



CENTRAL BANK OF SEYCHELLES

GUIDE TO MUTUAL FUND LICENSING

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1. INTRODUCTION

Applicants for a licence to operate a mutual fund in or from Seychelles should be familiar with the provisions of the Mutual Fund and Hedge Fund Act, 2008 as well as with the requirements of any guidelines, directives or administrative notices issued by the Central Bank from time to time.

The purpose of this guide is to provide assistance to promoters and operators of mutual funds wishing to operate in or from Seychelles. The guide addresses the following areas:

- (a) scope of the Act ;
- (b) licensing procedure and requirements;
- (c) service providers to a fund;
- (d) continuing obligations of a fund;
- (e) exemptions and concessions;
- (f) administrative procedures relating to exemptions and concessions.

This guide is not intended to be comprehensive nor replace or override any legislative provisions. Applicants are advised to read the guide in conjunction with the Act and any other guidelines the Central Bank may issue from time to time.

2. SCOPE OF THE ACT

2.1 Definition of Mutual Fund

The Mutual Fund and Hedge Fund Act applies to those funds which:

- (i) *“collects and pools investor funds for collective investment purposes or with the aim of spreading investment risks, including hedge fund purposes”*; and
- (ii) *“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”*

The Act therefore also applies to *“an umbrella fund whose equity interests are split or segregated into different funds or sub-funds” and “a hedge fund ”*.

It is important to note that for the purpose of the Act an equity interest is one which is *“redeemable or repurchasable at the option of the investor”*. The Act therefore does not apply to closed-end funds.

2.2 Structure

Funds licensed in Seychelles may be structured as:

- (i) a company formed under the International Business Companies Act, 1994, the Companies Act 1972, the Companies (Special Licence) Act, 2003 or the Protected Cell Companies Act, 2003;
- (ii) a company formed under the laws of a recognised jurisdiction;
- (iii) a limited partnership registered under the Limited Partnership Act, 2003;
- (iv) a partnership registered in a recognised jurisdiction;
- (v) a unit trust registered under the International Trusts Act; or
- (vi) a unit trust registered in recognised jurisdiction.

2.3 Types of Mutual Fund

The law makes a distinction between 3 main types of funds:

- private fund;
- professional fund; and
- public fund.

2.3 Private Fund

A private fund licence will be issued to a mutual fund which displays the following characteristics:

- (a) its constitutional documents specify that it will not have more than 50 investors;
- (b) its constitutional documents specify that the making of any invitations to the public to subscribe for or purchase shares in the fund is prohibited or to be made on a private basis; or
- (c) it is designated as a private fund by Regulations.

For the purpose of the Act an invitation is made on a private basis when it is made:

- (i) to specified persons and is not calculated to result in shares becoming available to other persons; or
- (ii) by reason of a private or business relationship between the person making the invitation and the investor.

2.1.2 Professional Fund

A professional fund is described as a mutual fund in which shares can only be held by professional investors and the initial investment amount per each investor is at least US\$ 100, 000 or its equivalent in any other convertible currency.

The Act defines a professional investor as 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; or
- (b) who has a net worth, whether individually or jointly with his spouse exceeding US\$ 1, 000, 000 or its equivalent in any other convertible currency; and has signed a declaration to such effect and whereby he also consents to being treated as a professional investor; or
- (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;

2.1.3 Public Fund

The Act defines a Public Fund simply as, a mutual fund which is not a private or a professional fund.

2.1.4 Exempt Foreign Fund

An Exempt Foreign Fund is a fund which:

- (i) is administered by a fund administrator licensed by the Central Bank;
- (ii) limits the initial minimum investment per investor to US\$ 100, 000 or its shares are listed on the stock exchange of a recognised jurisdiction; and
- (iii) holds a current licence or other authorisation to operate as a mutual fund under the laws of a recognised jurisdiction; and
- (iv) has been authorised to operate in or from Seychelles without a licence issued by the Central Bank.

3. LICENSING

To be able to engage in mutual fund business in or from Seychelles, a regulatory licence from the Central Bank of Seychelles ('CBS') is obligatory.

