



INDUSTRY CONSULTATION

CHANGES TO THE CODE FOR INTERNATIONAL CORPORATE SERVICE PROVIDERS

Date: 6TH October 2022

The Financial Service Authority (FSA) is proposing the following changes to the Code for International Corporate Service Providers. This document is for consultation with stakeholders before finalization. The proposed changes to the Code for ICSPs primarily reflect the policy changes brought about following the enactment of the new Trusts Act, 2021, the ICSP (Amendment) Act, 2021, the ICSP (Amendment of Schedule) Regulations, 2022 and the Business Tax (Amendment of Schedules) Regulations, 2021 (i.e. S.I. 108 of 2021).

The Code is also being revised to provide clarity on the expected level of monitoring by licensees vis-à-vis the accounting records being kept by specified entities and foundations under their administration.

Deadline: 4th November, 2022.

Code for International Corporate Service Providers



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1. Introduction

This Code, which must be read in conjunction with the International Corporate Service Providers Act, 2003 ("the Act"), is issued by the Financial Services Authority ("the Authority") in accordance with section 13 of the Act and shall be effective as from 1st January 2013.

The Code clarifies the position of the Authority on certain provisions of the Act in order to assist licensees to comply with such provisions and hence, facilitating the supervisory process of the Authority. The Code also provides guidance to persons applying for a licence under the Act.

It is important to note that this Code, which may be amended from time to time by the Authority, have the full force of law and must, therefore, be complied with by all licensees.

2. Definition and Scope of the Act

Any person providing International Corporate Services, Trustee Services and Foundation Services must be licensed by the Authority under the Act unless that person is exempted under section 3(1)(ii) of the Act. Failure to carry on any such services without a valid licence constitutes an offence and is liable on conviction to a fine not exceeding SR300,000.

2.1 International Corporate Services

"International Corporate Services" is defined under the Act as the provision of any of the following services in or from within Seychelles:

- (a) the formation (including continuation), management or administration of a specified entity
- (b) serving as a registered agent, director or other officer of a specified entity
- (c) the provision of a registered office, place of business or address for a specified entity
- (d) serving as a nominee shareholder in a specified entity
- (e) such other services as may be prescribed

A specified entity includes:

- an international business company
- a company issued with a special licence under the Companies (Special Licences) Act
- a protected cell company
- a limited partnership established under the Limited Partnerships Act
- such other body corporate as may be prescribed

2.2 Trustee Services

"Trustee Services" is defined under the Act as the provision of any of the following services in or from within Seychelles:

- (a) services connected with the formation, registration or administration of a trust
- (b) serving as a resident trustee of a trust
- (c) such other services as may be prescribed

2.3 Foundation services

"Foundation services" is defined under the Act as the provision of any of the following services in or from within Seychelles:

- (a) services connected with the formation, registration (including continuation) or administration of a foundation
- (b) serving as a registered agent, councillor of a foundation
- (c) the provision of a registered office of a foundation
- (d) the provision of councillor or protector for Seychelles foundations
- (e) such other services as may be prescribed

Note that:

- the Act only applies where the services are rendered in or from within Seychelles, regardless of whether any remuneration is received by the person. Therefore, no person resident or registered in Seychelles can provide the above-mentioned services unless that person is licensed or is exempted from the licensing requirement under the Act.
- the Act refers to the provision of “directorship services”. As such, a person resident in Seychelles does not require a licence to be a director of an international business company unless that person is providing directorship services in a professional capacity (i.e. is holding himself/itself out, directly or indirectly, as being available to provide directorship services to international business companies) rather than in a personal capacity.

2.4 Persons who do not require a licence under the Act

Due to the nature of the business involved, section 3(1)(ii) of the Act exempts the following persons from the licensing requirement of the Act:

- (a) an employee or director of a licensee who is fit and proper acting as a:
 - director, nominee shareholder or an officer for a specified entity, or
 - councillor of a foundation
- (b) an international business company, which is wholly owned by a licensee, acting as a director, nominee shareholder or an officer for a specified entity
- (c) a natural person appointed as a director of a company holding a special licence under the Companies (Special Licences) Act unless the Authority informs in writing that it does not approve the individual serving in that capacity.

3. Application for a licence

Application for a licence under the Act must be made to the Authority by companies incorporated under the Companies Ordinance, 1972. For application purposes, the Authority will not require the applicant to be incorporated, (i.e. the Authority will accept copies of the draft Memorandum and Articles of Association of the proposed company). However, if the Authority approves the application, the company must be incorporated before the licence is issued.

A company may apply for and hold different licences under the Act. However, the Authority notes that there may be a preference to hold each of the licences under a different company. Given that the Authority does not allow for sharing of “fit and proper” individuals among licensees (except in the case of a Managed Service Provider), each company will be required to employ its own “fit and proper” individuals unless:

- (a) the companies have similar directors, shareholders and beneficial owners,

- (b) the companies operate within the same business premise, and a company does not hold the same licence as that of another company, at the same time.¹

3.1 Application Documents

An application for a licence under the Act must comprise of:

- A covering letter
- A completed Application Form
- Certified true copies (or draft copies in case the applicant is not yet incorporated) of the constitutional documents of the applicant proving the legal existence of the entity (i.e. Certificate of Incorporation, Memorandum and Articles of Association of the company)
- Certified true copies of the constitutional documents² of each non-individual shareholder of the applicant proving the legal existence of the shareholder.
- Certified true copies of audited accounts for the past two years (if any) of each non-individual shareholder
- Questionnaire Form for each individual shareholder and beneficial owner of the applicant
- Personal Questionnaire Forms completed by each director and member of managerial staff of the applicant
- A detailed ownership structure of the applicant
- A detailed business plan
- Copy of the Client Agreement or Terms of Business
- Compliance and Procedures Manual with regards to the Act
- Compliance and Procedures Manual with regards to the Anti-Money Laundering and Countering the Financing of Terrorism Act³
- Name reservation certificate from the Registrar of Companies (if the applicant has not yet been incorporated)
- The application fee (i.e. US\$ 400)

Note: An application will not be processed unless the application fee has been paid to the Authority.

3.2 Assessment of application by the Authority

Upon receipt of the application documents mentioned above, the Authority will assess each application in the following respective order:

(a) Assessment of economic benefits

In the first stage, the Authority evaluates the economic benefit that the applicant will bring to the Seychelles economy, if licensed, taking into account both direct and indirect benefits.

(b) Assessment of “fit and proper”

¹ For example, if a set up comprises of two companies, A Limited and B Limited, holding an International Corporate Services licence and a Foundation Services licence respectively, A Limited cannot at the same time hold a Foundation Services licence or B Limited cannot at the same time hold an International Corporate Services licence. Nor, a new company having similar directors, shareholders and beneficial owners can apply for the aforementioned licences. However, A Limited or B limited or a new company (having similar directors, shareholders and beneficial owners) may apply for and hold a Trustee Services licence

² The constitutional documents required to prove the legal existence of non-individual shareholders will differ depending on the type of shareholder.

³ Note that reference should also be made to the relevant Guidelines issued by the Seychelles’ Authorities.

If the Authority is satisfied with the level of economic benefits, it will then assess whether:

- each director and member of the managerial staff is “fit and proper”
- the financial resources of the applicant are adequate for the carrying on of the business in respect of which the licence is sought
- each person having an ownership interest in the applicant is of satisfactory repute and financial standing; and
- the issuing of the licence is not against the public interest.

In determining whether a director or member of the managerial staff is “fit and proper”, the Authority will apply all the criteria set forth in the Code of Practice under Schedule 2 of the Act.

(c) Fulfilment of other legal requirements

If the “fit and proper” requirement is found to be satisfactory, the Authority will verify whether all other requirements of the Act, any code, directive or guideline are met by the applicant.

3.3 Request for further information by the Authority

During the application process, the Authority may liaise with the applicant should it require any further documents or information to be submitted or any clarifications to be provided in relation to its application. Should the applicant fail to respond to the Authority’s request for further information within a reasonable timeframe, the Authority will notify the applicant of its intention to reject the application within 10 working days from the date of issue of the notice.

3.4 Timeframe for the Authority to reach a decision

The Act does not provide a time limit within which the Authority must reach a decision in respect of an application. In practice, the Authority always seeks to deal as promptly as possible with each application. The timeframe required to complete initial enquiries may vary, depending on the nature of the issues and the promptness in obtaining any additional information from the applicant. Generally, the Authority would not expect an application to remain outstanding for a period of greater than 3 months.

