WHITE PAPER

FOR

INDUSTRY CONSULTATION

REFORM IN THE SECURITIES DEALER'S FRAMEWORK

POLICY PROPOSAL

White Papers communicate an intended Government policy or approach on a particular issue. They are chiefly planned as statements of Government policy.

The Financial Services Authority (FSA) is proposing certain reforms to the Securities Dealer framework licensed under the Securities Act, 2007. The reforms reflect market developments whereby Securities Dealer is being intended to be augmented to better conduct securities business in a more controlled and well regulated manner that does not impede on the jurisdiction, taking note of emerging risk and opportunities in the sector.

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1. Introduction

The purpose of this policy paper is to inform the Securities Dealer industry on the proposed changes to the regulatory framework of the Securities Dealers ("SD"), i.e. amendments in the Securities Act ("the Act"), as well as its subsequent regulations. The amendments are in line with the FSA's strategic objective to adopt a financial services centre for Seychelles that is geared on regulating licensed activities of substance and value.

2. Background

A Securities Dealer (SD) means a company who, in accordance with sections 2 and 45 (5) of the Act:

(a) carries on the business of dealing in securities or,
(b) holds himself out as conducting such business listed below:

(i) makes or offers to make an agreement with another person to enter into or offer to enter into an agreement, for or with a view to acquiring, disposing of, subscribing for or underwriting securities or in any way effects or causes to effect a securities transaction;
(ii) causes any sale or disposition of or other dealing or any solicitation in respect of securities for valuable consideration, whether the terms of payment be on margin, instalment or otherwise or any attempt to do any of the foregoing;
(iii) participates as a Securities Dealer in any transaction in a security occurring upon a securities exchange;
(iv) receives as a Securities Dealer an order to buy or sell a security which is executed; or
(v) manages a portfolio of securities for another person on terms under which the first-mentioned person may hold property of the other person.

Where, however, the company's dealings fall within one of the listed categories outlined in sections 45(6) of the Act, that person is not regarded as carrying on the business of dealing in securities. The list of relevant dealings by a person who either does the following or holds himself out as doing so: -

(i) carries out functions as a clearing agency;
(ii) carries out functions as an investment advisor who manages a portfolio of securities for another person;
(iii) gives advice on securities as an incident to the person's practice as a lawyer or professional accountant;
(iv) as an employer buys, sells, subscribes for or underwrites securities in connection with the operation of a share or pension scheme for the benefit of employees or former employees, or of their spouses, widows, widowers or children or step-children under the age of eighteen;
(v) as a principal or agent buys, subscribes for or underwrites securities and such securities create or acknowledge indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which such person or his principal has made, granted or provided;
(vi) as a company, partnership or trust, issues and redeems or repurchases any of its own securities;

(vii) buys, sells, subscribes for or underwrites securities for the purposes of or in connection with the disposal of goods or supply of services;
or

(viii) buys, sells, subscribes for or underwrites securities in the course of carrying on any profession or business not otherwise constituting dealing in securities;

NOTE: The persons specified in Schedule 4 of the Act do not require a Securities Dealer's License to deal in securities.

Noting the roles of an SD, section 46 (3) of the Act also provides the FSA with the power to restrict the extent to which an SD can operate. The FSA can restrict an SD licensee by: -

(a) limiting the number of clients to whom the licensee may provide services;
(b) limiting the licensee to providing services only to the clients named in the licence;
or
(c) setting the minimum value of an individual client's investment.

This type of license is termed as a "Restricted Securities Dealer License".

The Act also makes provision for an exemption from the licensing requirements in cases where the SD is a recognized Overseas Securities Dealer and holds current membership to deal on a Seychelles Securities Exchange.

This type of license is termed as an "Overseas Securities Dealer License".

3. Permissible Securities

Within the Act, "securities" means –

(a) securities as set out in Schedule 1, which lists the type of securities a licensee can trade in;
(b) any other instruments prescribed to be securities for the purposes of the Act,

but does not include –

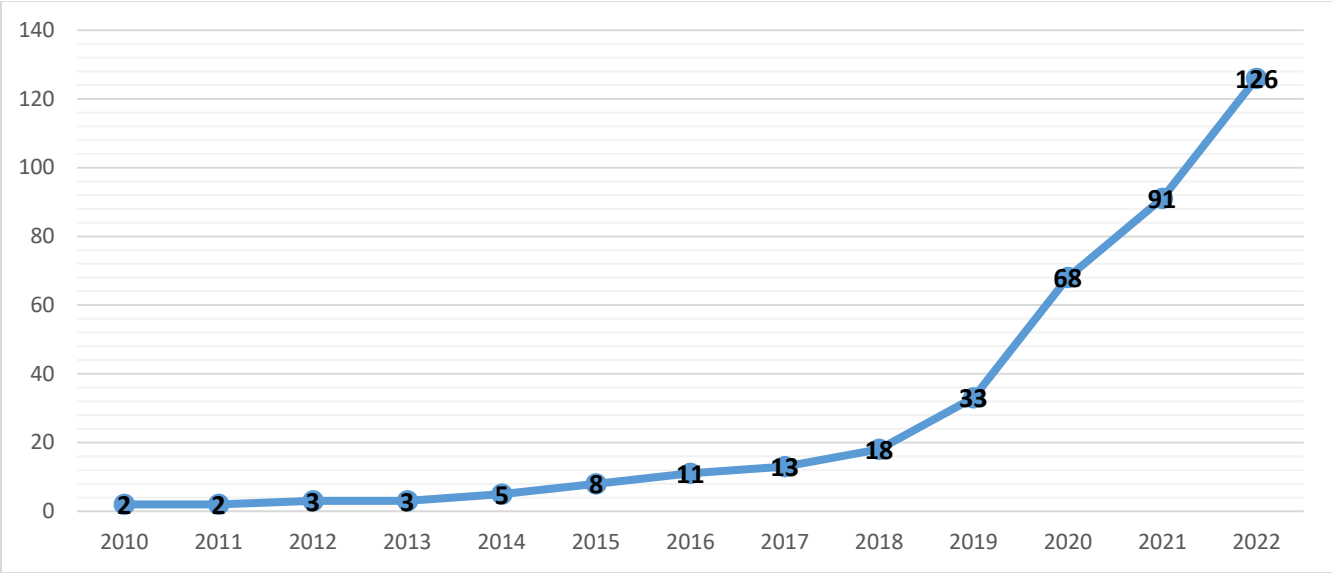
(i) bills of exchange;
(ii) treasury bills with an original maturity of less than ninety days;
(iii) promissory notes for less than two hundred and seventy days;
(iv) certificates of deposit issued by a licensed financial institution; or

(v) any other instrument prescribed, on the recommendation of the Securities Authority, not to be securities for the purposes of the Act.

4. Current status

Since the enactment of the Act in 2008, the number of SDs under the regulatory ambit of the FSA has steadily increased from 2 in 2010 to 13 in 2017, followed with a sharp increase from 18 in 2018 to 126 as at October 2022. See table 1 below.

