



Guide to Investment Funds in Seychelles

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PREFACE

This is the First Edition of the Guide, which we have produced for the information of our clients and professional colleagues.

This Guide is divided into six parts and purports to give a wealth of information on the formation of Collective Investment Schemes or recognition of foreign Schemes in Seychelles:

- A. Classification
- B. Regulation & Compliance
- C. Authorisation of Global Business funds
- D. Distribution and Marketing
- E. Taxation
- F. Government Fees

Under the heading of Distribution and Marketing, we have dealt with such matters as banking facilities in Seychelles, custodians, accountants, registers and inspection, and other topics.

All references in this Guide to “dollars” or “\$” are to US dollars, and all references to “rupees” or “Rs” are to Seychelles rupees.

It is recognised that this Guide will not completely answer detailed questions which clients and their advisers may have. It is intended to provide a sketch of Seychelles’ legal and regulatory environment in relation to funds. The Guide is, therefore, designed as a starting-point for a more detailed and comprehensive discussion of the issues.

Whilst we have made every effort to ensure the accuracy of the statements made herein, we accept no liability for any errors. In all cases expert legal advice from a qualified practitioner of Seychelles law should be obtained.

Appleby
Victoria, Seychelles
June 2009

INTRODUCTION

Seychelles' statute law on mutual funds is contained in the Mutual Fund and Hedge Fund Act, 2008 (the "Act").

A mutual fund under the Act is a company, unit trust or partnership that collects and pools investor funds for collective investment purposes including hedge fund purposes or with the aim of spreading investment risks, and 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 and includes an umbrella fund whose equity interests are split or segregated into different sub-funds and hedge funds.

Under the Act, an 'equity interest' means a share, trust unit or partnership that carries an entitlement to participate in the profits or gains of the company, unit trust or partnership and is redeemable or repurchasable at the option of the investor before commencement of the winding up, termination of the company, unit trust or partnership (but does not include a debt).

The formation and operation of mutual fund companies are governed principally by the Companies Act 1972 in connection with the Companies (Special Licences) Act 2003 or the Protected Cell Companies Act 2003 or by the International Business Companies Act 1994, the formation and operation of unit trust funds are governed by the International Trust Act, 1994 and the trust deed by which they are established and the formation and operation of partnership funds are governed by the Limited Partnership Act 2003 and the partnership agreement.

The Act governs the exclusion, exemption and authorisation of investment funds and contains certain requirements for the formation of investment funds, their operation and the offering of shares, units or interests of investment funds.

A. CLASSIFICATION

LEGAL FORMS

Company Types	Company Categories
Companies limited by shares (refer to Annex 1 for the <i>Securities Regulations 2008 – Second Schedule CIS</i> constituted as a Company)	Company incorporated under the International Business Companies Act, 1994
	Company incorporated under the Companies Act 1972 in conjunction with the Companies (Special Licences) Act, 2003
Trust A unit trust registered in Seychelles under the International Trust Act 1994, or a similar unit trust registered in a recognized jurisdiction.	Where the trust deed shall be binding on the custodian and the CIS Manager
Partnership A limited partnership registered in Seychelles under the Limited Partnership Act 2003 or a similar partnership registered in a recognized jurisdiction.	
Any other legal entity prescribed by the Regulator	Company incorporated under the Companies Act 1972 in conjunction with the Companies (Special Licences) Act, 2003

B. REGULATION & COMPLIANCE

Any investment fund wishing to operate in or from Seychelles must obtain a fund licence in accordance with the Act.

A fund licence may be granted to a company incorporated in Seychelles or a recognized jurisdiction, including a company incorporated under the Companies Act 1972 in connection with the Companies (Special Licence) Act 2003 or the Protected Cell Companies Act 2003 or by the International Business Companies Act 1994. A fund licence may also be granted to a limited partnership registered in Seychelles under the Limited Partnership Act 2003 or a similar partnership registered in a recognized jurisdiction or a unit trust registered in Seychelles under the International Trust Act 1994, or a similar unit trust registered in a recognized jurisdiction.

Professional Funds

An investment fund may apply for an exemption from authorisation if it is open only to “professional investors” (as defined below) and in respect of which the initial minimum investment per investor is not less than US\$100,000 or its equivalent in any other convertible currency.

A professional investor is defined in the Act to mean 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;
- (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 consenting to be treated as a professional investor;
- (c) A bank licensed under the Financial Institutions act, 2004 or under the corresponding law of a recognized jurisdiction;
- (d) A mutual fund licensed under the Act or under the corresponding law of a recognized 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 recognized jurisdiction.