3.1 Application for a fund licence

Every applicant for a fund licence must observe the following procedure:

1. The applicant must fully and properly complete and submit to the Central Bank, a mutual fund licence application form.
2. The application form must be accompanied by:
 - a. certified true copies of the constitutional documents of the fund;
 - b. the current or latest draft offering document of the mutual fund;
 - c. in the case of a newly established fund, three audited financial statements
 - d. a personal questionnaire form completed by each director, general partner or trustee, whichever is applicable;
 - e. the written consent of the fund's administrator;
 - f. the written consent of the fund's auditor;
 - g. any other supporting information or documents CBS may require; and
 - h. the application fee prescribed in Schedule 1 of the Act.

CBS will only process an application once all relevant information have been submitted and may request for additional information or supporting documents for the purpose of determining the application.

Application forms are available from the Central Bank website www.cbs.sc. Once completed the forms must be submitted to:

The Director General
Securities & Financial Markets Division
Central Bank of Seychelles
P.O Box 710, Victoria
Seychelles

3.2 Conditions for granting licence

In terms of Section 3(5) of the Act, the Central Bank will not grant a licence unless it is satisfied that:

- the fund is a fit and proper person;
- each operator, promoter and administrator of the applicant is a fit and proper person;
- the fund will be administered by persons with sufficient expertise;
- the business of the fund and any offer of shares in it will be carried out in a proper manner;
- the custodian of the fund is a financial institution or a licensed trustee services provider or such other person as CBS may approve (*See paragraph 5*);
- the fund's administrator is separate and independent of the custodian;

It should however be noted that the Authority has a discretion in granting or refusing a licence. It may in dealing with an application take into consideration matters other than those mentioned above.

3.3 Application for Approval by Exempt Foreign Fund

A fund which is incorporated or otherwise established and domiciled outside Seychelles may be exempted from the licensing procedure specified in 3.2. Such a fund will have to apply for exemption as an Exempt Foreign Fund and must:

1. fully and properly complete and submit to the Central Bank, an approval application form.
2. the application form must be accompanied by:
 - a. certified true copies of the licence or other authorisation granted by a regulatory body in a recognised jurisdiction;
 - b. proof that the fund is to be administered by a fund administrator licensed in Seychelles;
 - c. the current or latest draft offering document; and
 - d. the application fee prescribed in Schedule 1.

4. SERVICE PROVIDERS

4.1 Administrator

Before granting a fund licence the Central Bank will ascertain whether the administration of the fund is to be undertaken by a Fund Administrator duly licensed by CBS.

(See Guide on Mutual Fund Administration)

4.2 Custodian

A mutual fund is required to entrust the safekeeping of its assets to a custodian. The Custodian may be:

- (a) a licensed bank under the Financial Institutions Act, 2004;
- (b) a licensed trustee under the International Corporate Service Providers Act, 2003; or
- (c) such other financial institution or person in or outside Seychelles, as may be approved by CBS.

Applicants for a fund licence are expected to consider the fitness and propriety of their proposed custodians. Due consideration should be given to the custodian's honesty,

integrity, competence and financial soundness, taking into account the particular requirements of the fund's business.

In particular, a fund's custodian should:

- (a) have a sound track record;
- (b) have experience in providing custodian services;
- (c) have ample resources (infrastructure, office space, personnel) to provide custodian services;
- (d) have adequate internal control systems and procedures ;
- (e) be functionally separate and independent of the mutual fund's administrator;

4.3. Agent for Service

The requirement to appoint an agent for service in Seychelles is applicable to licensed funds incorporated or established overseas. The Act stipulates that an agent for service must be a licensed CSP, Financial Institution or such person as Central Bank may approve.

4.3 Auditor

A mutual fund is required to have its accounts audited annually by an auditor. The Act allows for the appointment of foreign auditors. Derogation to the Companies Act 1972 is provided for in that a company incorporated under that Act can appoint a foreign auditor subject to obtaining the necessary approval from the Central Bank.

5. REGISTERS

The Central Bank maintains separate registers for each type of fund licensed under the Act, a register pertaining to exempt foreign funds is also maintained. The registers are open to public inspection.

