

S.I. 88 of 2018

MUTUAL FUND AND HEDGE FUND ACT, 2008

(Cap 285)

Mutual Fund and Hedge Fund (Substantial Activity Requirements) Regulations, 2018

In exercise of the powers conferred by Section 34 of the Mutual Fund and Hedge Fund Act, 2008 the Minister of Finance, Trade, Investment and Economic Planning makes the following Regulations —

1. These Regulations may be cited as the Mutual Fund and Hedge Fund (Substantial Activity Requirements) Regulations, 2018 and shall come into operation on 1st January, 2019.

Citation and commencement

2. The substantial activity requirements under section 32 of the Act shall be met where the fund administrator undertakes the core income generating activities in Seychelles —

Requirements of core income generating activities

(a) by employing, either directly or indirectly, a reasonably adequate number of suitably qualified persons to carry out the core activities; and

(b) incurs an adequate amount of operating expenditures for such activities.

3. For the purposes of regulation 2, the core income generating activities required to be undertaken in Seychelles by a fund administrator shall include —

Core income generating activities

(a) the provision of administration services with respect to the operations of a mutual fund or hedge fund, including, but not limited to, the

preparation of fund accounts, periodic valuation of fund assets; or periodic preparation of relevant stakeholder reports; and

- (b) the management of a mutual fund or hedge fund, including, but not limited to, the control of the assets of a mutual fund or hedge fund; calculation of risks and reserves; making of hedging decisions; or periodic preparation of relevant stakeholder reports.

Structuring
of core
generating
activity

4.(1) Notwithstanding regulation 2, where the front-office activities are undertaken by a fund administrator outside of the Seychelles, the Authority may consider the substantial activity requirements to be met if the middle-office activities and back-office activities in relation to that core income generating activities are undertaken in Seychelles.

(2) In subregulation (1) —

- (a) “front-office activities” means client-facing business activities or functions, which could include inter-alia, sales or customer support;
- (b) “middle-office activities” means activities or functions that provide support to the front-office activities, including but not limited to risk, compliance and control business activities or functions, and which could include inter-alia, risk management or external accounting; and
- (c) “back-office activities” means operational, administrative business activities or functions which provide support to both the front-office and the middle office, and which could include inter-alia, human resources or legal counsel.

5. Where a fund administrator outsources any of its core income generating activity outside of Seychelles, the substantial activity requirements specified in regulation 2 shall be considered not to have been met.

Outsourcing of activities

6. A fund administrator licensed under the Act on or before the 16th October, 2017, shall comply with these Regulations as from 1st July, 2021, provided that the concession relating to the Business Tax Act shall not extend to assets or activities introduced in the business of the fund administrator on or after 17th October 2017.

Extent of concessions

7. For the avoidance of doubt, where a fund administrator fails to comply with the substantial activity requirements specified in regulation 2, the concession relating to the Business Tax Act shall not apply.

Non-applicability of concessions

8. For the purpose of ensuring compliance with these Regulations, the Authority may require a fund administrator to submit a declaration of compliance with the substantial activity requirements, in the form provided for in the Schedule.

Declaration of compliance

SCHEDULE

(Regulation 9)

Declaration Form

Substantial Activity Requirements under the Mutual Fund and Hedge Fund Act, 2008

I/We the undersigned declare to the best of my/our knowledge that (...insert name of fund administrator...) have complied with the Substantial Activity Requirements as prescribed within the Mutual Fund and Hedge-Fund (Substantial Activity Requirements) Regulations for the financial year ending (...insert financial year...).

I/We the undersigned understand that pursuant to Section 27(1)(a)(x) of the Financial Services Authority Act, the Authority may take enforcement action against a licensee if the licensee has provided the Authority with false, inaccurate or misleading information.

Director 1

Director 2

Signature: _____

Signature: _____

Name: _____

Name: _____

Date: _____

Date: _____

MADE this 21st day of December, 2018.

**MAURICE LOUSTAU-LALANNE
MINISTER OF FINANCE, TRADE
INVESTMENT AND ECONOMIC PLANNING**