3.5 Decision of the Authority

If the Authority is satisfied that the applicant has met all the requirements referred to in 3.2, a letter of approval will be issued to the application. In cases where the applicant fails to satisfy the application requirements, the Authority will send a written notification to the applicant of that fact and the reasons therefor.

Note: The Authority may decline an application where a person submits to the Authority information he knows or should reasonably know is false or misleading and in cases where a licence has been issued, the Authority may revoke a licence.

3.6 Visit of proposed business premise

A visit to the proposed business premise of the applicant will be scheduled and undertaken by the Authority following the issue of the letter of approval of the application. At least one individual who has been found “fit and proper” in the application must be present at the proposed business premise during the visit.

The Authority will verify amongst other things, the office set up, storage facilities, IT infrastructure and backup systems.

Note: The licensee must notify the Authority of its intention to change the business premise or to acquire additional business premises at least 5 working days prior to the event. The licensee must submit a certified true copy of its notice of situation duly registered by the Registrar of Companies to effect the change in its principal business premise on the Registrar's records.

4. Issue of licence

Where the Authority is satisfied with the proposed business premise of the applicant, the licence will be issued upon payment of the annual licence fee. A licence issued under the Act is valid unless it is suspended or revoked by the Authority and may be subject to any conditions as deemed fit by the Authority.

The annual licence fee is set out in Part 2 of Schedule 3 as follows:

- International Corporate Services licence: US\$2,500
- Trustee Services licence: US\$2,500
- Foundation Services licence: US\$2,500

However, in cases where a licensee holds all 3 licenses mentioned above, the total annual licence fee payable is US\$6,000.

Note that the Act provides different annual licence fees for Managed Service Providers as follows:

- International Corporate Service licence: US\$7,500
- Foundation Services licence: US\$7,500

However, in cases where a Managed Service Provider holds both licenses mentioned above, the total annual licence fee payable is US\$10,000.

Depending at which period of a particular year a license is first issued, a pro-rated fee shall be paid by the company to the Authority as its annual licence fee. The first annual licence fee payable is as follows:

- First Quarter: Full annual licence fee is payable
- Second Quarter: 75% of the annual licence fee
- Third Quarter: 50% of the annual licence fee
- Fourth Quarter: 25% of the annual licence fee

Licence	Pro-rated Fee per Quarter (USD)							
	Jan-Mar	% Amount	Apr-Jun	% Amount	Jul-Sep	% Amount	Oct-Dec	% Amount
Fully Fledged Licensee(s)								
International Corporate Services	2,500	100%	1,875	75%	1,250	50%	625	25%
Trustee Services	2,500	100%	1,875	75%	1,250	50%	625	25%
Foundation Services	2,500	100%	1,875	75%	1,250	50%	625	25%
Holds an ICS, ITS and FS Licence	6,000	100%	4,500	75%	3,000	50%	1,500	25%
Managed Service Provider								

International Corporate Services	7,500	100%	5,625	75%	3,750	50%	1,875	25%
Foundation Services	7,500	100%	5,625	75%	3,750	50%	1,875	25%
Holds an ICS and FS Licence	10,000	100%	7,500	75%	5,000	50%	2,500	25%

If the applicant fails to make payment for the annual licence fee within 10 working days (or such other longer timeframe as may be approved in writing by the Authority) from the date of issue of the letter of approval referred to in 3.5 without a valid reason, the Authority may reject the application.

5. Conditions to the licence

Section 3(6) of the Act provides the Authority with the power to amend any conditions of the licence or impose additional conditions to the licence at any time, as may deem fit by the Authority. Failure to adhere to the conditions specified in the licence may lead to the suspension or revocation of the licence.

6. Display of licence

The licence must be on display wherever the licensee conducts business in Seychelles. If there is more than one place of business, then the licence should be displayed at the registered or principal office and a copy of the licence displayed at other premises.

7. Payment of annual licence fee

The Act requires every licensee to submit payment of the annual licence fee and a completed Compliance Form (as may be approved by the Authority) in January of each year. For clarification purposes, note that payment of the annual licence fee must be accompanied by the completed Compliance Form.

Should a licensee fail to pay the annual licence fee in full and submit the Compliance Form on or before 31st January in any year, a penalty fee equivalent to 50% of the annual licence fee will be applied on the licensee for each month or part thereof during which the annual licence fee and any penalty fee remains unpaid.

For the avoidance of doubt, in cases where a company holds all three licences or both licences (in the case of a Managed Service Provider) the penalty will be applied on the annual licence fee itself (i.e. on US\$2,500 or US\$7,500 respectively).

If a licensee fails to pay the annual fee and any accrued penalty fee by 31st March of that year, the Authority will initiate the revocation process of the licence as provided for in section 15 of the Act.

Note: In December of every year, the Authority will send a reminder to every licensee regarding the payment of the annual licence fee and submission of the Compliance Form. The reminder will be sent via the email address of every licensee. Whilst the Authority is willing to assist licensees by issuing the above reminders, the responsibility of complying with the law rests on the licensee.

8. Minimum paid-up share capital requirement

A licensee is required to have and maintain a fully paid-up share capital of:

- not less than SR150,000 where the licensee holds an international corporate services licence
- not less than SR200,000 where the licensee holds a foundation services licence
- not less than SR250,000 where the licensee holds a trustee services licence

Where a licensee holds more than one licence under the Act, the Authority will accept the minimum paid-up share capital to be the higher applicable amount of the licences being held. For example, if a licensee holds all three licences, the Authority will accept SR250,000 to be the minimum paid-up share capital.

9. Appointment and departure of directors and members of managerial staff

A licensee must give the Authority 28 days' notice in advance of the proposed appointment or departure of a director or member of managerial staff.

A notice relating to an appointment must be accompanied by a covering letter from the licensee, a completed Personal Questionnaire and other relevant documents. Upon receipt of the documents, the Authority will determine whether the proposed director or managerial staff is "fit and proper" to act in such capacity and shall inform the licensee of its determination. Note that as part of the determination process, the Authority may require the individual to submit further information, provide further clarifications or attend an interview set up by the Authority .

The licensee may only proceed with the appointment subject to the receipt of the written approval of the Authority or the Authority not objecting to the appointment within 28 days from the date of submission of the notice of appointment.

Only in special circumstances, a notice relating to a departure may be given after the event and must include the reasons for the departure. For example, in cases of an immediate departure or dismissal. However, such notices must be submitted to the Authority no later than 2 working days after the event.

10. Change of shareholder and beneficial owner

A licensee must give the Authority prior notice in writing of any changes relating to the shareholding of a majority (i.e. at least 50%) of the issued shares of the licensee, or a change in the beneficial ownership of such shares.

The licensee may only proceed with the change referred to above subject to the receipt of the written approval of the Authority or the Authority not objecting in writing to the appointment within 28 days from the date of submission of the notice.

However, where there is a change in the shareholding of a minority (i.e. less than 50%) of the issued shares of the licensee or a change in the beneficial ownership of such shares, the licensee must notify the Authority within 7 days from the date of such change happening.

The notices referred to above must be accompanied by the relevant due diligence documents. That is, in the case of an individual, a Personal Questionnaire Form and in the case of a non-individual, certified true copies of its constitutional documents proving its legal existence.

11. Change of Name of Licensee

In the event that a licensee has the intention to change its name, the licensee must notify the Authority at least 5 working days prior to the event. The licensee must submit its name reservation certificate from the Registrar of Companies to the Authority for approval.

12. Registers kept by the Authority

The Authority maintains separate registers for International Corporate Service Providers, Trustee Service Providers and Foundation Service Providers. Each register contains the name, address of the business premise, registered address, the date that the licence was issued, the conditions attached to a licence and the fact of any suspension of the licence.

The registers are open to the public for inspection during office hours. In addition to the registers, the name and contact details of all licensees are listed on the Authority's website (www.fsaseychelles.sc).

13. Duties of licensees

13.1 General Duties

Section 8 of the Act provides for the duties of licensees which amongst other things include the maintenance of books, records and documents relating to the licensee's business and its clients. The Act requires monies or other assets that a licensee holds for or on behalf of any entity must be so designated and clearly identified as client funds. Client funds which are held for more than 30 days must be kept separate from that of the licensee's own funds (including any office bank account maintained by it) in an account designated as a client account unless the relevant entity instructs otherwise in writing.

