

Investment Advisor Guidelines



FINANCIAL SERVICES AUTHORITY

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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 Investment Advisors under the Securities Act, 2007 (“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 Markets & Collective Investment Schemes Supervision
Financial Services Authority
P.O. Box 991
Bois De Rose Avenue
Victoria
Mahé
Seychelles

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

Tel: +248 4 380 800

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2. Scope of the Act

2.1 Definition of Investment Advisor

The Act applies to a “Person” defined as a “company” or an “individual”.

Per the definition of the Act, an Investment Advisor is a person who carries on business giving advice on securities, or who holds himself out as conducting such business described below:

- (a) Advises other persons concerning investment in securities
- (b) Issues, analyses or reports concerning specific securities
- (c) Manages a portfolio of securities for another person
 - (i) without holding property of the other person; and
 - (ii) Manages a portfolio of securities on terms that preclude him from doing so

2.2 Persons excluded from the requirement of a licence:

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

- (a) Is a securities dealer
- (b) Is a bank in Seychelles
- (c) Is a lawyer or a professional accountant who gives advice on securities as an incident to the practice of that person’s profession
- (d) Gives advice on securities only in a newspaper, magazine, journal or other periodical publication:

- (i) which is generally available to the public
- (ii) which does not have as its principal or only object the provision of advice, or the issue of analyses or reports, concerning securities

2.3 Structure

Investment Advisors licensed in Seychelles may be structured as:

- (a) Individuals who satisfy the requirements of the Act, or
- (b) Companies incorporated or other body corporate wherever incorporated or constituted

3. Offences

Any person who carries on the business of an Investment Advisor without a licence issued by the Authority or, other than in accordance with a licence granted by the Authority commits an offence and is liable on summary conviction.

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

4. Application and licensing of Investment Advisors

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

4.1 Application for an Investment Advisor Licence for Companies

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

- (a) A cover letter¹ signed by the applicant or the agent of the applicant
- (b) A completed Application Form
- (c) The relevant application fee (i.e. US\$1,500)
- (d) Certified true copies of the constitutional documents of the applicant (refer to Appendix 2)
- (e) Personal Questionnaire completed by each Director, Investment Advisor Representative, 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 that hold no management position in the proposed Investment Advisor (refer to Appendix 1 for due diligence required)
- (g) Audited Financial Statements of the applicant for the past 2 years except in the case of an applicant who was not incorporated within the last 12 months
- (h) The last audited financial statements of the controlling owners of the applicant if the controlling owner is a non-individual
- (i) Proof of source of funds or wealth

¹ The cover letter must include reasons the applicant is applying for the licence and a list of all the documents that have been included in the application pack.

- (j) 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)
- (k) The Representative Licence Application Form completed by each prospective representative.
- (l) Notice of place at which the Register of Securities is to be kept as per Section 80(2)(a) of the Securities Act, 2007 and Schedule 1 Form 6 of the Securities (Forms and Fees), 2008
- (m) A written notification from the representative in accordance with section 53 of the Securities Act, 2007
- (n) A copy of the policy of insurance (appropriate to the proposed nature and size of the business) of the applicant
- (o) A detailed Business Plan (refer to Investment Advisors (Company/Individual Application Checklist, Part VI)
- (p) Internal Operations Manual
- (q) Client Service Level Agreement
- (r) Conflict of Interest Policy
- (s) Compliance Manual
- (t) Anti – Money Laundering Manual
- (u) Complaints Handling Manual
- (v) Business Continuity Plan

4.2 Application for an Investment Advisor Licence for Individuals

An application submitted to the Authority for an Investment Advisor Licence by an individual must comprise of the following documents:

- (a) A cover letter
- (b) A completed application form
- (c) The relevant application fee (i.e. US\$1,250)
- (d) Certified proof of identity and residential address of the applicant
- (e) A detailed statement of the applicant's assets and liabilities signed by the applicant
- (f) Proof of source of funds or wealth
- (g) 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)
- (h) Notice of the place at which the Register of Securities is to be kept as per Section 80(2)(a) of the Securities Act, 2007 and Schedule 1 Form 6 of the Securities (Forms and Fees), 2008
- (i) Personal Questionnaire completed by the applicant (refer to Appendix 1)
- (j) A detailed Business Plan (refer to Investment Advisors (Company/Individual Application Checklist, Part VI)

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.

