

Complaints Handling Guidelines



FINANCIAL SERVICES AUTHORITY

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Glossary of terms

For the purposes of this document, the following terms shown by this table should be understood.

Authority	Financial Services Authority established under section 3 of the Financial Services Authority Act, 2013.
Licensees:	A person holding a license under the following acts; <ul style="list-style-type: none"> • International Corporate Service Providers Act, 2003 • Securities Act, 2007 • Mutual Fund and Hedge Fund Act, 2008 • International Trade Zone Act, 1995 • Seychelles Gambling Act, 2014 • Insurance Act, 2008 • Hire Purchase and Credit Sale Act, 2013
Commercial Dispute:	Any issue arising out of a contractual or commercial relationship between individuals within their private and/or personal business capacity, and falling outside of the regulatory scope of the FSA.
Privity of contract:	A common law principle which provides that a contract cannot confer rights or impose obligations upon any person who is not a party to the contract.
Financial Crime:	Money laundering, financing of terrorism, offences relating to misconduct in, or misuse of information relating to, financial markets and offences involving fraud or dishonesty.
Complaint:	A complaint is a formal, written document, informing the Authority of an instance or series of instances when; <ol style="list-style-type: none"> a. its employees have not performed their duties sufficiently, professionally, transparently, efficiently, or fairly. b. a person has expressed dissatisfaction with a licensee or entity in the conduct of its business, in the performance of all regulated activity of the licensee/entity, or the failure of the licensee/entities to comply with laws etc.

1. Introduction

These Guidelines are issued by the Financial Services Authority (“the Authority”) in accordance with section 33 (1) of the Financial Services Authority Act, 2013 (the “FSA Act”). These Guidelines intend to establish the procedure that the Authority will follow, upon receiving a complaint against a licensee and any other specified entities under the regulatory scope of the Authority, and complaints in respect to the way in which the Authority has carried out its functions.

While these Guidelines are aimed to provide an understanding of the complaint handling process of the Authority, the Authority reiterates that it is not a judicial body. Court rules and procedures do not apply to the decisions that it takes. The Authority takes administrative decisions in accordance with powers vested in it that are set out in the legislation that it administers as per Schedule 1 of the FSA Act.

The FSA Appeals Board established under section 42 of the FSA Act, remains the quasi-judicial body for any appeals lodged against any decision rendered by the Authority.

These Guidelines shall provide the steps by which a determination is made vis-à-vis complaints received. Each stage includes a number of distinct steps that are collectively designed to ensure that the final decision taken is:

- one that the Authority is empowered to take
- one that is made in accordance with statutory obligations imposed on the Authority
- one that is made in accordance with principles of natural justice, and
- proportionate and reasonable based on all relevant information before the Authority at the time.

In light of its mandate under the FSA Act, the Authority undertakes an administrative role conferred by statute which involves acting in the public interest whilst having regard to the need to be fair to licensees, specified entities and the general public. Additionally, the Authority is committed to ensure that its employees act professionally and fairly at all times whilst discharging its functions.

2. Scope

2.1 The role of the Authority in relation to complaints is to ensure that any written complaint received against:

- a licensee, in relation to the conduct of its business, is appropriately dealt with and recorded accordingly. The purpose of this is to ensure that a licensee is dealing fairly with its clients and is performing all regulated activities competently. Should there be any indication of a licensee’s failure to comply with the terms and conditions as granted

under its license, the Authority may seek an explanation from the licensee and subsequently take relevant actions.

- the Authority, in which it has acted or omitted to act, (i.e. allegations and misconduct), and includes complaints alleging, but not limited to:
 - Mistakes and lack of care
 - Unreasonable delay
 - Unprofessional behavior
 - Bias, and
 - Lack of integrity

2.2 The Authority endeavors to maintain a comprehensive complaint management framework to provide a clear structure for receiving, assessing, recording, responding to, reporting on, and using complaints to improve services to the public. The Authority's management framework is guided by three broad underlying principles – prevention, management and accountability.

2.3 In accordance with section 33(1) of the FSA Act, the Authority may, after consultation with such persons or bodies as appear to be representative of the interests concerned, revise these Guidelines by revoking, varying, amending or adding to its provisions.

3. Instances whereby this document will not apply

3.1 The process described by this document will not be applicable in the following circumstances:

- where an application has already been made to the court or when a decision has been made by any court vis-à-vis a complaint
- where the Authority has determined that the matter relates to a commercial dispute
- where the Authority has determined that the matter does not fall within its regulatory scope an appeal has been lodged before the Appeals Board.