6. DURATION AND RENEWAL

The validity period of a licence or approval granted under the Act is of 1 year this requires that such licence or approval be renewed annually.

The Central Bank will only renew a licence or exemption upon:

- (i) the payment of the annual licence or exemption renewal fee, as the case may be;
- (ii) the submission to the Central Bank of a declaration of compliance in the form specified in Schedule 4 of the Act; and
- (iii) in the case of an exempt foreign fund; proof that it holds a current licence or other authorisation from a recognised jurisdiction.

Note: A licensed or exempt fund must ensure that formalities for licence or exemption renewal are undertaken well ahead of the expiry date of any licence or exemption. It is an offence to operate a mutual fund without a valid licence or exemption.

7. CONTINUING OBLIGATIONS

The Act sets out the obligations to be fulfilled by a fund once it has been licensed or exempted to carry on business in Seychelles.

Licensees are advised to read carefully the conditions described on the reverse of their licence certificates as they may impose on the licence holder obligations additional to those specifically mentioned in the Act.

It is the duty of each operator of the fund to ensure that it complies with its obligations.

7.2 Notification of Changes

- ***Change in addresses and service providers***

Under Section 6(3) of the Act lists a number of changes which must be notified in writing to the Authority by a licensed fund within fourteen (14) days. The notifications which have to be made by an exempt foreign fund are to be found in Section 6(11) and (13).

- ***Appointment/resignation/removal of operators and other managerial staff***

A change in the key personnel of a mutual fund may affect the fund's ability to remain fit and proper. It is therefore a condition of every fund licence issued under the Act that the Central Bank is notified forthwith of the appointment, resignation or removal of any operator or member of the managerial staff.

In the case of a resignation or removal the notification to the Central Bank should include a description of the circumstances surrounding such request for resignation and removal.

- ***Revocation or termination of licence/authorisation (exempt foreign fund)***

Where the licence or other authorisation of an exempt fund issued under the laws of a recognised jurisdiction is revoked or terminated, such revocation or termination must be notified to the Central Bank in writing¹.

- ***Material Change to Offering Document (public fund)***

In terms of the Act, a fund's offering document must contain information necessary to enable a prospective investor to make an informed decision. In the case of a public fund, any future material amendments to an offering document after its initial filing must be communicated to the Central Bank for approval.

7.3 Maintenance of Accounting Records and Preparation of Financial Statements

A fund holding a licence under the Act must maintain adequate accounting records and must prepare annual financial statements. The financial statements must be prepared in accordance with generally accepted accounting principles.

Copies of a fund's annual financial statements must be made available for examination by the Central Bank and the fund's investors. The Central Bank must also have access to the fund's accounting records.

7.4 Audit of Financial Statements

The accounts maintained by a licensed fund must be audited annually by an auditor. (See 4.1) The audited accounts in respect of each financial year must be sent to the Central Bank within four (4) months of the end of that financial year. This requirement is also applicable to exempt foreign funds.

The Central Bank may extend the period within which the audited accounts must be submitted.

¹ Section 6(13)

7.5 Due Diligence and KYC Procedures

Funds operating in or from Seychelles must at all times be able to identify its investors and the beneficial owners of its investors which are companies or other entities². They are subject to the requirements of the [Anti-Money Laundering Act, 2006](#) and are therefore required to have in place anti-money laundering procedures, policies and practices.

Licensed funds must specifically, maintain procedures and systems to establish the identity of its investors, adopt appropriate internal controls and communication procedures in accordance, provide appropriate training for employees, and establish internal reporting procedures.

The Central Bank's Financial Intelligence Unit has issued guidelines as to how the provisions of the Anti-Money Laundering Act can be implemented. The guidelines are available on the Central bank's website or can be obtained from the Financial Intelligence Unit.

7.6 Compliance to Central Bank Directions

The Central Bank may in the carrying out of its functions under the Act issue directions to any licensee.

8. ROLE OF THE CENTRAL BANK

The Central Bank is conferred powers of supervision over mutual funds by the Act. The Central Bank may in carrying out its supervisory functions;

- (a) issue directions to licensees;
- (b) request information or documents from licensees;
- (c) revoke a mutual fund licence;
- (d) impose further conditions on a mutual fund 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 exempt fund.