Private Fund

A mutual fund is a private fund if the constitutional documents specify that the number of participants is 50 or less or if an invitation to the public to subscribe for or purchase equity interest in the mutual fund is prohibited and which further provides that an invitation to the public shall not have been made and which is designated as a private fund by regulations.

Public Fund

A mutual fund is a public fund if it is not a private fund or a professional fund.

Recognition of Foreign Schemes

Foreign funds, if already licensed in a Recognized Jurisdiction (as defined in the Act) and if managed by a Seychelles-licensed administrator and listed on a stock exchange in a Recognized Jurisdiction (or where the minimum investment by each investor is not less than US\$100,000), may be granted a Seychelles licence exemption.

It is also possible to constitute an umbrella fund under each of the foregoing structures, allowing investors to switch their investment from one sub-fund to another without redeeming shares or units.

Under the current flexible approach a Seychelles fund can also be set up as sub-fund under a non-Seychelles based umbrella fund, or as a feeder fund for a non-Seychelles based master fund.

FUND ADMINISTRATORS, CUSTODIANS & AUDITORS

The current regulatory regime also requires that funds, subject to the prior approval of the Authority, appoint local and duly licensed fund administrators custodians and auditors.

Fund administrators: Under the present regulatory framework, funds may be administered in or from Seychelles by a Seychelles licensed fund administrator or outside of Seychelles by an approved foreign administrator.

Fund administrators, subject to the prior approval of the Authority and to such terms and conditions the Authority may deem appropriate, may be appointed by c funds, to provide administrative services and details of all fund administrators licensed by the Authority, or granted exemptions by the Authority will be kept in registers maintained by the Authority (§11(9)).

Administration services, under the Act, are restricted to services with respect to the operations and administrative affairs of mutual funds including accounting, valuation or reporting services and/or the provision of the principal office of a mutual fund. It authorises the holder of the licence to carry on mutual fund administration in respect of an unlimited number of mutual funds, but this licence may specify a restricted set of mutual funds for which the licence holder may provide mutual fund administration (§9).

When seeking the approval of the Authority, the applicant must provide details specifying the administrative services that the fund administrator will provide, certified true copies of the constitutional documents of the applicant, the fees specified in the Act and any other information required by the Authority (§10).

A fund administrator may obtain ‘approved foreign administrator’ status by applying to the Authority for an exemption from the requirement to be licensed as a Seychelles fund administrator.

Custodians: The assets of the fund cannot not be held for safekeeping by a person other than a financial institution or person, inside or outside Seychelles as approved by the Authority or licensed as a Seychelles bank or as a trustee service provider under the International corporate Service Providers Act, 2003. Such custodian must be independent from the fund administrator. Every fund shall appoint and shall at all times have a custodian.

The responsibility of the custodian is to take the assets of the scheme into its custody for safe-keeping and hold and deal with the assets. The custodian shall not exercise any function or activity in relation to a scheme, other than that for which it has been licensed.

Auditors: Under the present regulatory framework, funds, subject to the prior approval of the Authority, are required to appoint auditors in accordance with the law (§6(6)). The Authority will not approve an audit firm unless it is satisfied that the audit firm has adequate experience, expertise and resources to carryout such an audit. The Authority may require that the auditor of a scheme submits such additional information in relation to his audit as the Authority considers necessary.

A licensed fund incorporated under the Companies Act 1972 may appoint a foreign auditor (with approval from the Authority) (§6(7)).

Company Secretary

Companies formed under The Companies Ordinance, 1972 are required to have a corporate secretary, who may be an individual, a company or body corporate, or a firm (as from time to time constituted). Companies formed under the International Business Companies Act, 1994 are not required to have a company secretary.

Our associated licensed management company, Appleby Corporate Services (Seychelles) Limited, offers corporate and fund administrative services.

C. AUTHORISATION OF FUNDS

GENERAL REQUIREMENTS

The Authority may authorise a fund provided a complete application is received.

The documents accompanying an application form for authorisation normally include (§3(3)):

- a current or latest draft offering document in relation to the fund;
- certified true copies of the constitutional documents or such other proof as may be satisfactory to the Authority that the applicant is lawfully constituted under the laws of Seychelles or a recognised jurisdiction;
- personal questionnaire for each director, trustee or general partner (as relevant) unless the equity interests in the applicant or its controlling shareholder or beneficial owner are listed on a stock exchange of a recognised jurisdiction;
- written consent of the proposed fund administrator (Seychelles licensed administrator or approved foreign administrator) stating its consent to act and the name of the fund;
- written consent of the proposed auditor stating its consent to act as auditor of the fund and the name of the fund;
- any other supporting information or documents as the Authority may require for the purpose of determining the application; and
- application fee.