Table 1



FSA statistics, as at October 2022

During the period, prior to 2014, SDs were mainly licensed with the intention to trade in securities listed on the securities exchange, that is operating on a traditional basis regardless of having offices or branches located in Seychelles and in other jurisdictions. Following 2014, the FSA noted an upsurge in the number of licenses being issued which is attributed to a number of factors as analysed by the FSA whilst comparing with other jurisdictions, as follows: -

(a) Increased popularity and use of the MetaTrader 4/5, an online trading electronic platform with various trading tools for speculative traders and vast array of securities such as contract for differences;
(b) Alternative ways of financing following the 2008 financial crisis;
(c) The adoption of international standards by other competing jurisdictions;
(d) Amendment in laws that governs SDs in other jurisdictions are being augmented with much stricter requirements for licensing, whilst Seychelles laws are more relaxed regulatory wise.
(e) Lack of physical substance requirements in the Seychelles' SD framework that lures a high number of license application.

5. Issues in relation to the operation of SDs in the Seychelles' context

In recent years, the FSA has faced a number of issues in the regulation of SDs. The issues that have been identified has prompted the FSA to review its SD framework. This section aims to provide a descriptive overview of the issues FSA has faced in licensing and regulating the SDs.

5.1. Physical substance

Based on analysis conducted through inspections and observations made, more than 97.10% of licensed securities dealers:

(a) have limited or no base of operations in Seychelles, with majority of these offices remaining unmanned;
(b) have a director who is not aware of the core operations of the securities dealer;
(c) have limited or no record kept in or accessible from Seychelles;
(d) have limited or no bank accounts in Seychelles (we note however the reluctance of Seychelles' banks to open bank accounts for securities dealers)
(e) outsourcing most or all activities including but not limited to, the compliance function of their business;

Section 45(1) of the Securities Act provides that **"*…no person shall carry on business in Seychelles dealing in securities unless that person is licensed to do so by the Securities Authority under this Part or subject to sub-section (2), a recognized overseas securities dealer who holds current membership to deal on a Seychelles Securities Exchange".***

It is noted that the Securities Act, specifically section 45(1) states that, a person is granted a licence to carry on business of dealing in "securities" in Seychelles. In other words, the Act is not extra-territorial but rather its effect is limited to the territory of Seychelles only.

With technological advancements, an SD may offer its services through the medium of an online trading platform which renders the need for certain number of employees unnecessary, despite the Act being limited to the territory of Seychelles.

Given that the bulk of the operations of an SD is undertaken via an IT platform (with limited human interactions) and taking into consideration the lack of efficient IT infrastructure in Seychelles to conduct the IT based components of the business, this function is mainly carried out in other jurisdictions.

In view of above ongoing concerns, the FSA has deemed it necessary to put into place certain minimum physical requirements with regards to the operations and activities of securities dealers currently licensed in Seychelles, to allow the FSA to better supervise and monitor the SDs.

5.2. Licensing Requirements

The Authority has identified certain gaps in terms of the licensing requirements for the granting of an SD license. Currently, as per section 45(4) of the Act, the Authority shall not grant a SD's license unless the applicant meets the necessary requirements below –

(a) is a company incorporated under the Companies Act or under the laws of a recognized jurisdiction;
(b) employs at least two natural person directors;
(c) employs at least one individual who is licensed as a representative;
(d) complies with any prescribed minimum paid-up capital requirements i.e. (USD 50,000);
(e) complies with the insurance requirement;
(f) satisfies the Authority that it is a fit and proper person to be licensed as a securities dealer;

(g) will be able, if licensed, to comply with any financial resources regulations that may apply to it;
(h) has specified premises that are suitable for keeping records or other documents.

The Act, however is silent on whether the directors of the company must be based in Seychelles, as well as whether or not these directors must be actively involved in the management of the company.

Given the nature of an SD's operation, there lacks the notion of accountability for the conduct of business of licensees within the jurisdiction (i.e. local directors required) and with the existing requirements where licensees can operate remotely without the need to have a physical presence in the jurisdiction itself, this creates certain difficulties as the Authority is unable to effectively regulate and monitor these activities or take enforcement action against malpractice or instances of failure to act, by the licensees and/or its directors.

The imposition of accountability from a domestic perspective for a licensee is crucial to ensure that licensees are held accountable for the conduct of their business in accordance with the Act.

5.3. Inherent Risks

The business of Securities Dealers, as any other business, has inherent potential risks associated with its operations as follows:

(a) **Liquidity risk**- The risk that the Company will encounter difficulty in meeting its short term obligations that may arise (settled by cash or other financial assets) ;

(b) **Market price risk**- The risk where the value of a financial instrument fluctuates as a result of changes in market parameters such as interest rates, volatility and exchange rates. The SDs face this risk as a result of its trading activities in CFDs;

(c) **Exchange rate risk**- The risk where commercial transactions and/or assets and liabilities are denominated in a currency that is not the SD's operating currency. Furthermore, funds deposited by clients may not always be maintained in clients' user currency, which represents the currency at which the SD repays clients' accounts, but may be converted instead to another currency;

(d) **Credit risk**- The risk that arises as a result of the failure by counter parties to discharge their obligations. For SDs, credit risk mainly occurs from open positions with clients;

(e) **Strategic risk**- The risk that arises from events or decisions that could potentially prevent an organization from achieving its goals. From the FSA's observation, this occurs whereby directors engages in poor decision making as a result of being unaware of the operations of the SD within which they hold a directorship.

(f) **Operational risk**- This is where the business structure of an SD does not require a traditional mode of operation by having a front, middle and back office, as is required for a traditional business set-up. The risk of losses that arises is caused by flawed or failed processes, policies, systems or events that then disrupt business operations. The FSA has taken note of the absence of

clear processes or failure to follow/document/review processes within some of the SDs it supervises;

(g) **Compliance risk**- The risk that arises due to exposure to legal penalties, financial forfeiture and material loss, resulting from an SD's failure to act in accordance with industry laws and regulations, internal policies or prescribed best practices;

(h) **Money Laundering and Terrorist Financing risk** – The risk that results from monies involved in transaction for dealing securities which can be used for money laundering and terrorist financing;

(i) **Legal and Regulatory risk** – The risk associated with the impediments and limitations of legislations;

(j) **Jurisdictional risk** –The risk that arises where an SD operates in a foreign jurisdiction; in the local context, this causes a breach of the Securities Act by virtue of these SDs operating outside of Seychelles. The result of this is that the supervising Authority does not have the legislative coverage over the Securities Dealer as it ties back into the territorial aspect of the Act whereby the law is only enforceable in the Seychelles, with adjudication processes and potential remedies arising from a decision rendered by a court of competent jurisdiction within the Seychelles.

With the lack of physical substance and accountability of SDs in the jurisdiction, the risks above are enhanced and more often it renders the Authority powerless in identifying, assessing and mitigating any risks as well as limiting the required enforcement actions that can be taken with the SD, especially with particular companies operating beyond the jurisdiction of Seychelles. Therefore, it is imperative to implement a risk-based supervision (" RBS") approach towards monitoring and supervision of such entities in order for the FSA to better safeguard the reputation of the Seychelles jurisdiction and effectively supervise the SDs.

