

Guidelines for Companies (Special Licence)



FINANCIAL SERVICES AUTHORITY

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Table of Contents

1.	Introduction	3
2.	Background	3
3.	Administration and Regulation of the Act	3
4.	Scope of the Act	3
5.	Management of the company	4
	5.1 Meetings	4
	5.2 Annual returns and accounts	4
6.	Revocation of licence	4
7.	Continuation	4
8.	Continuation outside Seychelles.....	5
9.	Taxation	5
10.	Exemptions	6
11.	Fees	6
12.	Application Requirements	6
	12.1 Covering Letter.....	6
	12.2 Application Form.....	7
	12.3 Application Fee.....	7
	12.4 Name Reservation Certificate	7
	12.5 Memorandum and Articles of Association.....	8
	12.6 Declaration of Compliance with Companies Ordinance, 1972	8
	12.7 Declaration Certificate by the Directors, Secretary and of Registered Address.....	8
	12.8 Articles of Continuation	8
13.	Approval and Licensing Process.....	8
14.	Submission of documents to Registrar of Companies.....	8
	14.1 Issuing of Special License	9
15.	Filing of Annual Returns and Accounts	9
16.	Amendments to Memorandum and Articles of Association	9
17.	Change in Beneficial Ownership, Shareholding or Directorship.....	10
18.	Change of Secretary	10
19.	Winding up and dissolution of CSL	10
20.	Other obligations under Companies Ordinance, 1972	10
21.	Letter of confirmation of CSL status	10
22.	Payment of annual licence fee.....	10
23.	Tax Certificates and Tax Returns.....	11

1. Introduction

This guide to apply for a Special Licence under the Companies (Special Licences) Act, 2003 (“the Act”) has been prepared to ensure that information about the above licence is readily available to those interested. As well as outlining the process of applying for a “Special Licence”, the guide specifies the criteria against which the Financial Services Authority (FSA) conducts its assessment of applicant companies.

The guide provides a summary of the Act and also explanations to the application requirements expected from an applicant.

Should you have any queries, please direct them to:

The Chief Executive Officer
Financial Services Authority
P.O. Box 991
Bois De Rose Avenue, Victoria
Mahé
Republic of Seychelles

Attention: Director of Fiduciary Supervision

Tel: +248 380 800
Fax: +248 380 888
Email: enquiries@fsaseychelles.sc

2. Background

The Companies (Special Licences) Act allows companies to be incorporated under the Companies Ordinance, 1972 with special provisions. The Special Licence does not “licence” the company to undertake any activity in or outside of Seychelles and therefore, the company must, where appropriate, acquire the relevant licences in the jurisdiction from which it operates.

3. Administration and Regulation of the Act

The Act is administered and regulated by the FSA, defined in the Act as the Authority. In order to apply for a Special Licence, the company must be incorporated as per the requirements of the Companies Ordinance, 1972, through the Authority.

4. Scope of the Act

Companies engaging in business activities defined in Schedule 1 of the Act may apply for a Special Licence. However, the list is not exhaustive and any other activities may be put to the Authority for consideration.

This requires the objects specified in the Memorandum to be specific. A general trading or similar clauses will not be considered. Furthermore, although the objects can contain one or more of the

approved activities, a combination of approved and unapproved objects cannot be considered. The limitation is contained in Section 4 of the Act.

5. Management of the company

There shall be at least two individual directors. All directors must be natural persons. The secretary must be a licensed International Corporate Service Provider (ICSP) in Seychelles who is responsible for submitting and authenticating signatures on all documents which are submitted to the Authority. The ICSP is responsible to conduct all enquiries and due diligence checks under the KYC norms. Acceptance by the ICSP of any document is considered acceptance by the company.

The ICSP must ensure that any persons (including non ICSP staff) it provides or recommends as a director is competent and fully aware of their personal duties and obligations as per the Companies Ordinance, 1972.

5.1 Meetings

The Company must at a minimum hold one annual board meeting and one annual general meeting, each of which must be validly constituted in Seychelles.

5.2 Annual returns and accounts

The annual returns and accounts must be filed ONLY to the Authority not more than 90 days following the end of each financial year.