13.2 Ensuring compliance with certain record-keeping obligations by specified entities and foundations

A licensee shall:

- (a) monitor compliance by specified entities and foundations, with "record-keeping requirements";
- (b) upon detection of non-compliance with the record-keeping requirements, immediately advise the specified entity or foundation of such breach and request that the breach be remedied within 30 days from the date of issue of the notice (the licensee must be able to provide proof of compliance with this requirement); and
- (c) where –
 - (i) a specified entity or foundation fails to comply with the notice under paragraph (b), the licensee shall inform the Authority or Registrar in writing as follows:
 - (A) where the failure to comply with the notice occurs in January, February or March, the licensee shall inform the Authority or Registrar in April of that year;
 - (B) where the failure to comply with the notice occurs in April, May or June, the licensee shall inform the Authority or Registrar in July of that year;
 - (C) where the failure to comply with the notice occurs in July, August or September, the licensee shall inform the Authority or Registrar in October of that year;

(D) where the failure to comply with the notice occurs in October, November or December, the licensee shall inform the Authority or Registrar in January of the following year; or

(ii) no specified entity or foundation has been found to be non-compliant, the licensee shall inform the Authority or Registrar of the fact in writing within the specified timeframe in c(i) above.⁴

The “record-keeping requirements” referred to above include:

(a) in the case of an international business company:

- (i) the register of members required to be kept under the International Business Companies Act, 2016;
- (ii) the register of directors required to be kept under the International Business Companies Act, 2016;
- (iii) the register of beneficial owners required to be kept under the Beneficial Ownership Act, 2020; and
- (iv) the accounting records, the financial summary and the written notification of the physical address where the original accounting records are kept, as required to be kept under the International Business Companies Act, 2016;

(b) in the case of a foundation:

- (i) the register required to be kept under section 77 of the Foundations Act, 2009;
- (ii) the register of beneficial owners required to be kept under the Beneficial Ownership Act, 2020; and
- (iii) the accounting records, the financial summary and the written notification of the physical address where the original accounting records are kept, as required to be kept under the Foundations Act, 2009;

(c) in the case of a limited partnership:

- (i) the register required to be kept under section 11 of the Limited Partnerships Act, 2003;
- (ii) the register of beneficial owners required to be kept under the Beneficial Ownership Act, 2020; and
- (iii) the accounting records, financial summary and the written notification of the physical address where the original accounting records are kept, as required to be kept under the Limited Partnerships Act, 2003.

Where a licensee informs the Registrar or Authority of a “continued non-compliance” (defined below) by a specified entity or foundation, the relevant enforcement action shall be taken against

⁴ The amendment to paragraph 13.2(c) shall be effective as of 1st January, 2023.

the specified entity or foundation by the Registrar or Authority. The enforcement action shall only be imposed upon independent verification by the Registrar or Authority through onsite inspection. Generally, where the non-compliance involves an IBC or a foundation, the Registrar or Authority will initiate the striking off process and impose the relevant penalty fees which will be effective from the date that the Registrar or Authority has independently verified the non-compliance.

“Continued non-compliance” means that the specified entity or foundation remains non-complaint:

- (a) on the day following the date of expiration of the 30-day notice sent by the licensee to the specified entity or foundation, and
- (b) at the time the licensee is required to inform the Authority or Registrar.

NOTE:

- The requirement of this section does not apply to:
 - companies whose name has been struck off the Register;
 - foundations whose name has been struck off the Register; and
 - limited partnerships which have been deregistered.
- Continued non-compliance shall be reported in the next ensuing reporting month.

Example 1: On 10th March 2015, an IBC is found to be in non-compliance with the Share Register keeping requirement. On the same day, the licensee sends a written notice to the IBC of the non-compliance requesting that the breach be remedied within 30 days from the date of issue of the notice (i.e. by 9th April, 2015). If by June 2015 the IBC is still in non-compliance, the licensee shall inform the Registrar or Authority in writing (providing the name and company number of the IBC, and the nature of the non-compliance) of the non-compliant IBC on any day within the month of June 2015.

Example 2: On 15th May 2015, an IBC is found to be in non-compliance with the Share Register keeping requirement. On the same day, the licensee sends a written notice to the IBC of the non-compliance requesting that the breach be remedied within 30 days from the date of issue of the notice (i.e. by 14th June, 2015). If by March 2016 the IBC is still in non-compliance, the licensee shall inform the Registrar or Authority in writing (providing the name and company number of the IBC, and the nature of the non-compliance) of the non-compliant IBC on any day within the month of March 2016.

13.3 Ensuring compliance with certain record-keeping obligations by trustee service providers

Licensees providing trustee services must also ensure that certain record-keeping requirements (especially ownership and accounting information) in relation to each trust under their administration are being complied with. This specifically includes:

- (a) the trust register required to be kept under the Trusts Act, 2021;
- (b) the register of beneficial owners required to be kept under the Beneficial Ownership Act, 2020; and
- (c) the accounting records, financial summary and the written notification of the physical address where the original accounting records are kept, as required to be under the Trusts Act, 2021.

13.4 Monitoring of accounting records and financial summary by licensees

For the purpose of monitoring compliance by specified entities and foundations with their accounting record-keeping requirements, licensees shall not be required to establish the accuracy, completeness or reliability of the accounting records unless the licensee is a director, councillor or general partner of the specified entity or foundation.

Notwithstanding the fact that it is the responsibility of the specified entity or foundation to establish the accuracy, completeness or reliability of its accounting records, a licensee shall not deliberately disregard the appropriateness/relevance of the accounting records lodged by the specified entity or foundation at the licensee's principal place of business. Therefore, while a licensee shall not be expected to verify every single record, the licensee should be satisfied that, generally, the accounting records and financial summary are appropriate or relevant.

Without limiting the above requirements, the licensee shall ensure that:

- (a) the accounting records⁵ for a relevant period have been lodged;
- (b) the relevant declaration has been provided where there are no accounting records for a relevant period;
- (c) the financial summary for the relevant financial year has been prepared and being kept accordingly;
- (d) the written notification of the physical address where the original accounting records are kept, have been provided.
- (e) where a specified entity or foundation has been struck-off (including continued outside Seychelles), de-registered, dissolved, or otherwise ceased to exist before 6th August 2021 and it is yet to comply with the new accounting record keeping requirements, the licensee has taken all reasonable steps to request for the relevant accounting records and the licensee must be able to provide proof of compliance with this requirement; and
- (f) in the opinion of the licensee, the accounting records or financial summary are sensible and useful, seek relevant clarifications from the specified entity or foundation.

14. Directives guidelines and codes

The Authority may issue directives, guidelines or codes for the purpose of the performance of its functions under the Act. Section 13 of the Act provides that directives, guidelines or codes issued by the Authority are binding on licensees and hence have the force of law.

In addition, the Authority may, for the purpose of the performance of its functions under the Act, request any licensee, its director or member of its managerial staff to furnish such information or documents as the Authority may reasonably require.

⁵ It is to be noted that, while invoices and receipts received through transactions by the licensee (on behalf of its clients) with the Authority, or through transactions carried out between the licensee and the specified entity or foundation, may constitute accounting records of the specified entity or foundation, the most pertinent accounting records are those relating to the objects/activities that the specified entity or foundation was set up for. In such cases, the licensee shall satisfy itself that there are no accounting records relating to the objects/activities that the specified entity or foundation was set up for.

Any person who fails to comply with the above requirements is liable to a penalty of SR500 for each day which the default continues. In the case of a licensee defaulting, the Authority may subsequently suspend or revoke of the licence.

15. Audited Accounts

The accounts of a licensee must be audited annually (and at such other times as may be required by the Authority) by a qualified auditor in accordance with internationally accepted accounting standards. A certified true copy of the audited accounts must be furnished to the Authority within six months of the end of the financial year of the licensee or within such longer period allowed in writing by the Authority. A licensee who fails to comply with this requirement is liable to a penalty of SR500 for each day or part thereof during which the default continues. The Authority may, given sufficient notice to the licensee, request for submission of the licensee's management accounts at any time.

16. Functions of the Authority

The Authority monitors and supervises the provision of services by licensees and where necessary make enquiries and inspections to ensure that the provisions of the Act are being complied with.