The RBS approach essentially entails the allocation of supervisory resources and paying supervisory attention in accordance with the risk profile of each institution. The RBS is largely outcome and principled based and is encouraged by international regulatory bodies of which the FSA has committed to such as the FATF and the IOSCO. The RBS approach includes but is not limited to -

(a) Identification of risk
(b) Categorization of risk
    (i) "core" those that the company must take in order to drive performance and long-term growth
    (ii) "non-core" often not essential and can be minimized or eliminated completely
(c) Evaluation of risk
(d) Risk mitigation
(e) Risk Reporting and monitoring
(f) Risk governance (ensuring that all employees perform their duties in line with the risk management framework)

Lastly, RBS supports improved decision making and the most effective use of scarce supervisory resources.

5.4. Compliance Function

The Financial Services Authority Act, 2013 ("FSA Act") and the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020 (AML/CFT Act) requires the appointment of a compliance officer for the fulfilment of the compliance function.

Consequently, due to the shortage of qualified compliance officers within the Seychelles, the FSA issued a Code for Outsourcing of Compliance Function which allowed licensees under the Securities Act, 2007 and the Mutual Fund and Hedge Fund Act, 2008 to outsource their compliance functions to an approved third party. This was due to the fact that the compliance officer was allowed to fulfil the role of compliance for both the purposes of the FSA Act as well as the AML Act at the same time. It is noted that at the time, with a lack of availability of compliance officers, implementing and allowing the outsourcing of compliance functions was favoured as a practicable solution.

However, the promulgation of the new AML/CFT Act, 2020 has rendered the concept for outsourcing obsolete, given that the AML/CFT Act requires a compliance officer to be a resident person and an employee of the licensee. It is to be noted that the FSA Act does not currently include such a provision.

NB: The FSA Act is yet to be amended to include such a provision and as such is still capable of being outsourced. However, with the proposed policy changes to the FSA Act, the FSA will be adopting a similar approach to the AML/CFT Act, whereby compliance officers under the FSA Act will require the compliance officer to be a resident of Seychelles holding senior official at management level or an employee of the licensee.

Notwithstanding the above, it is also important to note that the FSA does not have sole control over the policies relating to the implementation of the AML/CFT Act 2020. As one of the three sectoral supervisors, it is crucial that we are consistent in relation to the policies contained in the AML/CFT Act.

Moreover, with the Code for Outsourcing of Compliance Function, some offices may be left vacant, with the outsourced service provider manning the offices of other SDs under its management. It is for these set of reasons that the concept of outsourcing of the compliance function has to be terminated.

5.5 General Outsourcing

Outsourcing of various functions of a license is a common practice in other jurisdictions. Whilst it would not be permissible for the primary functions *(see core functions below)* or for the actual licensable activities to be outsourced, in view that these are required to be retained and fulfilled in house, certain other functions of a licensee may be permissible to be outsourced. It is noted that the International Organization of Securities Commissions (IOSCO) published its final report in relation to the principles of outsourcing in October 2021 as a guidance to assist regulated entities and regulators. While outsourcing can be allowed, IOSCO highlights 7 key principles to be followed and outsourcing should not be permitted to impair the regulator's ability to perform its functions, including the proper supervision and examination of a regulated entity.

The IOSCO report further states that within some jurisdictions, regulators may impose restrictions on the outsourcing of certain tasks where they believe the outsourcing introduces an unacceptable risk or is critical to the functioning of a regulated entity. In line with same, the FSA has identified a list of functions of

which it believes should be conducted in-house and within Seychelles at all times. These functions are referred to as "Core functions" and is defined as a function that should there be a weakness in, or failure by the licensee to perform the function as it arises, would have a significant impact on the licensee's ability to conduct its operations in an appropriate manner.

Any function deemed to be a "core function" includes but is not limited to;

(a) any decision making functions of the entity affecting the operations of an SD;
(b) regulatory responsibilities; or
(c) any interaction or direct contact with clients and investors;

These functions cannot be outsourced unless they are outsourced to an entity within the same group of companies. Only support functions such as Human Resources, Finance/ Accounts and Administration on behalf of the licensee maybe be outsourced to third parties. In addition, these support functions cannot be further subcontracted and if they do, they will be in contravention of the law.

Further to the above, the regulated entity retains full responsibility, legal liability, and accountability to the regulator for all tasks that it may outsource to a service provider to the same extent it would if the service were provided in-house.

5.6. Complaints handling

The Authority has been receiving an increased number of complaints from clients, partaking in the online offerings made by its licensees, pertaining to the operations of Securities Dealers. An average of seven (7) complaints are received every month, which equates to one or two complaints per week ranging from remote access, boiler room activities etc. Consequently, this has become alarming to the Authority resulting in many red flags being raised on the operations of these existing licensed SDs.

6. Concerns of the FSA

The current operation model of SDs stems as a result of a number of concessions granted by the Authority, over the last few years in an effort to develop the industry, whereby companies conducting business overseas were licensed by the FSA, with the intention that these companies will eventually bring their base of operations to Seychelles within a specified period of time. However, to date, most aspects of operations have remained outside of Seychelles, where most SDs has failed to do the necessary to abide by the set requirements.

This means that most SDs continues to operate outside of the FSA's jurisdiction, leading to a lack of proper supervision and capability to take enforcement action. While FSA is able to revoke the SD licence, FSA is not able to provide any financial restitution or protection to affected investors.

This highlights a crucial shortcoming of the current operational model of the SDs, whereby an SD, while licensed, does not operate under the scope of its licence when conducting business overseas, despite giving the impression of the opposite, which results in false investor confidence. Should a malpractice of regulatory breach occur due to activity overseas, FSA will be severely limited in its options with regards to corrective action.

As the business operations of these securities dealers have grown, these occurrences have resulted in a growing number of negative press attention directed towards Seychelles, FSA and other licensed SDs. A concerning number of websites, news releases and regulatory alerts, issuing scam alerts on Seychelles licensed SDs, continuously highlight the issues with the Seychelles' licensed SDs, shedding light on unethical business practices, high pressure sales tactics and fraud. The effect is long-term implications, such as reputational damage to the FSA and the Seychelles' jurisdiction as an international financial centre is becoming a major concern.

A large number of complaints received by the FSA stems from the fact that existing licensees are engaging in "boiler room" activities, whereby customers are being instructed and pressured to enter specific positions and to deposit large amounts of money when such trades result in losses for the customer. Most of these instructions are given by phone, making it impossible for the Authority to trace and verify the integrity of the complaints, as these activities are outsourced to parties which do not record phone conversations.

The situation above is exacerbated even further with the annual review of Seychelles by the Organisation for Economic Co-operation and Development (OECD), and Seychelles Revenue Commission's position in lieu of tax matters on SD's activities vis-à-vis the substantial activity requirements for core income generating activities.

The conjuncture of the factors above paints a grim outlook of the SD industry in Seychelles. Given the current trajectory, whilst the short-term implications may be limited to diminishing trust in FSA's licensees, long-term implications, however, may be far more severe, such as increased growing attention from international financial authorities such as OECD, European Union and FATF. This might potentially lead to affect our ratings, possibility of being blacklisted, affects correspondence and line of communication and cooperation with international organisations as well as other jurisdictions.

Moreover, with the FSA's efforts to gain ordinary membership from the International Organization of Securities Commissions (IOSCO), the prevailing issues may cast Seychelles into a negative light and affect our efforts for ordinary membership.

7. Proposals to Securities Dealer framework

Thus, the proposal is to review the legislative framework and prescribe requirements to existing licensed SDs as well as new applicants to comply with the proposed requirements.

(a) At least one fit and proper resident director in Seychelles.