6. Revocation of licence

The Authority has the ability to revoke the Special Licence issued under Section 9, in the event of any misconduct of any director, officer, manager or agent of a company, or if the business being conducted by the company is found to be illegal or likely to cause harm to the good repute of Seychelles. In such an event, the Authority will serve unto the CSL a written notice of its intention to revoke the Special Licence, giving the reason for the revocation. The company will be given one month to make representation to the Authority. The company may within 90 days of the notice make application to the Supreme Court for relief against that notice. If the company chooses to ignore the rights to appeal, then its special licence will be revoked after 90 days.

Where a Special Licence has been revoked by the Authority, the provisions of CSL Act shall no longer apply to the company and the company shall remain a body corporate registered under the Companies Ordinance.

7. Continuation

An International Business Company (IBC) incorporated in Seychelles or a company incorporated outside of Seychelles may continue as a Special Licence Company notwithstanding any laws to the contrary in the jurisdiction in which it was first incorporated.

8. Continuation outside Seychelles

The company may, subject to the limitations in the Memorandum and Articles of Association, continue outside Seychelles. This continuation does not absolve the company from its liabilities despite the fact that the Registrar has struck the name off the Company Register.

9. Taxation

As of 1st January 2019, CSLs are taxed in accordance with the prevailing tax rates specified under the Business Tax Act.

However, CSLs which have been issued with a special licence on or before the 16th October, 2017 can still benefit from the repealed concessionary tax rates stipulated below, unless they decide otherwise, until 30th June, 2021.

- (a) In respect of a Company (Special Licences) global taxable income is 1.5%
- (b) The rates of withholding tax on payments made by the Company (Special Licence) are:
 - (i) In respect to dividend paid to a resident – 0 %
 - (ii) In respect to dividend paid to a non-resident – 0%
 - (iii) In respect to interest paid to a resident – 0 %
 - (iv) In respect to interest paid to a non-resident – 0%
 - (v) In respect to royalty paid to a non-resident for the use of or the right to use, any copy right, patent, design or model or plan or trademark – 0%
 - (vi) In respect to royalty paid to a non-resident for the use of or the right to use, any secret formula, process or know-how whether the know how is technical, managerial or otherwise and any other intellectual property or right – 0%
 - (vii) In respect to royalty paid to a non-resident for the use of, or the right to use, any industrial, commercial or scientific equipment – 0%

If a CSL which has been issued with a special licence on or before the 16th October, 2017 no longer wish to benefit from the concessionary tax rates, the CSL must notify the Authority in writing, indicating the financial year the concessionary tax rates will cease to apply. Such CSLs which has opted out, will be liable to the prevailing tax rates specified under the Business Tax Act as follows (note that, depending on the business activity of the CSL, a lower tax rate may apply):

Businesses with taxable income of R0 – R1,000,000	1.5% on turnover, or 25% on taxable income
Businesses with taxable income on the first R1,000,001 and above	30% on taxable income

The Authority will send a copy of the written notice to the Seychelles Revenue Commission (SRC).

10. Exemptions

A Special Licence Company is exempt from the following:

- (a) Stamp duty
- (b) Import duty on furniture and equipment, excluding motor vehicles
- (c) Expatriate employees are exempt from gainful occupation permit fees

These exemptions shall remain in force for a period of ten years from the date of incorporation and thereafter shall remain in force unless a written law in the future provides otherwise.

11. Fees

Fees are provided in Schedule 3 of the Act. For ease of reference they are provided below:

- (a) Application for Incorporation: US\$ 200 + 5% Tax
- (b) Annual License Fee: US\$ 1000 + 15% and upon renewal 7.5%
- (c) Annual Return Filing Fee: US\$ 200 + 5% Tax

12. Application Requirements

When making an application for a Special Licence under the Companies (Special Licences) Act, 2003, the applicant company will have to submit the following documents and information:

- (a) Covering Letter
- (b) Completed Application Form
- (c) Application Fee
- (d) Name reservation certificate
- (e) At least 3 copies of the Memorandum and Articles of Association
- (f) At least 3 copies of the Declaration of Compliance with Company Ordinance 1972
- (g) At least 3 copies of the Declaration of consent by the Directors
- (h) At least 3 copies of the Declaration of consent by the Secretary
- (i) At least 3 copies of the Declaration of Registered Address
- (j) Articles of Continuation (if the company is being continued)
- (k) KYC & Due Diligence Declaration

NOTE: Ensure that all blank spaces are filled out and all submissions completed with block capitals or typed. For documents requiring the submission of at least 3 copies, please ensure that at least one of the copies is original or has been certified as a true copy of the original by the ICSP.

