

S.I. 89 of 2018**SECURITIES ACT, 2007***(Cap 208)***Securities (Substantial Activity Requirements)
Regulations, 2018**

In exercise of the powers conferred by section 133(1)(k) read with section 128(2) of the Securities Act 2007, the Minister of Finance, Trade, Investment and Economic Planning hereby makes the following Regulations—

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

Citation and commencement

2. For the purpose of these Regulations, a licensee means a securities exchange, clearing agency, securities facility, securities dealer or investment advisor licensed under the Act.

Interpretation

3. The substantial activity requirements under section 128(2) are met where the licensee undertakes the core income generating activities in Seychelles—

Requirements of core income generating activities

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

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

4. For the purposes of regulation 3, the core income generating activities required to be undertaken in Seychelles by the licensees are as follows—

Core income generating activities

- (a) in the case of a securities exchange, the provision of services with respect to the operations of a securities exchange, including, but not limited to, the provision of —
- (i) facilities or systems for the public listing or quotation of securities;
 - (ii) facilities or systems for the bringing together on a regular basis purchasers and sellers of securities for trading in securities;
 - (iii) facilities or systems for the matching of trades in securities; and
 - (iv) securities market information to relevant stakeholders;
- (b) in the case of a clearing agency, the provision of services with respect to the operations of a clearing agency, including, but not limited to the provision of —
- (i) facilities or systems for the clearing of securities transactions;
 - (ii) facilities or systems for the settlement of securities transactions;
 - (iii) risk management services;
 - (iv) central counter party services; and
 - (v) periodic reports to relevant stakeholders;
- (c) in the case of a securities facility, the provision of services with respect to the operations of a security facility, including, but not limited to, the provision of —

- (i) securities registry services;
 - (ii) services for the safe-keeping of securities, irrespective of their format;
 - (iii) services linked with corporate actions;
 - (iv) services necessary for the borrowing and lending of securities; and
 - (v) any other securities facilities or systems that facilitate or are ancillary to the operations of a securities exchange;
- (d) in the case of a securities dealer, the provision of services with respect to the operations of a securities dealer, including, but not limited to, —
- (i) entering in agreements with other persons with a view to acquire, dispose of, subscribe for or underwrite securities or in any other way which effects or cause to effect a securities transaction;
 - (ii) causing of any sale or disposition of or dealing or solicitation in respect of securities for valuable consideration, whether the terms of payment be on margin, instalment or otherwise;
 - (iii) the participation as a securities dealer in any transaction in securities occurring on a securities exchange;
 - (iv) the receipt as a securities dealer of orders to buy or sell securities which is executed; and
 - (v) the management of a port-folio of securities for other persons on terms which

allows for the holding of property for these other persons;

- (e) in the case of an investment advisor, the provision of services with respect to the operations of an investment advisor, including, but not limited to, the —
- (i) provision of advice, guidance or recommendations to other persons concerning investment in securities;
 - (ii) issuance of analysis or reports concerning specific securities or a portfolio of securities; and
 - (iii) management of portfolios of securities for other persons, without holding property of the other persons.

Structuring of
core income
generating
activity

5.(1) Notwithstanding regulation 3, where the front-office activities are undertaken by a licensee outside of the Seychelles, the Authority may consider the substance requirements to be met if the middle-office activities and back-office activities in relation to a core income generating activities are undertaken in Seychelles.

(2) In regulation 5 —

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

- (c) “back-office activities” means operational, administrative business activities or functions which provide support to both the front-office and the middle office, and which could include inter-alia, human resources or legal counsel.

6. Where a licensee outsources any of its core income generating activity outside of Seychelles, the substantial activity requirements specified in regulation 3 shall be considered not to have been met.

Outsourcing of activities

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

Extent of concessions

8. For the avoidance of doubt, where a licensee fails to comply with the substantial activity requirements specified in regulation 3, the concession relating to the Business Tax Act shall not apply.

Non-applicability of concessions

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

Declaration of compliance

SCHEDULE**(Regulation 10)****Declaration Form*****Substantial Activity Requirements under the Securities Act, 2007***

I/We the undersigned declare to the best of my/our knowledge that (...insert name of licensee...) have complied with the Substantial Activity Requirements as prescribed within the Securities (Substantial Activity Requirements) Regulations for the financial year ending (...insert financial year...).

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

Director 1**Director 2**

Signature: _____

Signature: _____

Name: _____

Name: _____

Date: _____

Date: _____

MADE this 21st day of December, 2018.

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