This will ensure accountability of SDs and provide assurance to the Authority that a responsible and decision making party is present within the jurisdiction. Should a breach of the law occur, the Authority would easily be able to have someone within Seychelles who is accountable to the company to assist in the relevant steps in relation to investigation and enforcement action to be taken. The resident director could be taken to task, investigated and prosecuted, if deemed necessary. As per current practice, the director must be well versed with the operations of the business to which he/she is acting as director and would have to undergo a fit and proper test against a set of criteria's as set by the FSA. In the event that an individual is no longer deemed to be fit and proper, same will be removed and the person no longer eligible to serve as a director. In the event that this removal, it shall result in the

licensee no longer meeting the required criteria for two fit and proper directors, whereby the operations and the licence itself would therefore be in jeopardy, due to non-compliance.

This would require amendments in Section 46 of the Securities Act – see Annex 1 and also new definition for resident person in the interpretation section 2.

(b) Dual control (4-eyes minimum criterion).

The services of a licensee must be conducted by at least two residents and fit and proper individuals which must be based in Seychelles on a full time basis. The individuals can be either directors, compliance officers, representatives or any key officers of the licensee who has been determined to be "fit and proper" by the Authority.

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.

This would require amendments in Section 64 of the Securities Act – see Annex 1

(c) Full-time compliance function to be undertaken in Seychelles by a resident person.

The AML/CFT Act, 2020 requires compliance officers to be resident employees of the reporting entities. In view that SDs mainly serve non-face-to-face clients, this increases the level of AML and CFT risks which must closely be monitored and supervised by the Authority. In order to improve the effectiveness of this supervision and in line with the AML/CFT Act, full-time resident compliance officers will be required to conduct the relevant duties imposed on them under that Act.

Moreover, currently, SDs are required to appoint compliance officer under section 23 of the FSA Act to fulfil the licensee's compliance function. The FSA intends to mirror the provisions of the AML/CFT Act, 2020 which means that the compliance officer will be required to be a resident of Seychelles and a senior official at management level or an employee of the licensee.

This would require amendments in the Financial Services Authority Act as compliance function obligations is legislated under the same Act.

(d) Complaints handling conducted in Seychelles.

Complaint handling should be conducted in Seychelles (by a dedicated person or department) which would allow the Authority upon inspection (both on-site and off-site) of licensees to verify how complaints are handled and whether this is in accordance with the complaints handling policy of the

SD and the requirements of the law. The Authority will have no objection if the complaints handling is handled or overseen by the appointed compliance officer, who will be responsible for maintaining the complaints register, producing a complaint handling report and in cases where the company is at fault, make recommendations to the management to prevent future shortcomings on the company's behalf with regards to its customer conduct.

This would require amendments in the Securities (Conduct of Business) Regulations – regulation 2 and regulation 24 – see Annex 2

(e) Paid up capital requirements being maintained in Seychelles.

The initial minimum paid up capital to be maintained with a bank at all times licensed in the Seychelles or a recognised jurisdiction will be augmented from US$ 50,000 to US$ 250,000.

Existing licensees should transition to meet the new paid-up capital requirements within a period of 6-12 months.

This would require amendments in the Securities (Financial Statement) Regulations – regulation 20 – see Annex 4

(f) Access to licensee records from Seychelles.

While it is understood that with the advancement of technology, records are being kept and shared in the cloud, it is imperative for both the licensees and the Authority to be able to access these records at all times for compliance purposes. As such, all records and transactions pertaining to all the operations of an SD must be stored in Seychelles or accessible at all times from the Seychelles' office. The licensee shall ensure sufficient contingency planning for such access by means of backups, additional internet connections or remote access for the Authority, or any other means that may be deemed appropriate by the Authority.

This would require amendments in the Securities (Conduct of Business) Regulations – regulation 25(4) - see Annex 2

(g) Prohibit outsourcing of core functions.

As previously highlighted, while outsourcing is generally not prohibited, due to global focus on substance requirements and compliance, core functions must remain within the jurisdiction in which the business operates. However, with the modern business models of Securities Dealers, defining such functions poses a potential challenge.

"Core functions" can be defined as business functions which represent a significant investment for companies and are essential to almost every organization. To reiterate, "core functions" of a licensee entails a function that should a weakness be identified in, or failure by the licensee to perform the function arise, would have a significant impact on the licensee's ability to conduct its operations in a proper manner. As such, functions deemed to be a "core function" include but are not limited to:

(a) any decision making functions of the entity affecting the operations of an SD;

(b) regulatory responsibilities; or
(c) any interaction or direct contact with clients and investors.

As the clients are engaging with the business via an automated online platform, the trades are placed without the licensee's active involvement. As a result, this core function, around which the main business activity revolves, does not require staff or any human presence in the office.

However, there are certain other activities that may be defined as core function, such as client on-boarding and complaints handling, since both functions entail interaction and direct contact with clients and investors. Furthermore, as per the AML/CFT Act, all regulated entities shall undertake KYC/CDD verification in order to conduct business with their clients. Therefore, activities such as client on-boarding is considered to be one of the main income generating activities of the business.

As such, it is proposed that the following be defined as "core functions" that cannot be outsourced:

(a) All decision making functions of the entity;
(b) Any interaction or direct contact with clients and investors such as;
    i. Client on-boarding;
    ii. Customer support/ complaint handling;
    iii. Compliance function.

Subsequently, no third-party may fulfil any of the aforementioned core functions.

Where a SD forms part of a group, in which a branch is based in Seychelles, core functions may be allowed to be conducted outside of the Seychelles, subject to the FSA's approval. The outsourcing of such function shall be contractually binding and the licensee shall have sufficient knowledge on the activity of the outsourced function.

That being said, the Seychelles office shall at all times be the first point of contact and shall bear the full responsibility of the decision making and the final outcome of all activities shall rest with the Seychelles licensed entity, its directors and the compliance officer.

This would require promulgation of a new Regulation – Securities (Outsourcing of Functions) Regulations – see Annex 5

(h) Outsourcing of support services

Support services are ancillary services required for the smooth conduct of business in terms of internal support to the main business of organization. They are generally, HR, Finance, Logistics, Admin and IT. These services do not have a crucial direct impact on the licensee function given their role as "supporting" only, and does not involved interaction with clients.

Support services would therefore be allowed to be outsourced, however, licensees are expected to submit the service level agreements to the Authority and in the event of a default on the part of the company to whom the function is outsourced, the licensee remains liable.

This would require promulgation of a new Regulation – Securities (Outsourcing of Functions) Regulations – see Annex 5

(i) All medium of communication used with the clients shall be traceable and recorded.

It is recommended that licensees shall maintain, for at least 7 years, records of all communication with the clients, whether by phone, text, email or other alternative forms of communication. This is due to the reasons outlined above, whereby unethical business practices thrive with limited recourse by the Authority due to lack of evidence. All mediums of communication with clients must be recorded so as to ensure that transactions can be recreated. This will provide the Authority with a comprehensive overview of the client and licensee relationship, providing a 'map' for the manner in which the interaction and/or the transaction came about.

This would require amendment in the Securities (Conduct of Business) Regulations - regulation 25(4) – see Annex 2

(j) Limitation on trade names and domains.