12.1 Covering Letter

Every application for a Special Licence must be submitted with covering letter. This letter must state the documents being submitted and the number of copies of each.

12.2 Application Form

Each licence application requires the completion and submission of the CSL Application Form which has been designed to fulfil the required information in accordance with section 5 of the Companies (Special Licences) Act, 2003.

Each licence application requires the submission of a detailed business plan describing the proposed activity and operations of the company. This may be outlined in the space provided in section 6 of the Application Form or in a separate document. The points listed below should be used as a guide as to what to include in the business plan.

- (a) Company background
- (b) Objectives of the company
- (c) Type of activity the company will engage in
- (d) Market details
- (e) Details of Capital investments to be made in setting up operations in Seychelles
- (f) Logistical Requirement in setting up operations in Seychelles
- (g) Audited accounts for last accounting period (if applicable)
- (h) Detailed 3 year cash flow forecast including a breakdown of:
 - (i) Utilities, Communications (Telephones, Facsimile, Internet)
 - (ii) Administrative Costs, Salaries and Wages
 - (iii) Finance Charges, Insurance, Training Costs, Consultancy, General Overheads, etc.

- (i) Date of proposed commencement of business

12.3 Application Fee

When making an application for a Special Licence, the Application Fee of US\$200 + 5% Tax must be submitted. The Authority will not process any application documents if that fee has not been received. This fee is not refundable.

12.4 Name Reservation Certificate

Prior to submitting the application, the ICSP must make a formal request directly to the Registrar of Companies to reserve the proposed company name as per the procedures under Companies Ordinance, 1972. Proof of the name approval must be submitted along with other application documents. The name reservation should also be performed for any Seychelles IBC being continued as a CSL. The contact details of the Registrar of Companies appointed under the Companies Ordinance, 1972 are as follows:

Registration Division
Kingsgate House
Victoria, Mahé
Seychelles
Tel: (+248) 4280900
Fax: (+248) 4225764

12.5 Memorandum and Articles of Association

The objects as stated in the Memorandum must be limited to the carrying out of any one or more of the approved activities. At least 3 copies of the Memorandum and the Articles of Association have to be submitted to the Authority.

12.6 Declaration of Compliance with Companies Ordinance, 1972

A certificate signed by a legal practitioner practicing in Seychelles to the effect that the Memorandum and Articles of Association comply with the Companies Ordinance, 1972 read with the Companies (Special Licences) Act, 2003 must be submitted with the application.

12.7 Declaration Certificate by the Directors, Secretary and of Registered Address

In accordance with section 6 of the Companies (Special Licences) Act, the directors and the secretary have to consent in writing that they are willing to act in the capacity of directors and secretary of the Special Licence Company respectively. Furthermore, the directors and secretary must declare that they are not disqualified to conduct their duties and responsibilities, as per section 165 of the Companies Ordinance.

12.8 Articles of Continuation

In the case of a continuation, the applicant must submit its Articles of Continuation containing:

- (a) The name of the company and the name under which it is to be continued
- (b) The jurisdiction under which it is incorporated
- (c) The date on which it was incorporated
- (d) The amendments to its memorandum and articles, or their equivalent, are to be effective upon the registration of the articles of continuation

13. Approval and Licensing Process

Once the Authority receives the application documents, it will assess the application and accordingly contact the ICSP should it require any further clarification about a particular matter. The Authority will then notify the ICSP whether the application has been approved and if applicable, request the ICSP to submit payment for the license fee.

14. Submission of documents to Registrar of Companies

Should the application be successful, the Authority will issue a Certificate of Approval, confirming that the application is to its satisfaction. Thereafter, the Authority will send the following documents to the Registrar of Companies for processing:

- (a) The Memorandum and Articles of Association
- (b) Declaration of Compliance with Companies Ordinance, 1972
- (c) Certificate of Approval issued by the Authority
- (d) The name reservation certificate
- (e) Declaration of Consent by Directors
- (f) Declaration of Consent by Secretary

- (g) Declaration of Consent for Registered Address
- (h) Articles of Continuation (if applicable)
- (i) The special resolution passed under section 194(2) of the IBC Act (if applicable)
- (j) A certificate of good standing issued under the IBC Act (if applicable)
- (k) Declaration of compliance with section 190 (1) of the IBC Act (if applicable)

Information relating to the shareholding and beneficial ownership of the company will be retained by the Authority in accordance with Section 22 of the Act.