3.2 Complainants are required to demonstrate that they have exhausted all possible options to resolve the matter directly with the concerned parties prior to lodging the complaint with the Authority. In this respect, the Authority shall not attend to any complaint, unless that it is satisfied that the matter has been brought to the attention of the concerned parties and the parties have failed to reach a mutually agreeable solution on the matter.

3.3 Where the Authority receive complaints relating to financial crime, which does not fall within its regulatory scope the complaint may be forwarded to or assistance sought from the relevant authority (i.e. Seychelles Police) and the complainant shall be informed accordingly.

4. Complaints that are within the regulatory scope of the Authority

4.1 The following matters may be submitted to the Authority:

- complaints about conduct or service – expressions of dissatisfaction that may relate to customer service, quality of service, failure to provide information, competence or conduct of staff, errors of judgement or misinterpretation of information, decisions being unfair, unreasonable or lacking in merit, poor administrative processes, fees charged unknowingly or without prior agreement, breach of contract/agreement etc.
- review about how a complaint was handled by a licensee.

5. Procedure to lodging a Complaint

5.1 It is mandatory for complainants to fill in the Complaints Handling Form before any complaint is investigated by the Authority. All the information indicated on the form must be provided. The Complaint Handling Form, which is available on the FSA website can be submitted by any of the following ways:

- in a formal email through the following email address: complaints@fsaseychelles.sc
- in a formal letter addressed to the Financial Services Authority sent to:

The Chief Executive Officer
CC. Policy (Information & Communication Unit)
Financial Services Authority
Bois De Rose Avenue
P.O Box 991, Victoria
Mahé, Seychelles

- hand-delivered by reporting directly to the Authority.

5.2 Anonymous complaints will not be accepted.

5.3 All formal complaints must identify the complainant and should be accompanied by a copy of all relevant documentation and/or any correspondence between the parties.

5.4 Upon the receipt of a written complaint, the Authority shall register the complaint received and shall send a written acknowledgement, to the complainant within 48 hours (2 working days).

- 5.5 On a case by case basis, depending on the circumstances of individual complaints, if the Authority concludes that a complaint has merit, it will advise the complainant in writing what steps or actions it proposes to undertake to remedy the matters of the complaint.
- 5.6 If the Authority concludes that a complaint has no merit, it will explain its reasons in writing to the complainant and the complaint will be closed thence.
- 5.7 The Authority will seek to resolve a complaint within three (3) months from the date of receiving all information following enquiries undertaken, however if this is not possible, we will write to the complainant to advise on the progress of our review and when the Authority expect to complete the investigation.
- 5.8 In attending to complaints received, the Authority shall conduct its enquiries whereby it shall request for information from all relevant parties in order to establish the facts of the complaint.
- 5.9 By lodging a complaint, it is given that consent has been provided for the Authority to relay necessary information to relevant parties in order to conduct its enquiries.
- 5.10 In the event that the Authority requires additional information from the complainant, this shall be requested for accordingly, the complainant will then be provided with a specific timeframe to provide a response. Where a complainant fails to provide the requested information by the specified timeframe, the Authority shall issue a total of 2 reminders. Should no response be received, the Authority shall proceed with closing the complaint and informing the complainant of such in writing.
- 5.11 Where at any stage, it is determined that no further action is required or the complaint has been resolved by all parties involved, the Authority shall immediately close the complaint.
- 5.12 No determination shall be made by the Authority with regards to a complaint unless the concerned parties are granted an opportunity to be heard.
- 5.13 In each case, a complainant is advised that, the fact that the Authority accepts a complaint and/or initiates an investigation into the matters alleged is not an admission of any fault, wrong-doing, error, or legal liability on the part of the Authority, or licensee/entity.
- 5.14 In all cases, following a decision made by the Authority vis-à-vis a complaint received, the complainant may appeal against the decision of the Authority by lodging an appeal to the Appeals Board of the Authority within Four (4) weeks of the date of the Authority's final response, or by taking the matter to court in the event that the complainant considers that the decision is unreasonable having regard to all the circumstances.

5.15 In the event that a complainant wishes to withdraw a complaint lodged, a letter notifying the Authority of such is required to be submitted. However, should the Authority establish that the complaint relates to a breach of any relevant financial services legislation, although a complaint would be closed, the Authority may independently continue its enquiries in the matter.

6. Issuing of Advisories

6.1 On a case by case basis, the Authority may publish a notice on its website or any relevant media outlet, to issue advisories related to complaints to the general public as it considers appropriate.

7. Record-Keeping & Statistics

7.1 The Authority shall record and maintain a central register of all complaints received for a period of at least 7 years from the date of the complaint and ensure that relevant statistics is being kept.

The Authority has no obligation to disclose any actions undertaken against licensees to third parties, including the complainant, except in accordance with the FSA Act.