It is noted by the Authority that a growing number of licensees are registering a multitude of trade names and domain names without prior approval from the FSA. In certain cases, these names and domains are bought from previously unlicensed entities, resulting in reputational damage to Seychelles due to unethical business practices.

It is the Authority's opinion that hosting a multitude of domain and trade names without the Authority's approval and without control measures in place, is not acceptable as it results in the license issued being "diluted" over several businesses. It is further noted that the Authority has taken note of unethical business practices whereby domains are purchased and re-sold from and to previously and subsequently unregulated entities, which carries a risk to the repute of Seychelles as a financial jurisdiction.

Thus, approval for use of all trade names and domains names shall be sought, both at the pre-licensing and post-licensing stage, from the Authority prior to purchase and use. Trade names shall be registered with the Registrar of (Domestic) Companies prior to being used by the licensed entity and subject to the approval of the FSA. All trade names held by the licensed entity shall be listed on the license in conjunction with the legal name of the entity. All approved trade names shall be listed on the FSA website. Furthermore, licensees shall be required to conspicuously display their trade names as well as legal names on their website where a client/ investor will be able to clearly see the legal name as well as trade names used by the licensee. To note, by default, an SD shall be entitled to operate only one domain and trade name. Any additional domain and trade names shall be subject to additional fees, as listed below:

(a) Application fee for each additional Domain - $500
(b) Application fee for each additional Trade name - $500
(c) Annual fee for each additional Domain - $1,000
(d) Annual fee for each additional Trade name - $1,000

This would require amendment in Section 61 of the Securities Act – see Annex 1 and Securities (Forms and Fees) Regulations – Schedule 2 – see Annex 6

(k) Limitation on worldwide operations.

The Authority has previously received several letters from different jurisdictions around the world, informing us of our licensed entities operating in jurisdictions without prior authorization from the relevant regulatory bodies within these jurisdictions and the FSA has come across several alerts published by regulators from other jurisdiction and the IOSCO Investor alert portal.

As a result to protect the reputation of Seychelles, onus shall be placed on the licensee to comply with the following:

(a) ensure that countries in which they intend on providing services have clear provisions on providing financial services to their residents and/or citizens;
(b) Reverse solicitation laws;
(c) Licensee must ensure that a legal opinion or alternative documentary proof has been granted to ensure that on-boarding of client is not in contravention of any laws in countries in which they intend on carrying their services;

This would require amendment in the Securities (Conduct of Business) Regulations – insert new part 4 – see Annex 2

(l) Outsourcing of compliance function

The concept of outsourcing of compliance function would be discontinued in order to be consistent with the AML/CFT Act. Consequently, upon enactment of the proposed amendment, new licensees will be required to have an in-house compliance officer whereas existing licensees will be given three years to implement same. The FSA will issue a circular to advise the industry of these measures and the proposed manner in which same may be implemented.

(m) Fees

The revised fees for each license category will be as follows:

- **Securities Dealer** – Increase the license application fee from USD1,500 to USD3,000 and the annual license fee from USD3,000 to USD9,000;
- **Exempt Securities Dealer** – Introduction of the license application fee of USD500 and the annual license fee of USD1,000;
- **Securities Exchange** – Increase the license application fee from USD3,000 to USD5,000 and the annual license fee from USD7,500 to USD12,000;
- **Securities Facility** – Increase the license application fee from USD2,000 to USD4,000 and the annual license fee from USD2,500 to USD10,000;

- **Clearing Agency** – Increase the license application fee from USD3,000 to USD4,000 and the annual license fee from USD6,000 to USD10,000;
- **Investment Advisor (company)** – Increase the license application fee from USD1,500 to USD2,000 and the annual license fee from USD3,000 to USD5,000;
- **Investment Advisor (individual)** – Increase the license application fee from USD1,250 to USD2,000 and the annual license fee from USD2,500 to USD5,000;
- **Representative** – The license application fee to remain at USD500 and the annual license to remain at USD750.

This would require amendment Securities (Forms and Fees) Regulations – Schedule 2 – see Annex 6

(n) Fit and proper fee

Introduce a fit and proper fee which shall be applicable for a change in key persons required to undergo a fit and proper determination following submission of the initial SD application or following issuance of licence. The proposed fee would be US$500.

This would require amendment in Section 59 and 60 of the Securities Act – see Annex 1 and Securities (Forms and Fees) Regulations – Schedule 2 – see Annex 6

(o) Clarity on permissible activities of Securities Dealers.

SDs are allowed to generally provide investment advice on securities as part of their operations without the need of an Investment Advisor licence. This is consistent with Section 45(5)(e) of the Securities Act. In order provide further clarity on this, it is being proposed that Section 48(4)(a) which deals with the licensing of Investment Advisors, is repealed.

This would require amendment in Section 48 of the Securities Act, by repealing subsection (4)(a) – see Annex 1

(p) Negative Balance Protection for Retail Clients trading CFD Products

The leveraged nature of CFD products means that retail investors trading in them can be exposed to losses exceeding their deposited funds. Depending on the leverage used and the volatility of the underlying asset, the speed and volume of the losses can at times be significant.

In order to mitigate the risk of investors losing more than their initial deposits and to provide a level of certainty to the client of possible investment outcomes when investing in such products, a negative balance protection on a per trading account basis is being proposed, with the aim of limiting a retail client's aggregate liability/losses for all CFDs connected to a CFD trading account with a CFD provider to the funds in that CFD trading account.

Consequently, an SD that has opened a trading account for a Retail Client to trade in CFD products will not be able to recover any losses from the client that go beyond the funds in the Retail Client's trading account.

This would require amendment in the Securities (Conduct of Business) Regulations 2008 - insert a new Part 5 and new Section thereunder – see Annex 2

(q) Risk warnings

Further to item p above, another risk mitigating measure the authority is proposing would be risk warnings for retail client when trading in Securities, Futures and Contract For Differences. The proposal would require SD's to imprint/display risk warnings to their client, notably for –

1. Understanding of the complexity of the instrument and the risks that comes with it,
2. The risk of losing money rapidly due to leverage and price fluctuation,
3. Advising clients of the percentage of clients that has lost money,

This would require amendment in the Securities Act – Section 64 (see annex 1) by inserting new enabling provision, then amendment in the Securities (Advertisement) Regulations 2008 – see Annex 3

(r) Change of licensee name

Currently, section 61 provides the circumstances in which the authority requires a change of a name of a licensee. Whilst changing a name requires certain administrative procedures from the authority's side, it is of the view that a fee to commensurate the procedures is required.

Hence, an enabling provision is being inserted to allow a fee to be charged upon a name change.

This would require amendment in section 61 of the Securities Act – see Annex 1 and Securities (Forms and Fees) Regulations – Schedule 2 – see Annex 6

(s) Approval of issue, transfer of disposal of shares

Currently, section 60 provides the requirement for approval of issuance, transfer or disposal of shares of a licensee. Whilst approving for issuance, transfer and disposal, the authority must undergo certain administrative procedures to effect such approval. It is of the view that a fee to commensurate the procedures is required.