Under section 7(1) of the Companies (Special Licences) Act, 2003, the Registrar of Companies may retain and register the memorandum and articles of the applicant company. Upon registration, the Registrar will issue a Certificate of Incorporation or Continuation as appropriate. This certificate and the registered documents will be collected from the Registrar by FSA.

14.1 Issuing of Special License

When the Registrar of Companies has issued the certificate of incorporation, subject to receipt of appropriate licence fees, FSA will thereafter issue a Special Licence under section 9(1) of the Companies (Special Licences) Act, 2003.

15. Filing of Annual Returns and Accounts

In accordance with the Companies (Special Licences) Act, 2003, every CSL must submit its annual returns to the Authority accompanied by the filing fee (i.e. US\$200 + 5% Tax). The documents relating to the accounts of the company must be annexed to the annual return. The annual returns and accounts must be prepared in accordance with the Companies Ordinance, 1972.

Section 119 of the Companies Ordinance, 1972 stipulates that a company must hold its first AGM within 18 months of its incorporation and therefore the company's first annual return does not need to be submitted within 90 days from end of the first financial year. Section 15(1) of the Act shall apply for the annual returns submitted thereafter, allowing a CSL 90 days after the end of each of its financial year to submit its annual returns.

When a Special Licence Company fails to submit its annual returns, hence contravening Section 15 (1) of the Act and Section 114 of the Companies Ordinance, the appropriate penalties shall apply under the said section. In this section where it concerns a CSL, the word "Registrar" shall be replaced by the word "Authority".

16. Amendments to Memorandum and Articles of Association

Any amendments to the Memorandum and Articles of Association of a CSL must be made in accordance with the Companies Ordinance, 1972. The approval of FSA is however required for any amendments that affect the objects of the Company. In such cases, the Registrar of Companies will not proceed with such registration unless FSA has given its written consent.

Upon registration of any amendment, the secretary must file a copy of the registered document with the Authority.

17. Change in Beneficial Ownership, Shareholding or Directorship

The secretary must notify the Authority of any change in beneficial ownership, shareholding or Directorship of the CSL. Changes in directorships and shareholding will also require the registration at the Registrar of Companies upon the Authority's approval. The secretary must file a copy of the registered document with the Authority.

18. Change of Secretary

In the event that a CSL changes its secretary, prior to registration with the Registrar of Companies, the outgoing secretary must notify the Authority by submitting the following documents:

- (a) A covering letter from the outgoing secretary
- (b) A copy of the change in particulars for secretary

The CSL must register the particulars for secretary with the Registrar of Companies and file a copy of the registered document with the Authority.

19. Winding up and dissolution of CSL

The winding up and dissolution of a CSL must be made in accordance with the Companies Ordinance, 1972. However, prior to initiating the winding up and dissolution procedures, the secretary must notify the Authority. Following the dissolution of the CSL, the secretary must submit a copy of the relevant document confirming that the CSL has been dissolved.

20. Other obligations under Companies Ordinance, 1972

Unless stated otherwise under the Companies (Special Licences) Act, 2003, the CSL must comply with all the requirements of the Companies Ordinance, 1972.

21. Letter of confirmation of CSL status

Any person may request for a letter of confirmation of the status of a CSL from the Authority confirming:

- (a) the Company Name, Registration Number and CSL Number
- (b) the date on which the special licence was first issued to the company
- (c) the registered address of the company
- (d) the name and address of the current directors of the company
- (e) the name and address of the company's secretary
- (f) whether the company has any outstanding fees payable under the CSL Act
- (g) whether any adverse findings have been recorded on the company

22. Payment of annual licence fee

A CSL must annually pay an annual licence fee (i.e. US\$1000 + 7.5% Tax) to the Authority.

23. Tax Certificates and Tax Returns

The Seychelles Revenue commission is responsible for issuing tax certificates and assessing the taxable income of a CSL. For enquiries relating to taxation, please contact:

Seychelles Revenue Commission
P.O. Box 50
Victoria, Mahé
Seychelles

Tel: +248 4293737
Fax: +248 4225565
Email: advisory.center@src.gov.sc