For the purpose of the above, the Authority may during business hours, after giving reasonable notice, access the business premise of a licensee for the purpose of inspecting procedures, systems, controls, books, records and other relevant documents of the licensee to ensure compliance with the Act.

A person, who in way impedes, prevents or obstructs the Authority or any of its employees or authorised agent in the conduct of an inspection commits an offence and is liable on conviction to a fine not exceeding SR300,000.

The Act prohibits the Authority or any employee or agent of the Authority to disclose any information or document acquired in the performance of its, his or her duties under the Act in respect of any licensee or the affairs of any licensee or any client of a licensee, except in accordance with section 12(2) of the Act.

17. Enforcement

The Authority has wide-ranging powers to ensure that a licensee meets its obligations under the Act. This includes, besides fines and penalties, powers of suspension, revocation and protection order as stipulated under sections 14, 15 of the Act and section 29 and 31 of the Financial Services Authority Act. These powers of enforcement are essential to ensure that the licensee are meeting the obligations of the Act and to ensure that the integrity of the business is preserved.

18. Suspension and Revocation of a licence

Generally, the Authority shall, before suspending or revoking a license, give written notice to the licensee providing:

- (a) the grounds upon which it intends to suspend or revoke the license, and

- (b) that unless the licensee, by written notice filed with the Authority, shows good reason why its license should not be suspended or revoked, the license shall be suspended or revoked on a date not less than fourteen days after the date of the notice.

The Authority will not revoke or suspend a license if it is satisfied that the licensee has shown good cause to the satisfaction of the Authority why its license shall not be suspended or revoked.

In the event that the Authority suspends a licence, the suspension must not exceed 30 days unless an application is made to court for an extension.

Even though a licensee is not allowed to operate following a suspension of its licence, the Authority may allow the licensee to submit annual renewal fees to the Authority or Registrar in respect of specified entities and foundations.

As it is not the Authority's policy to "immediately" revoke a licence, a revocation under section 14 will only be invoked in rare circumstances. In order to ensure the smooth transfer of its clients including documents and records relating to the business of its clients, a revocation will mainly be invoked under section 15 of the Act. Where the Authority has decided that the licence should be revoked under section 15(4)(iii), the Authority will inform the licensee of its decision and shall liaise with the licensee to specify a timeframe for a complete transfer of the licensee's clients and the relevant documents to a successor. The licence will ultimately be revoked until such time that the Authority is satisfied that sufficient actions have been undertaken to protect the interests of the licensee's clients.

Where the Authority revokes a licence, the former licensee shall deliver up its licence to the Authority within 3 working days from the effective date of revocation of the licence.

19. Surrender of licence

Section 30 of the Financial Services Authority Act provides that a licensee may, at any time, surrender its licence by giving prior notice (of not less than 30 days) in writing to the Authority giving a true and full disclosure of the reasons to satisfy the Authority why the licensee wants to surrender the licence including:

- (a) the date on which the termination is to be effective;
- (b) the measures taken by the licensee for the discharge of its liabilities and transfer of the business of the clients; and
- (c) such other matters as may be required by the Authority.

In order to determine the adequacy of the measures undertaken by a licensee to discharge its liabilities and transfer of the business of clients, the Authority shall consider whether the licensee has notified its clients of the upcoming surrender and the measures undertaken by the licensee to facilitate the transfer of its clients to other licensees.

The Authority may, within 30 days of receiving the notice object in writing to the surrender and the licensee shall take such action as may be determined by the Authority.

Where a licensee fails to give adequate and sufficient notice, the surrender shall not take effect until 30 days after the notice is received by the Authority.

The Authority shall approve a licensee's notice of surrender of licence(s) when it is satisfied that the licensee has discharged its liabilities, clients' records have been transferred to a successor licensee and,

as required under the Anti-Money Laundering and Countering the Financing of Terrorism Act, the relevant records have been handed over to the Authority.

Where a licence is surrendered, the former licensee shall deliver up its licence to the Authority within 3 working days from the effective date of surrender of the licence.

20. Protection order

Schedule 3 to the Act requires a licensee to preserve the client's records until such time as they are handed over to a successor.

Under Section 31 of the Financial Services Authority Act the Authority may apply to Court for a protection order to protect or preserve the business or property of the person with respect to whom the application is made. Therefore, the Authority may apply for a protection order in relation to any record of a licensee (or former licensee) that is yet to be transferred to a successor licensee. In such circumstance, the Authority would generally appoint an administrator, through the Court, which will take over the records of the licensee. The Administrator will be acting as the facilitator to the potentially new licensees who wish to take over the clients of the former licensee.

However, where the Authority is of the view that there is delay in obtaining the Court Order, in the interest of the client and Seychelles' reputation, the Authority may require the licensee (or former licensee) to hand over to it, all remaining records that have not been transferred to a successor licensee, in the format specified by the Authority.

21. Appeals against decisions of the Authority

Any decision of the Authority may be challenged by judicial review before the Court, including a decision to suspend, revoke or refuse to grant a licence under the Act. An application must be made to the Court within 3 months after the service of the notice of the decision of the Authority. Furthermore, an appeal may be referred to the Court of Appeal against the decision of the Court on any application.

22. Offences

Any person who contravenes any provision of the Act commits an offence and if no penalty is specifically provided for, such offence is liable on conviction to a fine not exceeding SR300,000.

Where the offence is committed by a body corporate, and any of its directors or other officers, knowingly authorised, permitted or acquiesced in the commission of the offence, the director or other officer shall also commit the offence and is liable on conviction to a fine of the same amount as applies in respect of the body corporate.

23. Exemptions and concessions

A licensee is entitled to the exemptions and concessions specified in Schedule 1 of the Act. The exemptions and concessions are advantageous positions under the Income and Non-Monetary Benefits Tax Act, Immigration Decree, and the Trades Tax Act which will remain in force for a period of fifteen years from the date of commencement of the Act, and shall thereafter remain in force unless a law provides otherwise.

For clarification purposes:

- A licensee must not employ more than 50% expatriate employees and the concessionary gainful occupation permit (GOP) fee is SR375 per employee per month.
- The Value Added Tax Act (“VAT Act”) took effect on 1st January, 2013 and repealed and replaced the Goods and Services Tax Act. Note that whilst the supply of services provided by a licensee is categorised as zero-rated supplies under schedule 2, item 1 (c) of the VAT Act, a licensee is liable to Value Added Tax on the importation of motor vehicles by virtue of section 25 of the VAT Act.

24. Code of practice of licensees

The code of practice of licensees is set out in Schedule 2 of the Act and must be complied with by all licensees. A licensee who fails to comply is liable upon conviction to a fine not exceeding SR300,000 or may result in suspension or revocation of the licence.

A licensee must conduct its business in accordance with the following principles:

(a) Transparency

A licensee must conduct its business in a manner that is transparent to its respective clients.

(b) Integrity

A licensee must conduct its business with integrity and fulfil its fiduciary duties competently and efficiently.

(c) Clients’ interests

Licensees must act in the best interest of its clients. Adequate procedures should be in place in order to ensure that clients are treated fairly without any conflict of interests.

(d) Management and control

Licensees must ensure that there are proper procedures in place in order to control its affairs effectively and must have proper risk management procedures in place.

24.1. Identification and verification of customers and beneficial owners

The Act requires a licensee to know and be able to identify:

- its clients
- the directors, members and beneficial owner of each company to which the licensee provides international corporate services
- the beneficiaries, co-trustee (if any), settlor and protector (if any) of each trust in respect of which the licensee provides trustee services
- the beneficiaries, councillors, founder and protector (if any) of each foundation in respect of which the licensee provides foundation services, and
- the partners of each limited partnership in respect of which the licensee provides international corporate services.

Note that whilst the Act makes reference to the above requirement, licensees are also subject to the provisions of the Anti-Money Laundering and Countering the Financing of Terrorism, Act.

24.2. Client Agreement / Terms of Business

Every licensee must ensure that clients, existing or new, are made aware of the terms upon which the licensee provides services.