Without limiting the Authority's discretion in respect of granting a licence, the Authority may consider any of the following in dealing with an application:

- Whether the applicant is a fit and proper person;
- Whether each operator, promoter and administrator of the applicant is a fit and proper person;
- Whether the administration of the fund will be undertaken by persons who have sufficient expertise to administer the fund;
- Whether the business of the fund and any offer of equity interests in it will be carried out in a proper manner;
- Whether the fund is in compliance with the Act;
- Whether the fund is fit and proper to be a licensed fund;
- That the custodian of the fund is a licence bank under the Financial Institutions Act, 2004 or a licensed trustee services provider under the International Corporate Service Providers Act, 2003 or such other financial institution or person in or outside Seychelles as may be approved by the Authority;
- That the fund's fund administrator is separate from and independent of the custodian; and
- That the investors of the fund are entitled to have their equity interests redeemed or purchased by the fund in accordance with the constitutional documents of the fund (§3(5))

The Act further outlines further qualities of such person to be 'fit and proper' such as their educational background, knowledge and understanding of the fund's legal and professional obligations, soundness of judgement and diligence as well as any evidence that a person has committed any offences involving dishonesty or violence (§3(6)).

Every licensed fund shall:

- Maintain adequate accounting records and prepare financial statements in respect of each financial year in accordance with generally accepted accounting principles;
- Make such accounting records and financial statements available for examination by the Authority or any person duly authorised by the Authority (§6(4));
- Have its accounts audited annually by an auditor (§6(6)) although a licensed fund incorporated under the Companies Act 1972 may appoint a foreign auditor (with approval from the Authority) (§6(7));
- Send its audited accounts in respect of each financial year to the Authority within four months of the end of that financial year or within such extension of that period as the Authority may allow (§6(8));
- At all times know and be able to identify its investors and be able to identify the beneficial owners of its investors which are companies or other entities (§6(9));

FUND REGISTERS

The Authority is required to keep separate registers for licensed private funds, licensed public funds and licensed professional funds and exempt foreign funds (§4(1)).

Each register in relation to public, private and professional funds will contain (§4(2)):

- The name of the fund;
- Registered office or name and address of the fund's agent for service with foreign registered office (where applicable);
- The name and address of each director (where fund is a company), each trustee (where the fund is a trust) and each general partner (where the fund is a partnership);
- The date of commencement of the fund licence; and
- The status of the fund, including whether the fund has a current fund licence or not and the date of its cancellation (where applicable).

Each register in relation to an exempt foreign fund will contain (§4(3)):

- The name of each fund;
- The address of the fund's registered address overseas and its principal place of business overseas;
- the jurisdiction in which the fund holds a licence or other required authorisation (as applicable) and if the Authority is aware, the date of its cancellation (where applicable); and
- The status of the fund, including whether the fund has any current approvals for exemptions from the Act and the date of the cancellation of such exemptions (where applicable).

ADDITIONAL REQUIREMENTS FOR PUBLIC FUNDS

Every licensed public fund shall have not less than (§6(2)):

- Two natural persons as directors (company which is resident in or outside Seychelles);
- Two natural persons as general partners or two natural persons as directors of one or more corporate general partners (partnership which is resident in or outside Seychelles); or
- Two natural persons as trustees or two natural persons as directors of corporate trustees (unit trust which is resident in our outside Seychelles).
- Further, a licensed public fund must adopt an offering document, which is approved by the Authority and must submit a draft for approval and registration prior to each new offering, including when there is any material change to the previously approved draft.

Every licensed public fund shall ensure that copies of its annual audited financial statements are provided to or made available for examination by all its investors (§6(5)).

ADDITIONAL REQUIREMENTS FOR FOREIGN FUNDS

The Authority may, on application, allow funds established in a recognised jurisdiction (§3(2)(a)), such jurisdictions are listed in the Act² to operate from and be administered from Seychelles but not make a formal licence application. The foreign fund must submit and satisfy the following:

- Confirmation that the foreign fund is to be administered by a Seychelles licensed fund administrator;
- Confirmation of existence as a foreign fund, including documentary evidence of good standing and current fund licence (or similar) both in a recognised jurisdiction;
- The per investor initial minimum investment is not less than US\$100,000;
- A written statement including the name, address of registered office overseas and address of principal place of business overseas; and
- Copies of the foreign funds constitution (company – a certificate of incorporation and memorandum and articles of association or equivalent, unit trust – trust deed or equivalent and limited partnership – partnership agreement or equivalent); and
- Exemption application fee.