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

9. EXEMPTIONS AND CONCESSIONS

Schedule 9 of the Act grants exemptions and concessions from the applicability of certain legislative enactments.

- ***Business Tax Act***

The Business Tax Act does not apply to licensed and exempt funds unless the licensed fund is structured as a company under the Companies (Special Licence) Act, in which case a tax rate of 1.5% will be applicable on the income of the fund.

No withholding tax is payable on dividends and/or interest payable.

- ***Immovable Property Transfer Restriction Act***

The restriction in Section 4 of the Immovable Property Transfer Restriction Act the effect of which requires a non Seychellois to seek sanction from the Ministry of National Development prior to leasing an immovable property in Seychelles does not apply to mutual funds.

² Section 6(9)

- **Social Security Act**
By virtue of the exemption granted by the Act a mutual fund is not liable to pay any social security contributions in respect of persons it employs in Seychelles.

- **Stamp Duty Act**
A mutual fund is exempt from the payment of stamp duty on all instruments evidencing transactions in respect of shares or debt obligations and on all transfers of other property to or by the fund.

It should be noted that the exemption does not extend to the transfer of or interest in immovable property in Seychelles.

- **Trades Tax Act**
The Act grants exemption from the payment of trades tax (customs duty) on all imported furniture and equipment (computers, communication equipment) used by the licensee, in its office in Seychelles, in connection with the business of operating a mutual fund.

Appendix 1 is a list of furniture and equipment to be exempted under the Act. It should be noted that some of the goods on the list may already attract a 0% tax rate.

- **Goods and Services Act**
The GST Act is not applicable to mutual funds in its entirety.
- **Immigration Decree**
The Act allows a mutual fund to employ expatriate employees up to 50% of its total number of employees. (See 10.5 for guide to recruitment of foreign workers)
- **Exchange Control Act**
The provisions of the Exchange Control Act do not apply to mutual funds.
- **Foreign Earnings Act**

The Foreign Earnings Act is not applicable to a licensed or exempt fund in its entirety. It therefore ensues that a fund earning foreign currency is entitled to retain 100% of its foreign exchange earnings.

10. ADMINISTRATIVE PROCEDURES WITH REGARDS TO SCHEDULE 9

10.1 Conditions for Duty Concession

10.1.1 A mutual fund must submit to the Central Bank, a list of office equipment, furniture and stationery requirements of its office.

10.1.2 The Central Bank shall approve a quota limit for each mutual fund based on the expected volume of activities and type of service offered following consultation with the mutual fund.

10.1.3 Orders in excess of the quota limit will only be considered for approval if justifiable reasons are provided to Central Bank.

10.1.4 An updated list of the office requirements must be lodged with the Central Bank on an annual basis before consideration for exemptions can be given.

10.1.5 Office equipment and furniture are replaceable when they have reached their economic useful life, are beyond reasonable repair or not meeting the quality standard desired by the mutual fund:

- Economic Useful Life means that the asset has fully depreciated and the depreciation method used is in line with Business Tax Act.
- Beyond Reasonable Repair means that the asset has had frequent breakdown and/or servicing during a month and actual costs of repair are substantial.

10.1.6 A mutual fund has to provide justification to Central Bank for replacement of office equipment, stationary and furniture, which have reached their economic useful lives, are beyond reasonable repair, their quality of output is not to the required standard and/or out of stock.

10.1.7 Disposal of office equipment, furniture have to be lodged with Central Bank and once approved, all tax liabilities must be paid before the asset is disposed of (see 6.3 for procedures).

A mutual fund has to maintain an asset register for all assets purchased

10.1.9 Central bank shall approve duty concession only if the goods are consigned to the Licensee and/or separate invoices and BOE are presented in the case of group orders.

NOTE

- i. A mutual fund shall comply with the provisions of the Trades Tax Act in relation to obtaining an Import Permit and other requirements set out by the Ministry of Finance in relation to importation of goods.
- ii. It is important to consult on tax/duty concessions prior to confirming an order, if in doubt
- iii. All tax-exempt items must be located in offices and/or premises and are subject to inspect by Central bank or Tax Division.