This would require amendment in section 60 of the Securities Act – see Annex 1 and Securities (Forms and Fees) Regulations – Schedule 2 – see Annex 6

(t) Role of Securities Dealer's representatives and Investment Advisor's representatives

Presently, the roles and functions of Securities Dealer's representatives and Investment Advisor's representatives are ambiguous, in terms of their definitions are similar to that of the Securities Dealer

and Investment Advisor. Even-though, ideally, Securities Dealers representatives and Investment Advisor representatives are essentially employees of Securities Dealer and Investment Advisor, the functions are similar to that of its "employer".

This ambiguity is being addressed by clearly segregating the functions of the two category of license. Whilst the original definition for Securities Dealer and Investment Advisor would be maintained, their representatives would not be doing the licensees functions, but rather overseeing the activities as employees of the licensee.

This would require amendment in section 2 of the Securities Act – see Annex 1.

(u) Coming into force of the proposed amendments

Entities licensed before coming into force of the amendment in the Securities Act, Securities (Conduct of Business) Regulations, Securities (Financial Statement) Regulations and for the promulgation of the Securities (Outsourcing of Functions) Regulations, shall have one year to comply with the provisions unless specified otherwise.

New licensees shall immediately comply with new legislative requirements.

The Securities (Fees and Forms) Regulations shall come into force the moment it is gazetted.

Annex 1

SECURITIES (AMENDMENT) BILL, 2022

(Act No of 2022)

AN ACT to amend the Securities Act, 2007.

ENACTED by the President and the National Assembly.

Short title

1. This Act may be cited as the Securities (Amendment) Act, 2022.

Amendment of Section 2

2. To repeal the definitions of securities dealer's representative and investment advisor's representative and substitute as follows –

"securities dealer's representative" means an individual in the employment of (including a director of) with a securities dealer whose principal purpose is to oversee the execution of the activities outlined within the meaning of section 45, whether he is paid a salary, wages, commission or otherwise;

"investment advisor's representative" means an individual in the employment of (including a director of) with an investment advisor whose principal purpose is to oversee the execution of the activities outlined within the meaning of section 48(3), whether he is paid a salary, wages, commission or otherwise;

3. Insert a new definition of resident person as follows –

"resident person" means an individual who resides and who is domiciled in Seychelles; or who is present in Seychelles for a period of, or periods amounting in aggregate to, one hundred eighty-three days or more in any twelve (1) month period that commences or ends during the financial year of a licensee.

Amendment of Section 9

4. In subsection 2(g) by adding after the word "directors;" the following words "of which one shall be a resident person who is employed on a full-time basis".

Amendment of Section 46

5. In subsection 4(b) by adding after the word "directors;" the following words "of which one shall be a resident person who is employed on a full-time basis"

Amendment of Section 48

6. Repealing subsection 4(a)

Amendment of Section 59

7. Renumber subsection (2) as subsection (3) and thereafter insert a new subsection (2) as follows –

Further to subsection 1(c), the notification for change shall be accompanied by the prescribed Fit and Proper fee.

Amendment of Section 60

8. Renumber subsection (2) as subsection (3) and other subsections accordingly and thereafter insert a new subsection (2) as follows –

Where approval has been granted under subsection (1), the licensee shall be liable to prescribe fees.

Amendment of Section 61

9. Renumber section 61 as section 61(1).

Thereafter amendment subsection 1(e) by adding after the word "name", the following words "and pay the prescribe fees"

Insert new subsections as follows –

"61(2). A licensee shall submit to the Securities Authority the –

(a) trade names

(b) domain names

to be used by the licensee as part of the application process for a license under section 46(1), for approval by the Authority.

(3). Notwithstanding subsection 2, a licensee may use other trade names and domain names other than the trade names and domain names approved under subsection 2, subject to the Securities Authority's approval in writing and subject to the payment of such fees as may be prescribed.

(4). All trade names shall be listed on the licence certificate of the licensee, and clearly displayed on the website of the licensee and the Securities Authority's website.

(5) All domain names shall be listed on the conditions of the licence.

Amendment of Section 64

7. By inserting after item (m), the following new items –

"(n) ensure that at all times, there are at least two resident fit and proper persons who are either directors, compliance officers or members of the managerial staff of the licensee."

"(o) ensure that at all times there are standard risk warnings as prescribed."

Insertion of new Part 15

8. After section 137, insert a new Part 15 as follows –

"PART 15
CHANGE IN FIT AND PROPER PERSONS"

9. Insert a new section 138 as follows –

138. For the purposes of this part –

"Key position or in significant role" means but not is limited to:

(a) the management and oversight of the day-to-day operations and of the employees;

(b) ensuring the availability of up-to-date and timely information concerning the operations and affairs;

(c) acting as an intermediary between the board and employees.;

(d) formulating and implementing policies and procedures;

(e) conducting training for staff and assisting in the identification and evaluation of other officers and board members as may be appropriate;

(f) having regulatory knowledge of the industry;

(g) having knowledge and understanding of the roles and duties for the position occupied or for the position applied to be occupied as applicable;

139 (1). The provision of this part shall apply to –

(a) licensed Securities Dealers;

(b) licensed Investment Advisor;

(c) licensed Securities Exchange;

provided that the particular circumstances in which it applies are relevant to Fit and Proper determination of persons in key position or with a significant role.

(2). Determination under subsection (1) shall apply to a change in an approved Fit and Proper persons in key position or with a significant role as previously approved under section 9(2)(g), 46(5) and 49(4).

(3). A licensee shall give the Authority prior notice in writing of any change referred to in subsection (2), a completed application for Fit and Proper status and prescribed Fit and Proper Fees within 30 days before the change is deemed effective.

(4). No change shall be effective without the approval of the Authority following the required submission under subsection (3).

(5). A licensee who fails to comply with subsections (3) & (4) shall be liable to a penalty of $5000 per day or part thereof during which the contravention continues. .

(6). Further to subsection (5), the Authority may take enforcement action as deemed appropriate.

Transition and savings provision

10. Entities licensed before coming into force of this amended Act, shall have one year to comply with the provisions of this amended Act.

Annex 2

S.I. OF 2022

SECURITIES ACT

Securities (Conduct of Business) (Amendment) Regulations, 2022

In exercise of the powers conferred by section 133 of the Securities Act, the Minister responsible for Finance on recommendation of the Securities Authority makes the following regulations –

Citation

1. These regulations may be cited as the Securities (Conduct of Business) (Amendment) Regulations, 2022.

Amendment of Securities (Conduct of Business) Regulations 2008

2. The Securities (Conduct of Business) Regulations is amended as follows –

(a) in regulation 2, by inserting a new definition after "the Act means the Securities Act, 2007."-

"complaint handling function" means the handling of complaints by the licensee;

(b) by repealing regulation 24 and substituting it with the following –

"24(1). A licensee shall employ a resident person, who may be the compliance officer, to undertake the complaints handling function of the licensee.

(2). A licensee shall have internal policies and procedures in place to effectively undertake the complaint handling function by the designated individual under subsection (1).

(3). A licensee shall ensure that all complaints are promptly attended to and that all actions to remedy the complaints are exhausted.

(4). A licensee shall maintain an accurate and up-to-date database of all complaints received which shall contain, inter alia, the following information, in relation to each complainant –

(a) Name and surname;
(b) Email address;
(c) Nationality;
(d) Country of residence;
(e) Passport number
(f) National Identity Number;
(g) Date of account opening;
(h) Status of the account;
(i) Complaint reference number;
(j) Date of lodging of the complaint;
(k) Nature of the complaint; and

(l) Status of the complaint.