The Act has the following additional requirements for a foreign fund;

- Must have an agent for service in Seychelles, which agent shall be a person licensed under the International Corporate Service Providers Act, 2003 or under the Financial Institutions Act, 2004 or otherwise approved in writing by the Authority (§6(1)) and must notify the Authority of any change of agent within fourteen days of such change;

The reasons for this exemption are to prevent the foreign fund from having to be regulated heavily under two different jurisdictions but ensures that there is no compromise in the level of regulation overall. There are also annual fees due and a requirement for annual compliance certificates.

Provided all the above is to the satisfaction of the Authority, the foreign fund will be exempt from the fund licensing requirements under Seychelles law, but will be able to operate in and from this jurisdiction as an exempt foreign fund.

²Refer to Annex 1 for the complete list of recognized jurisdiction under the Act, Schedule 6

D. DISTRIBUTION & MARKETING

PROSPECTUS

A licensed public fund which intends to make an invitation to the public, or any section thereof or to make a material change to a previously approved offering document shall file the proposed offering document (or amended document) for approval by the Authority (§7(1)).

The following is an indication of the minimum content requirement of any prospectus³:

- General Information concerning the fund indicating its principal objectives and policy with the particulars of any investment restrictions or risk factors involved;
- Name and registered and or principal address of the fund, whether in Seychelles or otherwise;
- The jurisdiction and date of formation of the fund, with an indication of its duration (if limited)

- A list of the fund’s constitutional documents and an address in Seychelles where they can be inspected free of charge or purchased from the fund;
- Names and registered addresses of the persons involved with the fund, including but not limited to the directors/trustees/partners of the fund, fund administrator, investment managers, agents, trading advisors, custodians and auditors.

³Refer to Annex 3] for the complete list of requirements for a proposal offering document under the Act, section 7(2)

E. TAXATION

Funds are exempt from all Seychelles taxation, except for companies incorporated under the Companies Ordinance 1972 and licensed under the Companies (Special Licence) Act, 2003, as such companies are tax resident in Seychelles to allow access to the various double taxation agreements to which Seychelles is a party.

F. GOVERNMENT FEES

The following government fees are payable to the Authority in advance:

- Application Processing Fee :
 - o Private fund licence - US\$500
 - o Public fund licence – US\$1,000
 - o Professional fund licence - \$750
 - o Exemption application for an exempt foreign fund from the requirement to obtain a fund licence – US\$1,500
- Annual Licence Fee:
 - o Private fund licence - US\$500
 - o Public fund licence – US\$1,000
 - o Professional fund licence – US\$750
 - o Exemption renewal for an exempt foreign fund from the requirement to obtain a fund licence – US\$1,500

These do not include professional fees or those that may be charged by any third party or service provider.

PROCESSING TIME

The time-frame for incorporation and authorisation of funds in Seychelles is 2-4 weeks.

ANNEX 1

SCHEDULE 6 – THE MUTUAL FUND AND HEDGE FUND ACT, 2008 RECOGNISED JURISDICTIONS

Austria
Australia
Belgium
Bahamas
Bahrain
Bermuda
Bermuda Virgin Islands
Canada
Cayman Islands
Cyprus
Denmark
France
Germany
Gibraltar
Guernsey
Holland
Hong Kong
Isle of Man
Ireland
Japan
Jersey
Luxembourg
Malaysia (including Labuan)
Mauritius
New Zealand
Singapore
Switzerland
United Arab Emirates
United Kingdom
United States of America

ANNEX 2

DOUBLE TAXATION AGREEMENTS

DT Agreement (ratified) with:	Date of entry into force:
Barbados	28th February 2008
Botswana	22nd June 2005
China	17th January 2000
Cyprus	2nd November 2006
Indonesia	16th May 2000
Malaysia	10th July 2006
Mauritius	22nd June 2005
Oman	20th January 2004
South Africa	3rd July 2002
Thailand	14th April 2006
U.A.E.	23rd April 2007
Vietnam	7th July 2006
DT Agreement (not ratified) with:	Date of entry into force:
Belgium	27th April 2006
Qatar	1st July 2006
Zimbabwe	6th August 2002

ANNEX 3

SECTION SEVEN – THE MUTUAL FUND AND HEDGE FUND ACT, 2008 OFFERING DOCUMENT REQUIREMENTS – PUBLIC FUND

7.(1) Without prejudice to the provisions of section 3(3)(a), a licensed public fund which intends at any time–

- (a) to make an invitation to the public or any section thereof to subscribe for or purchase equity interests in the mutual funds; or
- (b) to make a material change to an offering document previously approved by the Authority,

shall, prior to making such an invitation or material change as the case may be, file the proposed offering document or amended document as the case may be, with the Authority for approval and, except for any offering document filed with an initial application for a public fund licence, pay to the Authority the applicable fee as set out in Schedule 1.