A licensee must enter into a written agreement with each of its client, detailing the licensee's terms and conditions of business. This agreement must, amongst other things, provide for:

- (a) The fees to be charged and/or the basis of calculation of fees to be charged by the licensee, the method by which such fees are to be collected, and the method by which revision in fees are to be notified to the client
- (b) The conditions for the termination of services by the licensee, including, if applicable, the provisions for the refund of any fees due to the client as a result of the termination of services
- (c) The conditions for the termination of services by the client, including, if applicable, the fees to be borne by the client as a result of the termination of services
- (d) The arrangements for payment to the client of any interest received on the client's money.

In addition, where a licensee acts as, provides or arranges for others to provide, a nominee shareholder (whether as a registered shareholder or as a registered bearer or otherwise to hold shares on behalf of another) of a client company, the licensee must ensure that it has in place a written nominee agreement or such other nominee agreement.

24.3. Dual control (4-eyes minimum criterion)

The services of a licensee must be conducted by at least two resident individuals (based in the office of the licensee in Seychelles on a full time basis) who are directors or members of the managerial staff of the licensee and who has been determined "fit and proper" by the Authority. This requirement, however, does not apply to Managed Service Providers.

In order to ensure compliance with the 4-eyes minimum requirement at all times (especially in cases of immediate departures or dismissal of "fit and proper" employees), a licensee must ensure that it employs adequate "fit and proper" individuals.

Where a licensee fails to meet the 4-eyes minimum criterion, the licensee must notify the Authority of the proposed locum arrangement. This arrangement must be approved by the Authority and cannot continue for more than 3 months unless the Authority approves otherwise. A locum must be determined "fit and proper" by the Authority.

The purpose of the locum arrangement is to ensure that the business activities that a licensee provides to its clients can continue without interruption. Licensees should be aware of the possible need to provide for alternative locum arrangements due to unforeseeable circumstances.

24.4. Directors and members of managerial staff

All directors and members of the managerial staff must be determined "fit and proper" by the Authority and that individual must remain "fit and proper". The Authority exercises judgment and discretion in determining whether an individual is "fit and proper" in accordance with the criteria set out in Paragraph 3 of Schedule 2 of the Act, which includes:

- (a) the person's probity, competence, experience and soundness of judgement for fulfilling the responsibilities of the relevant position

- (b) the diligence with which the person is fulfilling or likely to fulfil those responsibilities
- (c) whether the interests of clients of the licensee are likely to be threatened by the person holding those responsibilities
- (d) the person's financial soundness
- (e) the person's educational and professional qualifications, and membership of any professional or other relevant bodies
- (f) the person's knowledge and understanding of the legal and professional obligations to be assumed or undertaken
- (g) any evidence that the person has –
 - (i) committed any offence involving dishonesty, fraud or violence,
 - (ii) contravened any law designed to protect members of the public from dishonesty, incompetence, malpractice, or from the conduct of discharged or undischarged bankrupts or otherwise insolvent persons, and
 - (iii) the person's procedures for vetting of clients.

A licensee must have a sufficient number of directors who:

- (a) are capable of exercising independent judgment,
- (b) have sufficient knowledge, skills, experience and understanding of the business of the licensee including the risks associated with the business of the licensee, in order to ensure that the board can efficiently and effectively fulfil its duties and responsibilities, and
- (c) have sufficient time and commitment to undertake their duties diligently.

Members of managerial staff include managers and other employees having significant powers or responsibilities with respect to the business activities of the licensee. The Authority will consider, on a case-by-case basis, the responsibilities of any particular individual in relation to the organisation structure. Where the Authority is of the opinion that an individual has significant powers and responsibilities in the management of the licensee's business, the Authority will determine whether the individual is "fit and proper".

The Authority assesses "fit and proper" in relation to the duties and responsibilities of the individual within a licensee. Therefore, should there be any significant change in the duties and responsibilities of that individual or a change in managerial position of that individual within a licensee, a new "fit and proper" application must be submitted to the Authority.

Where an individual who has been determined "fit and proper" by the Authority for a particular position within a licensee resigns from that position or is otherwise removed from that position, the individual may only be re-appointed by the licensee in that same position following the submission of a new "fit and proper" application and the Authority approving the application.

Similarly, an individual who has been determined "fit and proper" by the Authority within a licensee is not automatically "fit and proper" in another licensee. Therefore, in cases where a "fit and proper" individual wishes to be employed by another licensee, an application must be made to the Authority for "fit and proper" determination within the new licensee.

24.5. Application for "fit and proper" determination

Whilst the Authority is empowered to determine whether an individual is "fit and proper", the primary responsibility for ensuring that a licensee is soundly and prudently managed rests with the licensee itself. Therefore, a licensee must ensure that, whenever it submits a "fit and proper" application to the Authority, it has conducted its own relevant checks on the individual and is of the opinion that the individual will be found "fit and proper" by the Authority.

A “fit and proper” application must comprise of a covering letter from the licensee which intends to employ the individual and a Personal Questionnaire Form completed by the individual, accompanied by other relevant documents.

Note that individuals, who have been determined “fit and proper” by the Authority during the past 6 months and continues to be “fit and proper” on the Authority’s record, may be subjected to a more flexible procedure in relation to the submission of “relevant documents” referred to above. However, the submission of the Personal Questionnaire Form is mandatory in all cases.

24.6. Minimum qualifications and working experience of “fit and proper” applicants

In an effort to guide licensees on the standard the Authority expects from an individual applying for “fit and proper” status in terms of educational qualifications, working experience and skills, the following guidelines have been prepared.

An individual who may apply for “fit and proper” status is expected to have at a minimum the following qualities:

- effective verbal and written communication
- strong organizational skills and attention to details
- familiarity with human resources policies and practices
- ability to adapt to and perform under different business environment
- ability to handle a variety of informational documents

In addition to the above qualities, the individual must meet at least one of three criteria ((a), (b) or (c)) set out below.

(a) The individual has obtained either:

- (i) An ICSA Level 5 Diploma in International Finance and Administration
- (ii) a Diploma in Society of Trust and Estate Practitioners (STEP)
- (iii) an ICA Diploma in Compliance, or
- (iv) a Bachelor’s Degree or higher qualification in a relevant field,

provided that the individual has a minimum of 2 years working experience in a relevant field.

(b) The individual has obtained either:

- (i) an ICSA Level 4 Certificate in International Finance and Administration
- (ii) a Certificate in Society of Trust and Estate Practitioners (STEP), or
- (iii) a Diploma or equivalent qualification in a relevant field

provided that the individual has a minimum of 3 years working experience in a relevant field.

(c) The individual has passed:

- (i) Introductory Certificate in Seychelles Financial Services (conducted by The Guy Morel Institute); or
- (ii) an ICSA Level 4 Award in International Finance and Administration

provided that the individual has a minimum of 5 years of working experience in a relevant field.

Note: The Authority highly recommends that the individuals referred to above in a(iii), a(iv) and b(iii) to undertake the Introductory Certificate in Seychelles Financial Services (conducted by The Guy Morel Institute)

Working experience includes, at a minimum, a position within middle management. Such individuals must have been responsible to the top management for the functioning of their department and must have devoted time to organizational and directional functions. Their roles can be emphasized as executing plans of the organization in conformance with the company's policies and the objectives of the top management, defining and discussing information and policies from top management to subordinates and most importantly providing guidance to subordinates towards better performance.

The term “relevant field” includes:

- Law
- Accounting
- Commerce
- Economics
- Taxation
- Finance
- Management
- Business Administration
- Any other relevant field as may be deemed relevant by the Authority from time to time

NOTE:

- The Authority may, for purposes of determining an application, require the applicant to attend an interview with the Authority to clarify any relevant pertinent issues relating to the application.
- These guidelines do not apply to individuals who have already been found “fit and proper” by the Authority unless such individuals apply to be found Fit and Proper for another position within the licensee (including the assignment of additional significant duties and responsibilities to that individual) or apply to be found “fit and proper” in another licensee.

24.7. Individuals ceasing to be “fit and proper”

The Act requires all directors and members of managerial staffs to be and remain “fit and proper” at all times. Where an individual ceases to satisfy the criteria set out in paragraph 3 of schedule 2 of the Act, the Authority will notify the licensee in writing that the individual has ceased to be “fit and proper”.

An individual who has ceased to be “fit and proper” cannot continue to be a director, a member of the managerial staff or cannot continue to hold significant duties and responsibilities within the licensee.

24.8. Provision of directorship services to specified entities

Section 3(1)(ii)(a) of the Act requires any employee or director of a licensee acting as a director for a specified entity to be a “fit and proper” individual. For the purpose of this section, the term “employee” shall include a Professional Officer.