4.3 Submission of Application

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

The Chief Executive Officer
Financial Services Authority
P.O. Box 991
Bois De Rose Avenue
Victoria
Mahé
Seychelles

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

4.4 Administrative process 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 carried out:

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 Investment Advisor (Company/Individual) Application Checklist in the document Checklist for Licensees under the Securities Act, 2007).

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 from the applicant, 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.

5. Representative

The Authority will grant an Investment Advisor Licence, in the case of a company, if the applicant employs at least one individual who is licensed as a representative under section 52 of the Act. An Investment Advisor Representative means an individual in the employment of (including a Director of), or acting on behalf of or by arrangement with an investment advisor, who advises on securities on behalf of that investment advisor, whether he is paid salary, wages, commission or otherwise.

6. Service Standards

The Authority's current Service Standards for processing the application for an Investment Advisor, from receipt of a completed application for consideration by the Authority, is thirty (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 further noted:

- (a) The Authority will only process complete applications. Applications that are deemed to be incomplete will be returned to the applicant. Applicants will have a period of 3 months for resubmission of the application.
- (b) 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 remain 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 the Authority does this will depend on the applicant's particular circumstances.

7. Approval in Principle

If the only outstanding matters in respect to the Investment Advisor 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 FSA in relation to the application.

Upon approval of the Board of FSA, the Authority will issue the applicant an "approval in principle" letter stating the conditions to be fulfilled by the applicant in order to be licensed. An "approval in principle" is valid for 90 days from the date of issuance of the letter and upon expiration, the application shall stand as void. If the conditions specified in the "approval in principle" letter have been satisfied within the respective timeframe, then the Authority will issue the licence (with any further conditions) upon payment of the relevant annual licence fee as follows:

- (i) An Investment Advisor's licence for Individuals: US\$2,500
- (ii) An Investment Advisor's licence for Companies: US\$3,000
- (iii) An Investment Advisor Representative's licence: US\$750

8. Granting of licence

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

- (a) In the case of a company, employs at least one individual who is licensed as a representative under the Act
- (b) Complies with the prescribed minimum paid-up capital requirement of US\$25,000
- (c) Complies with the insurance requirement and maintains an appropriate policy of insurance under section 73
- (d) Satisfies the Authority that it is a fit and proper person to be licensed as an advisor
- (e) Will be able, if licensed, to comply with any financial resources regulations that may apply to it
- (f) Has specified premises under section 50(c) that are suitable for keeping records or other documents

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. In the event that the application is successful and the licence is issued, the Authority may publish on its website or other publications, the name of the licensee and contact details.

8.1 Fitness and Propriety

When considering the fitness and propriety of the applicant the Authority shall have regard to the applicant's:

- (a) financial status
- (b) educational or other qualifications or experience having regard to the nature of the application
- (c) ability to perform his proposed function competently, honestly and fairly
- (d) reputation, character, financial integrity and reliability
- (e) satisfactory completion of any examination requirements prescribed by the Authority

For more details on the fitness and propriety refer to the Competency Standards.

8.2 Conditions to an Investment Advisor Licence

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

The Authority may impose conditions on a licensee which includes:

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

Investment Advisors are advised to read carefully the conditions contained in their licence as they may impose on the licensee's obligations in addition to those specifically mentioned in the Act.

9. Renewal of licence

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

The Authority will only renew a licence upon:

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

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

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

10. Compliance Officer

Pursuant to Section 23 of the Financial Services Authority Act, 2013, each licensee should appoint a compliance officer who will be responsible for the maintenance of adequate systems and controls to ensure compliance with the Act, regulations, codes, guidelines and directives issued by the Authority.

The appointed compliance officer may be a member of the board of directors.

For further guidance with regards to compliance officers and the compliance functions, refer to the Code for Compliance Standards.

11. Auditor

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

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

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

12. Audited Accounts

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

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

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

13. Change in ownership of a licensed Investment Advisor

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

14. Notifications to the Authority

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

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

14.1 Appointment, resignation or removal of a director or officer

An Investment Advisor must notify the Authority of the appointment, resignation or removal of any director or officer and such notification should include a description of the circumstances of the departure.

15. Registers

15.1 Investment Advisors' Register

Section 79 of the Act requires a licensed Investment Advisor to maintain a register of the securities for which that person has an interest as prescribed in Schedule 1, Form 5 of the Securities (Forms and Fees) Regulations, 2008.