(2) Every offering document published under subsection (1) shall contain –

- (a) the name and registered address of the fund, the address of the fund’s principal office in Seychelles and, where applicable, the fund’s principal office outside of Seychelles;
- (b) the jurisdiction and date of formation of the fund, with an indication of its duration if limited;
- (c) particulars of the fund’s investment objectives and policy;
- (d) particulars of any investment restrictions;
- (e) particulars of the risk factors of the fund;
- (f) if any area of investment of the fund may reasonably be considered to be a high risk area, a warning to that effect, and a description of the risks involved;
- (g) the names and registered addresses of the following persons–
 - (i) the directors or resident trustee or general partner of the fund, as the case may be;
 - (ii) the fund administrator;
 - (iii) the investment or trading manager or managers;
 - (iv) each agent, distributor or underwriter if any, authorized to process or receive applications to buy an equity interest in the fund;
 - (v) each investment or trading advisor, if any;
 - (vi) custodian;
 - (viii) the auditors;
- (h) if the fund is listed or proposed to be listed, the relevant stock exchange;
 - (i) the following characteristics of the equity interests in the fund–
 - (i) maximum and minimum aggregate amount offering;
 - (ii) minimum investment, if any, and maximum investment, if any, for each investor;
 - (iii) description of the different types of equity interests, including their currency of denomination and rights;
 - (iv) frequency of valuation;
 - (v) redemption timings and requirements;
- (j) the procedure for subscribing for and redeeming of equity interests;
- (k) the circumstances in which redemption of equity may be suspended;
- (l) The distribution policy and the approximate dates on which distributions, if any, will be paid;
- (m) the amounts of all fees and charges payable by an investor, including charges levied on subscription and redemption and, in the case of umbrella funds, switching;
- (n) the financial year of the fund;

- (o) particulars of what reports and or statements will be sent to investors and when;
- (p) a warning to the effect that the value of fund investments and the income from them, where income is distributed, may go down as well as up;
- (q) a recommendation to the effect that a prospective investor obtains expert and independent legal advice and taxation and investment advice in relation to the contemplated investment and on the content of the offering document before applying to acquire an equity interested in the fund;
- (r) a list of the fund's constitutional documents and an address in Seychelles where they can be inspected free of charge or purchased from the fund;
- (s) the date of publication of the offering document;
- (t) a statement to the effect that the directors or trustees or general psrtner, as the case may be, of the fund, accept that to the best of their knowledge, information and belief, the information contained in the offering document is accurate as at the date of application.

(3) Where in an offering document any of the disclosures required under section 7(2) cease to be accurate in a material particular, the licensed fund shall within 21 days of the change occurring publish an amendment to the offering document giving accurate disclosures and provide a copy of such amendment to each of its investors and to the Authority.

For more specific advice on Investment Funds in Seychelles, we invite you to contact:

Malcolm Moller
Managing Partner – Mauritius and Seychelles
+230 203 4301
mmoller@applebyglobal.com

Appleby is the leading provider of offshore legal, fiduciary and administration services. With an unparalleled presence in the key offshore jurisdictions of Bermuda, the British Virgin Islands, the Cayman Islands, Isle of Man, Jersey, Mauritius and the Seychelles, the group offers advice on offshore law. We also have offices in the international financial centres of London, Hong Kong, Zurich and Bahrain.

Over 800 lawyers and professional specialists deliver sophisticated, specialised services, primarily in the areas of Corporate and Commercial; Litigation and Insolvency; Private Client and Trusts; and Property. We advise global public and private companies, financial institutions, and high net worth individuals, working with them and their advisers to achieve practical solutions, whether in a single location or across multiple jurisdictions.

This publication is intended only to provide a summary of the subject matter covered. It does not purport to be comprehensive or to provide legal advice. No person should act in reliance on any statement contained in this publication without first obtaining specific professional advice.

If this guide has been sent to you, and you would like to update your details or be removed from our marketing database, please contact the marketing department at Appleby or e-mail info@applebyglobal.com

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