(5) A licensee shall properly document and record all complaints received.

(c) in regulation 25(4),

(i) adding after item (e), the following –

"(f). records of communication with clients via email, video conferencing, text, fax, telephone calls and other modes of communication"

(ii) by repealing the paragraph after item (f) and substitute with the following-

"for a period of not less than seven years in Seychelles at its registered office or the principal place of business in physical or digital copy, for inspection by the Authority or any person duly authorised by the Authority."

(d) after regulation 33, insert a new part 4 as follows –

"PART 4
WORLDWIDE OPERATIONS"

(e) insert a new section 34 as follows –

"34(1). A licensee shall ensure that the countries in which they intend on providing services allows their residents to engage with a licensee licensed under this Act.

(2). Further to subsection 1, a licensee shall prove to the Authority that they possess the necessary legal opinion or alternative documentary proof, including but not limited to on-boarding or solicitation of clients, from the relevant authorities of the countries in which they intend on providing their services as part of the application for a licence and at post-licensing stage.

(3). Should a licensee offer or intend to offer services to any country not previously notified to the Authority, the licensee shall be required to keep proof of such legal opinion or alternative documentary proof and notify the Authority prior to the on-boarding or solicitation of clients within 10 working days.

(4). To ensure compliance with subsection (1), all Directors shall consent to a declaration to the Authority that they shall comply with the laws of the countries they intend on offering their services.

(f) after regulation 34, insert new part 5 as follows –

"PART 5
CLIENTS PROTECTION"

(g) insert a new section 35 as follows –

"35(1). For the purposes of this section–

"arranging deals in securities" means making arrangements with a view to another person buying, selling, subscribing for or underwriting a security (whether that other person is acting as principal or agent) and such arrangements include:

(a) arrangements which do not bring about the transaction; and

(b) arrangements comprising or involving the receipt and transmission of client orders in relation to securities.

"deal in a restricted speculative investment" means dealing in securities as principal in relation to a restricted speculative investment;

"dealing in securities as agent" means buying, selling, subscribing for or underwriting any security as agent.

"dealing in securities as principal" means buying, selling, subscribing for or underwriting any security as principal.

'margin' means the pre-agreed amount a retail client is required to have in the form of money to open a position in relation to a restricted speculative investment;

"restricted speculative investment" means:

(i) a leveraged contract for differences;

(ii) a leveraged rolling spot forex contract;

(iii) an option over a contract referred to in (i) or (ii); or

(iv) any other leveraged investment similar in nature to an instrument referred to in (i), (ii) or (iii); and

(v) "rolling spot forex contract" means an instrument that falls within paragraph 8(b) of the definition of contract for differences in Schedule 1 of the Act, where the value of the contract is ultimately determined by reference, wholly or in part, to fluctuations in an exchange rate or the value of a currency.

"retail client" means a client who is not a professional client;

"professional client" means a client who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs.

Each of the following shall be considered to be a professional client:

(1) Entities which are required to be authorised or regulated to operate in the financial markets shall be all authorised entities carrying out the following activities:

(a) Credit institutions;

(b) Investment firms;

(c) Other authorised or regulated financial institutions;

(d) Insurance companies;

(e) Collective investment schemes and management companies of such schemes;

(f) Pension funds and management companies of such funds;

(g) Commodity and commodity derivatives dealers;

(h) Local authorities;

(i) Other institutional investors;

(2) Large undertakings meeting two of the following size requirements on a company basis:

(a) balance sheet total: EUR 20 000 000 or the equivalent in any other currency
(b) net turnover: EUR 40 000 000 or the equivalent in any other currency
(c) own funds: EUR 2 000 000 or the equivalent in any other currency

(3) Governments, including public bodies that manage public finance and debt and licensed financial institutions.

(4) Other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions.

(2) The rules in this section apply to licensees which carries on or intends to carry on:

(a) Dealing in securities as principal;

(b) Dealing in securities as agent;

(c) Arranging deals in securities; or

(d) Advising on securities;

in relation to a restricted speculative investment.

(3). A licensee shall, before offering a service with or for a person, classify that person as a:

(a) retail client; or

(b) professional client;

in accordance with the requirements in this section.

(4). A licensee may classify a person as a different type of client for different financial services or financial products that are to be provided to such a client.

(5). If a licensee is aware that a person or the agent, with or for whom it is intending to carry on a financial service is acting as an agent for another person in relation to the service then, unless the agent is another licensee or a licensed financial institution, the licensee must treat the other as its client in relation to that service.

(6). If a licensee intends to provide any financial service to a trust, it must, unless otherwise provided in the rules, treat the trustee of the trust, and not the beneficiaries of the trust, as its client.

(7). A licensee must classify as a retail client any person who is not classified as a professional client.

(8). A licensee must not deal in a restricted speculative investment with a retail client, unless the licensee has carried out an appropriateness assessment of the person and formed a reasonable view that the person has:

(a) adequate skills and expertise to understand the risks involved in trading in the type of restricted speculative investment; and

(b) the ability to absorb potential significant losses resulting from trading in the restricted speculative investment due to leverage.

(9). A licensee must not open a position in relation to a restricted speculative investment for a retail client unless the margin posted to open the position is in the form of money.

(10). The liability of a retail client, for all restricted speculative investments connected to that retail client's trading account with a licensee that deals in restricted speculative investments, is limited to the funds in that trading account.

(11). A licensee must maintain records to demonstrate its compliance with the requirements of this section.

(12). Records referred to subsection (11) must be kept for a period not less than seven years.

Transition and savings provision

3. Entities licensed before the coming into force of this amended Regulations, shall have one year to comply with the provisions of this amended Regulations

MADE this …..... day of 2022

NAADIR HASSAN
MINISTER OF FINANCE,
NATIONAL PLANNING AND TRADE

Annex 3

S.I. OF 2022

SECURITIES ACT

Securities (Advertisement) (Amendment) Regulations, 2022

In exercise of the powers conferred by section 133 of the Securities Act, the Minister responsible for Finance on recommendation of the Securities Authority makes the following regulations —

Citation

1. These regulations may be cited as the Securities (Advertisement) (Amendment) Regulations, 2022.

Amendment of Securities (Advertisement) Regulations 2008

2. The Securities (Advertisement) Regulations is amended by inserting after subsection 7(5) the following new subsections -

"**Specific risk warnings obligation for licensed Securities Dealers**

(6). A licensee shall not market, publish, or provide any communication, information, advertisement or public invitation regarding securities, future and contract of differences to a retail client, or disseminate such communication, information, advertisement or public invitation without including the following risk warning, as applicable –

(a) the prices of securities fluctuates as it may move up or down, and may become valueless. It is as likely, that losses will be incurred rather than profit made when engaging in the buying and selling of securities.

(b) trading in futures involves risk and may result in potentially unlimited losses that are greater than the amount deposited with your broker.

(c) contract for differences are complex financial instruments that requires knowledge and understating as it involves a high risk of losing money rapidly due to leverage;

(7). the relevant risk warnings under subsection (6) must be –

(a) prominent;
(b) contained within its own border and with bold and plain text as indicated;
(c) if provided on a website or via a mobile application, statistically fixed and visible at the top of the screen even when scrolling up or down the page; and
(d) if provided on a website, included on each linked webpage on the website.

