
- (b) 5% of fees in respect of annual renewal of mutual fund licences; and
- (c) 5% of all other fees under the Act.

If the substantial activity requirements are not met, then the fund administrators will not benefit from the tax concessions.

Distinction is also made between the front office, back office, and middle office. If the back office and middle office activities are conducted in Seychelles as opposed to the front office, then the substance requirements are deemed to have been met.

The figure explains the distinction made between the offices.



21. Role of the Authority

The Authority is conferred powers of supervision over the Fund Administrators and the mutual funds by the Act and may in carrying out its supervisory functions:

- (a) issue directions to licensees
- (b) request information or documents from licensees
- (c) revoke a Fund Administrator licence
- (d) impose further conditions on a Fund Administrator licence
- (e) appoint a person to advise a licensed mutual fund on the proper conduct of its business
- (f) revoke the approval given to an Approved Foreign Administrator.

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

Appendix 1

Due Diligence Requirements

1. The completed **Personal Questionnaire** Forms by all directors, securities dealer representative, compliance officer and key persons in connection with the application, should be accompanied by:
 - 1 certified true copy of passport(s)
 - 1 recent passport photograph, with an attestation at the back of the photo that the photo is a true likeness of the person and signed by an acceptable certifier
 - 1 certified proof of residential address that is not older than three months e.g. utility bill (water and/or electricity) and/or bank statement and/or tenancy agreement
 - 1 original bank reference from each bank with which you are affiliated and/or a report from Credit Rating Agency from Country of Residence (if available)
 - Certified copies of stated higher academic qualifications
 - Certified copies of stated professional qualifications
 - Certified copies of stated membership to professional bodies
 - Detailed job description of your proposed role or position
 - Past Employment references (if applicable)
 - Comprehensive and Up-to-date Curriculum Vitae
 - A list of directorships, partnerships, other business interests or affiliations (if applicable)
 - Police Character Reference/certificate (original) not older than three (3) months from the Country in which the applicant resides or its equivalent
 - Tax Clearance Certificate from the Country in which the applicant resides or its equivalent
 - Politically Exposed Person Self-Declaration Form

2. The completed **Questionnaire form for Shareholders and Beneficial Owners** Forms by all shareholders and beneficial owners who do not have a management position in the company should be accompanied by:
 - 1 certified true copy of passport(s)
 - 1 recent passport photograph, with an attestation at the back of the photo that the photo is a true likeness of the person and signed by an acceptable certifier
 - 1 certified proof of residential address that is not older than three months e.g. utility bill (water and/or electricity) and/or bank statement and/or tenancy agreement
 - 1 original bank reference from each bank with which you are affiliated and/or a report from Credit Rating Agency from Country of Residence (if available)
 - A list of directorships, partnerships, other business interests or affiliations (if applicable)
 - Police Character Reference/certificate (original) not older than three (3) months from the Country in which the applicant resides or its equivalent
 - Tax Clearance Certificate from the Country in which the applicant resides or its equivalent
 - Politically Exposed Person Self-Declaration Form
 - Evidence of source of fund/wealth

3. Due Diligence documents for entity shareholders should include the following:

(a) Companies

- Certificate of Incorporation
- Memorandum and Articles of Association
- Notice of Situation of Registered Office or any change thereof
- Particulars of Directors and Secretaries
- Audited financial statements for the past 3 years
- Certificate of Good Standing

(b) Foundations

- Foundation Charter
- Register of Founder(s), Counsellor(s), Beneficiaries and Protector(s) (if applicable)
- Certificate of Good Standing

(c) Trusts

- Trust Deed
- Declaration of Trust
- Register of Trustee(s), Settlor, Beneficiaries and Protector(s) (if applicable)

(d) Limited Partnerships

- Limited Partnership agreement
- Register of General Partner(s) and Limited Partner(s)

List of Constitutional documents

Certified true copies of the following documents:

- Certificate of Incorporation
- Memorandum and Articles of Association
- Notice of Situation of Registered Office or any change thereof
- Particulars of Directors and Secretaries
- Audited financial statements for the past 3 years