10.2 Processing of Goods for Duty Concession

10.2.1 A set of 5 (five) documents each containing the Bills of Entry (BOE), invoices, shipping documents and must be submitted to the Central Bank for "Endorsement" for Duty Exemption prior to presentation of document to Trades Tax Division. A full set of the BOE is kept at the Central Bank. The remaining 4 (four) copies are given to the mutual fund for processing at Trades Tax Custom Office at the Airport or New Port.

10.2.2 During clearance of goods, a designated officer of the mutual fund must be physically present and must ensure that the Custom Officer declares any short landing and/ or damage of goods.

10.2.3 When the goods enter the fund's premises after being cleared by Trades Tax Custom office, a designated officer must inspect the goods again and any items that have gone missing during transit should be reported to the Central Bank, immediately. Trades Tax shall apply on any missing items thereafter, and the fund will be liable.

10.2.4 After the Goods have been cleared and delivered to the fund's office, a copy of the Processed Trades Tax Bill of Entry and any variation order made by Trades Tax Division should be forwarded to the Central Bank by the next working day.

NOTE:

A fund is required to keep well documented and updated records of the items exempted from Taxes. These records should include inventory of fixed assets, stationery imported and goods disposed of, and must be available at all times for inspection. Tax will apply for any item unaccounted for.

10.3 Processing Disposal of Duty Concession Goods

As stated in 10.1.7, disposal of office equipment and furniture have to be lodged with the Central Bank and once approved, all tax liabilities must be paid before the asset is disposed of.

Mutual funds must observe the following guidelines:

- i. Submits their request for disposal to the Central Bank in typed format indicating the item, the quantity, the cost value, present market value, reasons for disposal, and manner in which they are going to dispose the item
- ii. The Central Bank will consider the application and may inspect the items to be disposed of in the process
- iii. If approval is being considered positively, the mutual fund must file the following before disposal:
 - Duty payable be settled with Tax Office
 - Copy of duty payment forwarded to Central Bank
 - Central Bank gives final approval

NOTE:

- i. A mutual fund must not destroy or disposed any office equipment, furniture, or stationery exempted from customs duty unless written approval is given by the Central Bank.

10.4 Payment of Business Tax

The tax payable by a licence holder in respect of its income shall be collected at source by Central Bank and remitted to Business Tax Division. (Pending final agreement with Business Tax)

10.5 Guide to Recruitment

10.5.1 Foreign worker should be recruited outside Seychelles.

10.5.2 The person making an application for a Gainful Occupation Permit (GOP) must undergo a compulsory Medical Examination. This should be done prior to entering into Seychelles. However, if the person is already in Seychelles, an appointment with the Occupational Health Unit of the Health Authority can be obtained for the person to undergo all relevant tests.

The medical fitness test is required to be submitted in the form contained in Appendix A. Other information required to be submitted are tests for the following:

- i. HB%
- ii. HIV Test
- iii. Hepatitis B Test

- iv. VDRL Test
- v. Urine – Routine and Microscopic Exam
- vi. X-ray chest PA view.

All of the original copies of laboratory and z-ray results must be submitted to the Occupational Health Unit to certify that the person has passed the medical fitness test.

A fee of SR 725 is payable to the Occupational Health Unit for processing and medical verifications.

10.5.3 The Central Bank must be informed of the employment of foreign workers 28 days prior to entry of the employee into Seychelles.

10.5.4 Request for foreign employment must be lodged to the Central Bank and upon approval; the following documents and information would be required.

- Medical fitness certificate presented in the format prescribed by the Ministry of Health, plus original test result of the following:
 - HIV, PPR, Hepatitis B, HB WBC DC, urine, stool & chest X-ray
- Contract & condition of employment unless defers from the standard conditions/contract
- Passport number, date of birth, nationality, marital status and date of arrival into Seychelles.
- Statistical information on employees (local and foreign)
- Signed G O P Application Form

10.5.5 In addition to the above, the fund should liaise with the Occupational Health Unit of the Health Authority in respect of the prospective employee to enter into Seychelles on the basis of the Medical fitness certificate presented. Based on Unit's recommendation, the Central Bank will extend approval for entry of the employee into Seychelles to the Immigration Division.