15.2 Inspection of registers kept by the Authority

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

16. Exemptions and concessions

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

16.1 Business Tax Act

Investment Advisors can benefit from a business tax rate of 1.5% (applicable on the assessable (gross) income) and zero withholding tax rate on dividends or interest payable, provided that the substantial activity requirements are met by the investment advisor.

However, investment advisors licensed on or before the 16th October, 2017 can still benefit from the tax concession mentioned above without the need to meet the substantial activity requirements until 30th June, 2021.

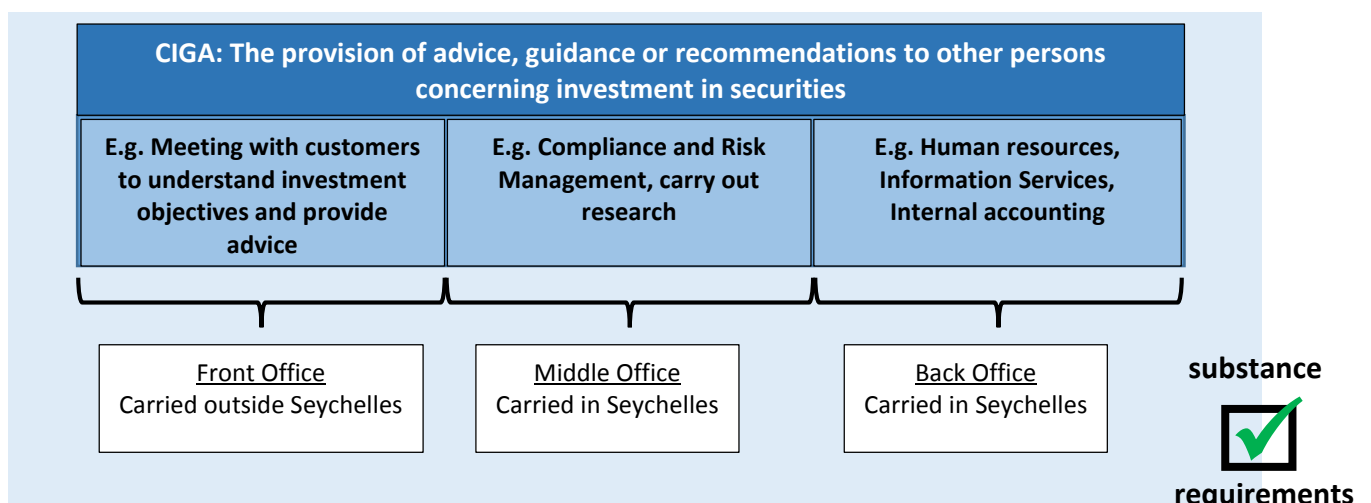
16.2 Substantial Activity Requirements

In order to meet the substantial activity requirements, the Core Income Generating Activities of the Investment Advisor must be undertaken in a physical office in Seychelles by:

- (a) employing an adequate number of suitably qualified persons to carry out the core income generating activities; and
- (b) incurring an adequate amount of operating expenditures for such activities.

Note that the substantial activity requirements are considered to have been met if the middle office and back office activities are conducted in Seychelles even though the front office activities may be undertaken outside Seychelles.

Example:



17. Role of the Authority

The Authority is conferred with powers of supervision over the Investment Advisors and may in carrying out its supervisory functions:

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

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

Appendix 1

Due Diligence Requirements

1. The completed **Personal Questionnaire** Forms by all directors, investment advisor, 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-sized photograph signed at the back by the 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
 - Latest Employment references (if applicable)
 - A list of directorships, partnerships, other business interests or affiliations (if applicable)
 - Original Police Character Reference/certificate 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** 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 sized passport photograph signed at the back by the certifier
 - Proof of Appointment as Nominee E.g. Declaration of Trust, Deed of Indemnity or its equivalent
 - 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)
 - Original Police Character Reference/certificate 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 2 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)

Appendix 2

List of Constitutional documents

Certified true copies of the following documents:

- Certificate of Incorporation
- Memorandum and Articles of Association
- Partnership Agreement (if applicable)
- Notice of Situation of Registered Office or any change thereof
- Particulars of Directors and Secretaries
- Audited financial statements for the past 2 years