A “Professional Officer” means, for the purpose of this Code, any individual who enters into an agreement with the licensee to provide directorship services to specified entities to which the licensee provides registered agent services.

The licensee must take reasonable steps to ensure that individuals acting as directors of specified entities:

- (a) are suitable and competent
- (b) are aware and understand their duties, responsibilities and liabilities as directors under all relevant laws, and
- (c) are able to effectively carry out their responsibilities and duties in respect of each of those client companies in a diligent and proper manner.

Regardless of the above, the following persons are disqualified for appointment as a director of a specified entity:

- (i) an individual who by law is considered a minor
- (ii) an undischarged bankrupt
- (iii) a person acting as a liquidator
- (iv) a person who in respect of a particular company, is disqualified by the memorandum or articles from being a director of the specified entity
- (v) a trustee of a debenture trust deed covering debentures by the specified entity or by a specified entity belonging to the same group of specified entities as the specified entity
- (vi) a person convicted of an offence involving fraud or dishonesty, or
- (vii) a person disqualified from being a director by any order of the court.

Where a licensee enters into an agreement with a professional officer, the professional officer is deemed to be “fit and proper”.

With respect to the performance of the duties and responsibilities of the office of the director, an individual should not hold a greater number of directorships than he can competently undertake. In assessing the ability of an individual to fulfil his responsibilities as a director of a client company, a licensee may take into consideration:

- (a) the procedures and control systems which are in place,
- (b) the competence of support staff available to those acting as directors for a number⁶ of client companies, and
- (c) the complexity of the business and the level of activity of each of the client companies for which the individual acts as director, as this may have an effect on the scope and extent of commitment required from that individual to fulfil his responsibilities.

The directors should remain responsible for the exercise of the powers they delegate and should monitor the exercise of the delegated powers. This applies to the issuing of powers of attorney, and control of bank accounts (financial transactions and assets belonging to the client company). In all circumstances, the board should keep the delegated powers within restricted parameters as may be appropriate and ensure that it does not relinquish ultimate control over the company affairs. Notwithstanding that the directors are not the authorised signatories or are not the only persons authorised to sign on the client company’s bank account, ultimate control thereof would be expected to remain with the directors.

⁶In assessing the number of directorships which an individual may competently undertake, account should also be taken to the number of corporate directorships to which the individual is a director.

Directors must avoid conflict of interest in all circumstances when acting in the capacity of a director of a specified entity.

Directors should not allow others to unduly influence them in such a way as to undermine the exercise in good faith of their powers in the manner, which is in the best interests of the client company.

24.9. Professional Officers

Before a licensee enters into such an agreement, it shall satisfy itself that such individual is aware and understand his duties, responsibilities and liabilities as directors under all relevant laws, and in no circumstances, the licensee shall enter into such an agreement where the reputation of Seychelles may be negatively affected.

No person shall be a Professional Officer unless the services provided have been agreed in an agreement between the licensee and that person. The contract must set out the latter person's remuneration or the basis of its calculation.

A professional officer must notify the licensee as soon as he becomes aware of his disqualification to act as director under any Seychelles' law or under any law outside Seychelles.

A licensee must, in January of every year, provide to the Authority such statistical information relating to the number of Professional Officers it has entered into an agreement with and the number of specified entities that each Professional Officer is acting as Director.

Note that the "fit and proper" criteria set out in Paragraph 3 of Schedule 3 of the Act applies only to directors and members of the managerial staff (including those holding significant duties and responsibilities within the licensee) and does not apply to Professional Officers.

24.10. Control systems and procedures

A licensee must organize and control its internal affairs in a reasonable manner and have in place control systems and procedures that are well-documented, commensurate with the level and scope of its business, to enable it to comply with the relevant laws.

A licensee must be able to demonstrate its compliance to the Authority by being able to produce relevant records. All records and documents must be easily retrievable in Seychelles and may be kept in such form as the licensee thinks fit. However, where the records and documents are kept in magnetic, electronic or other data storage form, the licensee must be able to produce legible evidence of its contents.

A licensee must take all such steps as are reasonable to ensure that any company that it forms, sells, transfers, or disposes of for a client, and each client company for which it provides regulated activities, comply with such statutory and any other legal obligations under any relevant law as are applicable to the particular regulated activity being provided.

A licensee must ensure that members of its managerial staff and other employees, who perform any regulated activities, carry out their duties in a diligent and proper manner in accordance with the control systems and procedures of the licensee.

24.11. Legal proceedings

A licensee must notify the Authority of any legal claims or proceedings brought against the licensee relating to the provision of its licensed services in any jurisdiction where the amount claimed or

disputed is likely to exceed SR60,000. The licensee should, immediately upon becoming aware of such proceedings, provide a brief summary of the case. However, a licensee is not under an obligation to disclose any items subject to legal privilege. The Authority may require further information as the case proceeds.

A licensee must also notify the Authority as soon as it becomes aware of the bringing of any criminal proceedings against the licensee, any directors, employees, any person having an interest in the licensee or any associated group company of the licensee.

24.12. Disqualification of company director

A licensee must notify the Authority as soon as it becomes aware of any application for disqualification or any disqualification under the Companies Act, 1972 or any provision having similar effect in any jurisdiction if made in respect of:

- (a) a licensee;
- (b) any of its directors; or
- (c) any "fit and proper" employee of the licensee

24.13. Criminal conviction

A licensee must notify the Authority as soon as it becomes aware of the conviction of the licensee or any associated company of the licensee or any of its directors, employees or any person having an interest in the licensee for any offence relating to any business or financial activity, any offence relating to the formation, management or administration of companies, trusts or foundations in any jurisdiction, or any offence relating to fraud or dishonesty in any court in or outside Seychelles.

24.14. Criminal proceedings against a client company

A licensee must notify the Authority and provide a brief summary of the case where possible, as soon as it becomes aware of the bringing of any criminal proceedings or conviction in any jurisdiction, of a client company, any officer or the beneficial owner of a client company, in relation to any proceedings concerning that client entity in any court in or outside Seychelles.

24.15. Staff disciplinary action

A licensee must promptly inform the Authority by written notice of any serious disciplinary action taken against any member of its managerial staff or any of its "fit and proper" employees. Full details of such action including copies of any notices or written warnings issued by the licensee to the relevant employee must be provided to the Authority. The licensee must make available to the person concerned a copy of any such report.

For clarification purposes, "serious disciplinary action" includes circumstances where the licensee suspects or has reasonable grounds to believe that the employee:

- (a) has been guilty of fraud, theft or other dishonesty,
- (b) has contravened any provision made by or under any enactment or any internal rule or regulation of the licensee designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice, or
- (c) has engaged in any business practice appearing to be deceitful or oppressive or otherwise improper or which casts doubt on his competence or soundness of judgement and which resulted in a written warning being issued to the employee (with regards to the employee's future conduct) whereby the repeat of a similar action may lead to the termination or

suspension of employment or which resulted in the termination of employment of the employee.

24.16. Breakdown in administrative systems

A licensee must notify the Authority of any serious or prolonged breakdown in its administrative or control systems as soon as it becomes aware that such a breakdown could result in an inability to maintain proper records or is likely to result in failure to comply with any provisions of the Act.

24.17. Acquisition or cessation of business

A licensee which voluntarily decides to stop carrying on business under the Act must notify the Authority not less than 28 days before the decision is implemented or if circumstances prevent notification to be made within such period, the notification must be made within a reasonable period of time. The notice must provide details of the arrangements it has made in order to ensure an orderly winding up or transfer of its clients' business.

A licensee must also notify the Authority not less than 28 days in advance of a proposed merger of its business, a management buy-out, takeover or similar transaction. If circumstances prevent notification within such period, the notification must be made within a reasonable period of time.

24.18. Going concern requirement

A licensee must be able to meet its liabilities as they fall due and be able to continue in operation as a licensee for the foreseeable future. A licensee must notify the Authority if it is no longer able to meet the going concern requirement. Notifications must also be made to the Authority forthwith of any of the following occurrences:

- (a) The presentation of a petition for the winding up of a licensee
- (b) The appointment of a receiver, liquidator, provisional liquidator, administrator or trustee in bankruptcy to the licensee
- (c) The making of a composition or arrangement with creditors of the licensee
- (d) The refusal or revocation of any legal authorisation applied for or held by the licensee in respect of any other business in or outside Seychelles, including banking, money lending, insurance, investment or fiduciary business
- (e) The appointment of inspectors by a statutory or other regulatory Authority to investigate the affairs of the licensee.