10.5.6 Notwithstanding the above, the mutual fund has to ensure that employees present themselves to the Occupational Health Unit of the Ministry of Health for a medical fitness test within one month of arrival into the country.

10.5.7 Please note that the issuance of a visa upon arrival of the employee does not automatically constitute residency in Seychelles. An application for a GOP should be made. Approval to reside in Seychelles during the period of employment is the prerogative of Immigration Division.

10.6 Application of Gainful Occupation Permit (GOP or Work Permit)

10.6.1 After the Health Authority has endorsed health clearance of the prospective employee, the mutual fund must submit the following document to the Central Bank for GOP concession as per Schedule 9 of the Mutual Fund and Hedge Fund Act, 2008.

- i. Health Clearance letter
- ii. 2 copies of employee's passport, (one copy shall be retained by the Central Bank)
- iii. 4 passport size photographs, (one shall be retained by the Central Bank)

- iv. A Copy of the mutual fund licence and other relevant document
- v. Sign GOP Application Form

10.6.2 Central Bank will then issue a formal letter to Immigration Division through the licensee whereby same letter should be forwarded to Immigration Division along with a set of documents as specified in par 9.6.1 above. The mutual fund shall submit to Immigration along with the documents above, a processing fee of SCR600.

10.6.3 Please note that employee can enter into Seychelles unless he/she is in possession of a copy of the GOP for presentation on his arrival to immigration officers.

10.6.4 A copy of the GOP should be forwarded to the Central Bank once approved by Immigration Division.

10.6.5 Same process is applied for Renewal of a GOP. Please note that the expired GOP certificate should be forwarded with the renewal application.

10.7 Surrender of Work Permit -Termination of Employment or End of Contract.

10.7.1 The Central Bank must be notified in writing of the termination of employment or end of contract of foreign employees.

10.7.2 The Work Permit of these employees must be surrendered to the Central Bank.

10.8 Social Security Contribution

A mutual fund must register with the Social Security Fund office situated at Oceangate House, Victoria. The Licensee must complete the SSF60 form. The Central Bank will after registration issue a letter to the Social Security Fund specifying the concession to be granted to the fund as per the Mutual Fund and Hedge Fund Act, 2008. A copy of the mutual fund licence must be forwarded to the Social Security Fund during application.

Appendix 1

List of Equipment and Furniture

Office Equipment

- Photocopier
- Fax Machine
- Table or Electric Emboss Seal
- Binding Machine
- Franking Machine
- Laminating Machine
- Shredders
- Guillotine/Trimmers
- Air-condition (1 per office) unless Office has Centralise air-condition
- Air Humidifier
- Telephone Set (Fixed)
- Heavy Duty Punch
- Heavy Duty Staplers

Security Equipment

- Security Camera
- Security lock and other office Security Devices

IT Equipment

- Personal Computers
- Laptop (senior Management use only)
- Printers
- Scanners
- Computer Servers
- Network Cables (CAT 5)
- Wireless Network Devices
- Network Switches (10/100/1000 MBPS)
- Network Routers (lease line digital Connection)
- Computer Peripheral such as diskette, CD, backup tapes, Keyboard, Screen
- CD/DVD Writers
- Modems

Conferencing Equipment

- TV, DVD
- Projector LCD/Overhead,
- Projector Screen,
- Video Camera/Recorder
- Video conferencing Equipment
- Small HI Set
- Carry Case for Above

Office Furniture

- Office Desk
- Office Chares
- Side Table
- Conference Table & Chairs
- Rubber Chair Mat
- Reception chair/table
- Filing Cabinet/Cupboards

- Office Storage Cupboard
- Desk end Pedestals
- Book shelves
- Rotary Filing units
- Calculators
- Desk Trays
- Date stamps and other office stamps
- Blinds/Curtain
- Carpets
- White Board
- Year Planner
- Flip Chart
- Advertising Panel stand and display units
- Literature/Brochure stand