(8). The authority may at any time publish further guidance on risk warning.

Transition and savings provision

3. Entities licensed before coming into force of this amended Regulations, shall have one year to comply with the provisions of this amended Regulations.

MADE this …..... day of 2022

NAADIR HASSAN
MINISTER OF FINANCE,
NATIONAL PLANNING AND TRADE

Annex 4

S.I. OF 2022

SECURITIES ACT

Securities (Financial Statements) (Amendment) Regulations, 2022

In exercise of the powers conferred by section 133 of the Securities Act, the Minister responsible for Finance on recommendation of the Securities Authority makes the following regulations —

Citation

1. These regulations may be cited as the Securities (Financial Statements) (Amendment) Regulations, 2022.

Amendment of Securities (Financial Statements) Regulations 2008

2. The Securities (Financial Statements) Regulations is amended as follows —

(a) by renumbering regulation 20 as regulation 20(1).

(b) in regulation 20(1)(a) by repealing "US$50,000" and substituting thereof "US$250,000"

(c) by inserting a new sub-regulation 2 as follows –

"20(2). Further to sub-regulation (1), the minimum issued and paid-up capital shall be maintained at all times in a bank account of a bank licensed under the Financial Institutions Act, 2004 or in a recognised jurisdiction, to be approved by the Securities Authority".

Transition and savings provision

4. Entities licensed before coming into force of this amended Regulations, shall have one year to comply with the provisions of this amended Regulations.

MADE this …..... day of 2022

NAADIR HASSAN
MINISTER OF FINANCE,
NATIONAL PLANNING AND TRADE

Annex 5

S.I. OF 2022

SECURITIES ACT

Securities (Outsourcing of functions) Regulations, 2022

In exercise of the powers conferred by section 133 of the Securities Act, the Minister responsible for Finance on recommendation of the Securities Authority makes the following regulations —

Citation

1. (1). These regulations may be cited as the Securities (Outsourcing) Regulations, 2022.

(2). These regulations shall apply to licensed securities dealers provided that the particular circumstances in which it applies are relevant to the business being undertaken by the licensee.

Interpretation

2. In these Regulations **–**

"core function" means a function that should a weakness in or failure by the licensee to perform the function arise, would have a significant impact on the licensee's ability to conduct its operations in a proper manner;

"support function" means a function that does not constitute a core function and which generally supports the operation of the business;

"outsource/outsourcing" means a business practice in which a licensee uses a service provider to perform tasks, functions, processes, services or activities that would, or could in principle, otherwise be undertaken by the licensee itself;

"outsourcing agreement" means a written agreement setting out the terms and conditions governing the relations, obligations, responsibilities, rights and expectations of the parties involved;

"outsourced service provider" means a third party individual or company to which an outsourcing agreement has been entered with;

Outsourcing of support function

3. (1). A licensee may outsource a support function from its business to an outsourced service provider.

(2). The outsourcing must be notified to the Authority not more than 14 days before the commencement of the outsourcing.

(3). The outsourcing must be entrenched through an agreement between the licensee and the outsourced service provider.

(4). The agreement for outsourcing must be submitted alongside the notification under subsection 2.

Outsourcing of core function

4. (1). A licensee shall not outsource a core function from its business to an outsourced service provider.

(2). A licensee may outsource a core function from its business within the same group within which the licensee is affiliated.

(3). Outsourcing under subsection 2 shall be subjected to the Authority's approval.

(4). Approval for outsourcing must be sought with the Authority not more than 30 days before the commencement of the outsourcing.

(5). The outsourcing must be entrenched through an agreement between the licensee and the outsourced service provider, as approved by the Board of Directors of the licensee.

(6). The agreement for outsourcing must be submitted to the Authority alongside the request for approval under subsection 3.

(7). The Authority may impose conditions on an approval granted under subsection 3.

(8) The licensee shall be responsible for the outsourced arrangement.

Record keeping

5. A licensee must keep and maintain records of all transaction relating to outsourcing functions including but not limited to -

(a) constitutional document on the outsourced service provider;
(b) outsourcing agreement;
(c) details of the business model of the outsourced service provider; and
(d) records of payment for service;

for a period of not less than seven years, for inspection by any person duly authorised by the Authority

Contravention

6. If a licensee contravenes any provisions of these Regulations, the licensee commits an offence under the Act.

Transition and savings provision

7. Entities licensed before coming into force of this amended Regulations, shall have one year to comply with the provisions of this amended Regulations

MADE this …..... day of 2022

NAADIR HASSAN
MINISTER OF FINANCE,
NATIONAL PLANNING AND TRADE

Annex 6

S.I. OF 2022

SECURITIES ACT

Securities (Forms and Fees) (Amendment of Second Schedule) Regulations, 2022

In exercise of the powers conferred by section 133 of the Securities Act, the Minister responsible for Finance on recommendation of the Securities Authority makes the following regulations —

Citation

1. These regulations may be cited as the Securities (Forms and Fees) (Amendment of Second Schedule) Regulations, 2022

Amendment of Securities (Forms and Fees) Regulations 2008 as amended by S.I 14 of 2020, Securities (Forms and Fees) (Amendment) Regulations 2020

2. The Securities (Forms and Fees) Regulations, Second Schedule, as amended, is hereby amended as follows —

(a) By repealing item 1(a) to 1(f) and 2(a) to 2(g) and substituting with the following:

TYPES OF FEES	**AMOUNT IN US $**	**EXPLANATION (if applicable)**
1. Application Fee:		
(a) Securities Dealer	$3000	
(b) Investment Advisor (Company)	$2000	
(c) Investment Advisor (Individual)	$2000	
(d) Representative	$500	
(e) Securities Exchange	$5000	
(f) Clearing Agency	$4000	
(g) Securities Facility	$4000	
(h) Exempt Securities Dealer	$500	
2. Annual Licence Fee:		
(a) Securities Dealer	$9000	
(b) Investment Advisor (Company)	$5000	
(c) Investment Advisor (Individual)	$5000	
(d) Representative	$750	
(e) Securities Exchange	$12000	
(f) Clearing Agency	$10000	
(g) Securities Facility	$10000	
(h) Exempt Securities Dealer	$1000	

(b) By adding after item 8, a new row as follows –

9. Domain and Trade names fees: (a) Application fee for each additional Domain	US$500	

(b) Application fee for each additional Trade name	US$500	
(c) Annual fee for each additional domain	US$1,000	
(d) Annual fee for each additional Trade name	US$1,000	
(e) Fee for replacement of certificate	US$ 375	The fee shall be applicable upon reissuance of a new certificate for additional Trade name as the case maybe.
10. Fit and Proper fee: (a) Fee for processing of Fit and Proper applications	US$500	The fee shall exclude representatives of Securities Dealers and Investment Advisors.
11. Change of Name fee: (a) Fee for a change in name	US$ 500	
(b) Fee for replacement of certificate	US$ 375	
12. Approval for issuance, transfer and disposal of shares: (a) Fee for approval for insurance, transfer and disposal of shares	US$ 500	
13. Search of register: (a) Fee for search of register	US$ 200	
(b) Fee for a certificate of search	US$ 375	

MADE this …..... day of 2022

NAADIR HASSAN
MINISTER OF FINANCE,
NATIONAL PLANNING AND TRADE