24.19. Complaints

A licensee must ensure that any written complaint (other than those relating to the level of fees charged in accordance with its client agreements or terms of business) it receives in relation to the conduct of its business is:

- (a) acknowledged and entered into a register of complaints
- (b) brought to the attention of a person having the appropriate authority to deal with complaints within the licensee
- (c) investigated promptly and thoroughly (where appropriate, request further details from the complainant in writing with supporting evidence), and
- (d) appropriately deal with and recorded accordingly.

The register of complaints referred to above, which may be in summary form provided that a full record is kept elsewhere, must contain:

- (a) the date the complaint was made
- (b) the date the complaint was reported to the person with authority to deal with complaints
- (c) details of the nature of the complaint and the name and address of the complainant, and
- (d) details of how and when the complaint was investigated and the actions that were taken.

Note that the Authority will not interfere in commercial disputes between a licensee and its client. The purpose of maintaining a register of complaints is to provide one way for the Authority to satisfy itself that a licensee is dealing fairly with its clients and performing all regulated activities competently. The Authority may seek an explanation from the licensee where the register of complaints indicates a possible failure to comply with the Act.

24.20. Avoidance of conflict of interest

A licensee must endeavour to avoid conflict of interest between itself and its clients and where it is aware of the situation, between one client and another. An example of a conflict of interest, which may arise, is where two or more client companies for which directors are provided by the licensee are bidding for the same significant contract, or compete in the same market.

Where such a conflict may arise, the licensee shall promptly notify each of the clients concerned and attempt to avoid the conflict. Unless all clients with conflicting interests in any matter agree to the licensee continuing its services to the other clients concerned, the licensee shall discontinue its services to all the clients concerned.

24.21. Standard of advertising

In advertising its services, a licensee must ensure that any advertisement that is published or causes to be published does not damage the good image and reputation of the Republic of Seychelles. Advertisements shall contain a fair and accurate indication of the services that the licensee provides and must not be false, misleading or deceptive in any way.

Advertisements should not contain any reference to business practices which are illegal, and which imply circumvention of the law in the Republic of Seychelles or in any relevant jurisdiction, or have any dubious implication, which may be harmful to the reputation of the Republic of Seychelles as a centre for high professional standards.

A licensee should not promote its services in a manner, which suggests that the provision of services will be on a "no questions asked" basis. If in doubt as to whether the contents of an advertisement would be acceptable to the Authority, a licensee should request guidance from the Authority.

A licensee must identify the Regulator (the Authority) on all correspondence and advertisements and the reference to its licence must take the following form:

"Licensed by the Seychelles Financial Services Authority as an International Corporate Service Provider, Trustee Service Provider and/or Foundation Service Provider (as the case may be)".

However, no reference to its licence is required where only the name of the licensee is being promoted (i.e. where no products or services offered by the licensee are referred to).

Any written advertisement by or on behalf of the licensee advertising its licensed services must contain the name and address of the licensee who issued it or caused it to be issued.

Upon the surrender or revocation of a licence issued under the Act, the former licensee shall undertake the necessary actions to remove all forms of advertising by it from the public domain.

24.22. Professional indemnity insurance cover

A licensee must at all times hold a valid professional indemnity insurance to cover the risks associated with the size and nature of its business. Unless the licensee has access to such insurance through other means (e.g. through its parent company) it should maintain a separate professional indemnity insurance cover.

The professional indemnity insurance policy must cover for claims arising from the conduct of services by the licensee and any of its employees. A licensee must assess the level of professional indemnity insurance necessary to cope with possible losses arising from civil liability claims in connection with its business.

Any claims in excess of US\$15,000 must be notified to the Authority as they arise.

24.23. Resignation of a licensee

If a licensee wishes to resign from acting on behalf of a client, it must inform the client in writing.

Where the licensee discontinues its services to a client, the licensee must preserve all records and documents relating to the client until such time that the records and documents are handed over to a successor licensee. During this transition, the licensee must co-operate with the client and the successor licensee or that other person in order to ensure a smooth transition.

24.24. Business continuity arrangements

A licensee must have in place adequate business resumption or contingency provisions to safeguard the interest of its clients at all times.

As planning for disaster recovery is accepted as a necessary contingency arrangement in most commercial operations, a licensee must have suitable business resumption plans in place. The onus is on the licensee to ensure that its client's affairs are protected in all circumstances, and that the licensee is able to continue the management of its client companies within a reasonable time following a disaster.

As a matter of best practice, the Authority recommends that:

- (a) with regards to information held on computer, regular back-ups are taken and held off-site, and
- (b) duplicate copies of paper documents, the information contained in which cannot be retrieved from any other source are also held off-site.

The Authority recognises that organisations will each have different business resumption or contingency arrangements, and assessment of compliance with this paragraph will be dealt with on a case-by-case basis.

25. Managed Service Providers

The concept of Managed Service Provider is to allow two licensees to enter into a management agreement whereby one licensee will carry on and manage the business of the other licensee. The Act

defines a Managed Service Provider as a licensee holding an international corporate services licence and/or a foundation services licence, subject to the condition that its business is carried on or managed by another licensee (referred to as a Managing Service Provider) approved by the Authority.

The main concession made to Managed Service Providers is with respect to the 4-eyes minimum requirement. Subject to the requirement for a board of directors, a Managed Service Provider will rely on its Managing Service Provider to provide management services that it requires to carry on its licensed business in Seychelles. Therefore, the Managed Service Provider must not employ any individual in Seychelles to carry on or manage its business.

25.1. Application requirements

Applications to operate as a Managed Service Provider are restricted only to applicants being part of a group of companies operating in reputable international financial services jurisdictions. The Authority adopts a policy of “selectivity” in considering such applications and may at its sole discretion, approve or decline an application.

For clarification purposes, it is to be noted that the Authority will not accept an application to operate as a Managed Service Provider from an existing licensee or a company whose licence was previously revoked by the Authority.

The application must be submitted through the proposed Managing Service Provider. During the application process, the Authority will only liaise with the proposed Managing Service Provider for any matters relating to the application (note that the Authority will not process an application unless the application fee has been submitted).

Whilst the application procedure is similar to that of a licence application as provided for under the “Guide to becoming a CSP in Seychelles”, the Authority will have regard to the following additional requirements:

(a) Capacity to accommodate the Managed Service Provider

The Managing Service Provider must demonstrate to the Authority its capacity to accommodate the Managed Service Provider. The former must have in place adequate resources in terms of physical infrastructure, office equipment, IT infrastructure and manpower.

In addition, the proposed Managing Service Provider must hold a valid licence which is similar to the one being applied for by the Managed Service Provider.

Example: X Ltd is a “fully fledged” licensee. Y Ltd is a company applying to operate as a Managed Service Provider with a foundation services licence. X Ltd can apply to be the proposed Managing Service Provider of Y Ltd only if X Ltd holds a valid foundation services licence.

Note: Where approval has been granted to a Managed Service Provider’s application, the Managing Service Provider must ensure that, at all times, it holds a valid licence which is similar to the one being held by the Managed Service Provider

(b) Additional “fit and proper” individual

The Managing Service Provider must ensure that it employs at all times an additional “fit and proper” individual in addition to the 4-eyes minimum requirement for every company to which it acts as a Managing Service Provider.

Example 1: A licensee approved to be the Managing Service Provider of one Managed Service Provider must employ, at all times, at least three “fit and proper” individuals.

Example 2: A licensee approved to be the Managing Service Provider of two Managed Service Providers must employ, at all times, at least four “fit and proper” individuals.

A “fit and proper” individual in the office of the Managing Service Provider must dedicate reasonable time to the business of the Managed Service Provider in order to ensure compliance with the requirements of the relevant laws.

(c) Proven track record

The Managing Service Provider must have at least 18 months of satisfactory proven track record with the Authority as a “fully fledged licensee”.

(d) Management Agreement

A Managed Service Provider must at all times hold a valid written management agreement with the Managing Service Provider. Failure to comply will result in a breach of condition to the licence of the Managed Service Provider which may result in the suspension or revocation of its licence.

The content of the management agreement, amongst other things, must:

- (i) provide the responsibilities of each party.
- (ii) clearly establish the working standards between the parties, which include but not limited to operations matters (administrative and procedural) and the fulfilment of legal obligations under the relevant laws.
- (iii) provide for the fees and other costs to be charged by the Managing Service Provider.
- (iv) provide details on how any disputes that may arise between the parties will be resolved (note that while the Authority may intervene for compliance purposes with the relevant laws, the Authority expects any dispute to be resolved by the parties themselves or the matter may be brought to the courts of Seychelles).
- (v) provide for the conditions for termination of the agreement and notification of such event to be made by the Managing Service Provider to the Authority within a reasonable timeframe prior to the termination date.
- (vi) provide for the transfer of documents and records pertaining to the Managed Service Provider upon termination of the agreement.
- (vii) provide for the validity period of the agreement.
- (viii) provide for an arrangement between the Managed Service Provider and Managing Service Provider where a compliance officer and an alternate compliance officer form part of the human resource function

Note: A draft copy of the management agreement must be submitted as part of the application documents and must be filed with the Authority. Special attention will be given to the extent of which client interests are protected.

If the Authority approves the application, a licence will only be issued to the Managed Service Provider if a certified true copy (or original) of the duly executed agreement and the payment of the annual licence fee are submitted to the Authority within 15 working days from the date of approval of the application or within such other longer timeframe as may be approved in writing by the Authority. If the applicant fails to comply with the timeframe provided, the Authority may disregard the application.

(e) Business plan

Amongst other things, the Business Plan must provide for the reason(s) for operating as a Managed Service Provider and the time period for such arrangement (if any), including the steps that the company will undertake in order to ensure a smooth transition from the Managed Service Provider to a fully-fledged operation. The applicant must demonstrate to the Authority its global positioning, reputation and international profile.

25.2. Application of the Act to Managed Service Providers

For the avoidance of doubt, all provisions of the Act apply to a Managed Service Provider unless provided otherwise in the Act.

25.3. Notification relating to Management Agreement

The Managing Service Provider must give the Authority prior written notice of any proposed changes to an existing management agreement and the Authority may within 10 working days of receiving such notification, object to the proposed change.

The Managing Service Provider must notify the Authority of any renewal of the management agreement and a certified true copy of the renewed agreement must be submitted to the Authority at least 10 working days prior to the expiry date of the existing agreement.

Where either party intends not to renew the management agreement, the Managing Service Provider must inform the Authority of such intention within a reasonable timeframe prior to the expiry date of the management agreement.

25.4. Notifications relating to disputes between the parties

The Managing Service Provider must notify the Authority of any dispute arising between itself and the Managed Service Provider. In addition, the Managing Service Provider must keep the Authority abreast of the developments in relation to such disputes.

25.5. Change of Managing Service Provider

Should a Managed Service Provider, for whatever reason, wishes to change its Managing Service Provider, an application must be submitted to the Authority through the proposed Managing Service Provider accompanied by the following documents:

- A letter from the proposed Managing Service Provider requesting the Authority's approval to be the Managing Service Provider of the Managed Service Provider. In addition to the requirements of paragraph 2(a) to (d) above, the letter should also cover the steps to be undertaken to ensure the smooth transition of relevant documents and records of the Managed Service Provider.

- A written acknowledgement from the current Managing Service Provider stating that it is aware of the intention of the Managed Service Provider to change Managing Service Provider (note that any reasons for the change which may be of interest to the Authority may be provided in a separate letter) and any outstanding issues or disputes between itself and the Managed Service Provider.
- A letter signed by at least 2 directors of the Managed Service Provider requesting the Authority's approval for the change of Managing Service Provider and any outstanding issues or disputes between itself and its current Managed Service Provider.

The transition may only be effected upon the Authority's written approval of the application.

25.6. Avoidance of conflict of interest

A Managed Service Provider and a Managing Service Provider must use their best endeavours to avoid any conflict of interest between themselves.

25.7. Transition from Managed Service Providers to a fully-fledged operation

Where a Managed Service Provider wishes to switch operation to a fully-fledged office, an application must be made by the Managed Service Provider to the Authority. The Authority will have special regard to the individuals being proposed to fulfil the minimum 4-eyes criterion, the proposed office space to be occupied by the Managed Service Provider and the steps to be undertaken to ensure a smooth transition.

Note: The application referred to above must be accompanied by a letter from the Managing Service Provider confirming the intent of the Managed Service Provider to switch to a fully-fledged operation and any outstanding issues or disputes between itself and the Managed Service Provider.

25.8. Contractual disputes

In case where there is a contractual dispute between the Managing Service Provider and the Managed Service Provider during an application to change Managing Service Provider or to switch operation to a fully-fledged operation, the dispute shall be settled by the parties accordingly and the dispute shall not be a ground for the Managing Service Provider not to provide any notice required of it during any of the aforementioned application.

25.9. "Separate entity" characteristic

The Managing Service Provider and the Managed Service Provider are two distinct and separate legal entities. Therefore, the business affairs must properly be segregated from each other. The Managed Service Provider must, as far as possible, portray itself as a separate entity by having separate (the list below is not exhaustive):

- (i) Contact person on FSA's website
- (ii) Telephone line or facsimile
- (iii) E-mail address
- (iv) Letterhead
- (v) Filing cabinets
- (vi) Client agreement
- (vii) Professional indemnity insurance cover
- (viii) Business resumption and continuity provision

(ix) Documented control system and procedures

The contact person referred to above must at all times be a “fit and proper” individual of the Managing Service Provider, provided that the individual is not already the contact person of another Managed Service Provider or the Managing Service Provider itself.

26. Administrative procedures with regards to concessions and exemptions

The below guidelines provides the administrative procedures with regards to concessions and exemption entitled by licensees as per Schedule 1 of the Act.

26.1. Value Added Tax concession

The supply of services provided by a licensee is categorised as zero-rated supplies under schedule 2, item 1 (c) of the VAT Act. However, a licensee is liable to Value Added Tax on the importation of motor vehicles by virtue of section 25 of the VAT Act

26.2. Recruitment of expatriate employees

All recruitment should be advertised in the local market first and if there are no takers the recruitment shall be advertised to foreigners. Immigration Department requires that applications for a work permit are submitted and processed prior to the prospective employee entering Seychelles.

The Authority must be notified of the employment of expatriate workers at least 28 days prior to the proposed entry of the employee in Seychelles. The notice must be accompanied by the following documents:

- A covering letter from the licensee
- Statistical information regarding the licensee's employees (locals versus expatriates)
- 2 original Gainful Occupation Permit (GOP) application forms as approved by the Immigration Department (including the relevant fees⁷ and documents to be attached)
- 2 copies of passport of the prospective employee (one copy will be retained by the Authority)
- 3 passport size photographs (one will be retained by the Authority)
- A copy of the licensee's licence
- CV and relevant certificates of competence and certificates of past employment
- Contract of employment
- Detailed job description
- Foreign medical fitness certificate endorsed⁸ by the Ministry of Health, plus original test results of:
 - Chest X-ray, Full blood count, Urinalysis, Stool, Hepatitis B, VDRL and HIV

The Authority will verify the above documents and if found satisfactory, endorse the application for GOP concession (as per Schedule 1 of the Act) and forward the application to the Immigration Department. The Authority shall provide a letter of confirmation in support of the application.

The Immigration Department will liaise directly with the licensee regarding the application and has its full discretion to accept or reject the application. Where the application is approved, the licensee must forward a copy of the GOP to the Authority.

⁷Processing fee of SR1,000 and GOP fees at concessionary rate of SR375 per month per person for the duration of the work permit

⁸Based on Ministry's recommendation, the Authority will extend approval for entry of the employee into Seychelles to the Immigration Division. Notwithstanding the endorsement of the foreign medical certificate, the licensee 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.

The licensee shall submit a certified true copy (by an independent certifier) of the final documents received from the Ministry within 7 days of receipt of same to the Authority.

Any application for renewal of a GOP must first be submitted to the Authority accompanied by the relevant form approved by the Immigration Department (i.e. "Application for Variance of Conditions or period of Validity of Gainful Occupation Permit"), the original GOP and relevant fees.

Where a licensee terminates the employment or the contract of expatriate employees end, the licensee must notify the Authority and surrender the GOP of these employees to the Authority.