

Securities Dealer Guidelines



FINANCIAL SERVICES AUTHORITY

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1. Introduction

These guidelines have been prepared by the Financial Services Authority (“the Authority”) to provide assistance in matters pertaining to the application and licensing (including exemption from the licensing requirements) of Securities Dealers under the Securities Act, 2007 (“the Act”) and the Securities Regulations. These guidelines also provide a summary of the Act; thus it is not intended to be comprehensive nor replace or override any legislative provisions. Applicants and licensees are therefore advised to read these guidelines in conjunction with the Act and Regulations.

1.1 Enquiries

Enquiries on licensing related matters should be forwarded to the Authority:

By Post: Director of Capital Markets & Collective Investment Schemes Supervision
Financial Services Authority
P.O. Box 991
Bois De Rose Avenue
Victoria, Mahé
Seychelles

By e-mail: capitalmarkets.supervision@fsaseychelles.sc

Tel: +248 4 380 800
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2. Scope of the Act

2.1 Definition of Securities Dealer

Per the definition of the Act, a Securities Dealer means a person:

- (a) who carries on the business of dealing in securities, or
- (b) who holds himself out as conducting such business described 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.

This definition also includes a person who holds a restricted Securities Dealer licence.

If the person’s dealings fall within one of the categories outlined in section 45(6) of the Act, that person is not regarded as carrying on business dealing in securities

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

2.2 Types of Securities Dealers

Applicants may apply for Securities Dealer Licence, upon processing the application, the Authority may also decide to grant a Restricted Securities Dealer Licence to the applicant, as per the conditions set out in Section 46(3) of the Act. The Act also makes provision for an exemption from the licensing requirement in cases where the applicant is a recognised Overseas Securities Dealer and holds current membership to deal on a Seychelles Securities Exchange (referred to as "Exempt Overseas Securities Dealer").

3. Offences

Any person who carries on the business of a Securities Dealer or an Exempt Overseas Securities Dealer without a licence or exemption issued by the Authority or, other than in accordance with a licence or exemption granted by the Authority commits an offence and is liable on summary conviction:

- (a) In the case of an individual to a fine of US\$100,000 or the equivalent in Seychelles Rupees or to imprisonment for two years or both
- (b) In the case of a company, to a fine of US\$200,000 or the equivalent in Seychelles Rupees.

4. Application and licensing of Securities Dealers

To be able to engage in Securities Dealer business in Seychelles, a licence from the Authority is obligatory.

4.1 Application for a Securities Dealer Licence

An application submitted to the Authority for a Securities Dealer's Licence must comprise of the following documents:

- (a) A cover letter¹ signed by the applicant or the agent of the applicant
- (b) A completed Application Form
- (c) The relevant application fee
 - (i) Securities Dealer Licence Application Fee of US\$3,000
 - (ii) Securities Dealer Representative Licence Application Fee of US\$500
- (d) Certified true copies of the constitutional documents of the applicant (refer to Appendix 2)
- (e) Personal Questionnaire Forms completed by each Director, Securities dealer representative applicants, compliance officer and key individuals of the application (if the relevant party is listed on a stock exchange in a recognised jurisdiction, Personal Questionnaire Forms are not required) refer to Appendix 1
- (f) Questionnaire Form for Shareholders and Beneficial Owners completed by each shareholder and beneficial owner that hold no management position in the proposed Securities Dealer (refer to Appendix 1)

¹ The cover letter must include reasons the applicant is applying for the licence and a list of all the documents that have been included in the application pack.

- (g) Audited Financial Statements of the applicant for the past 2 years except in the case of an applicant who was incorporated within the last 12 months
- (h) The last Audited Financial Statements of the controlling owners of the applicant if the controlling owner is a non-individual
- (i) Proof of source of funds or wealth
- (j) Proof of Physical Place of Office (Title Deed of Premises or Lease Agreement for premises or Sub Leasing Agreement and consent letter from the owner of the premises stipulating that the lessee can sublease) (refer to Appendix 3)
- (k) The Representative Licence Application Form completed by each prospective representative
- (l) Notice of place at which the Register of Securities is to be kept as per Section 80(2)(a) of the Securities Act, 2007 and Schedule 1, Form 6 of the Securities (Forms and Fees) Regulations, 2008
- (m) A written notification from the representative in accordance with section 53 of the Securities Act, 2007
- (n) A copy of the insurance quotation (appropriate to the proposed nature and size of the business) of the applicant
- (o) A detailed Business Plan (refer to the Securities Dealer Licence Application Checklist, Part VI)
- (p) Internal Operations Manual
- (q) Client Service Agreement or Terms of Business
- (r) Conflict of Interest Policy
- (s) Compliance Manual
- (t) Anti – Money Laundering Manual
- (u) Complaints Handling Manual
- (v) Business Continuity Plan

In order to increase the efficiency of the application process, the Authority may pre-approve standard manuals and policies from service providers to be used in future applications.

Where pre-approved documents are submitted as part of an application, the service provider shall make a declaration on whether any changes have been made to each of the pre-approved document and indicating the relevant paragraph or section of the document where the changes have been made.

The Authority will only process an application if the application fee and the complete application has been submitted. During processing of the application, the Authority may request for additional information or supporting documents for the purpose of determining the application.

A person who supplies, to the Authority, information in connection with an application which he knows or reasonably knows is false or misleading, is guilty of an offence and liable to conviction to a fine of US\$25,000.

4.2 Submission of Application

All applications seeking the approval of the Authority must be addressed and either hand-delivered or mailed to:

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

All application forms and other documents are available from the Authority's website (www.fsaseychelles.sc).

4.3 Administrative process of license applications

The Authority will initiate the processing of a complete application, only upon payment of the required application fee. The following steps will then be carried out:

Step 1: Acknowledge receipt of the application.

Step 2: Carry out an initial review of the application to assess whether the application is complete according to the requirements detailed herein. (refer to Securities Dealer Application Checklist in the document Checklist for Licensees under the Securities Act, 2007)

Step 3: Begin to process the application if the application is deemed to be complete; or return the application to the applicant if the application is deemed to be incomplete, highlighting the area(s) of deficiencies.

Please note that the Authority may provide general and brief guidance on the area(s) of deficiencies, but it is the responsibility of the applicant to engage suitable professionals or service providers to ensure the completeness of the application.

Step 4: Request for additional information or supporting documents for consideration of the application from the applicant, if necessary.

Step 5: Inform the applicant on whether the application has been approved for licensing or not.

Note that a person who supplies, to the Authority, information in connection with an application which he knows or reasonably knows is false or misleading, is guilty of an offence.

5. Representative

The Authority shall not grant a Securities Dealer licence unless the applicant employs at least one individual who is licenced as a representative under section 52 of the Act. A Securities Dealer's Representative means an individual in the employment of (including a Director of), or acting on behalf of or by arrangement with a Securities Dealer, who deals in securities on behalf of that Securities Dealer, whether he is paid salary, wages, commission or otherwise.

6. Service Standards

The Authority's current Service Standards for processing the application for a Securities Dealer, from receipt of a completed application for consideration by the Authority, is thirty (30) working days.

It is important to note that this service standard will only be achievable if all the requisite information/documents are provided at the time the application is lodged. The Authority is not responsible for delays arising from the submission of incomplete applications. The following is to be further noted:

- (a) The Authority will only process complete applications. Applications that are deemed to be incomplete will be returned to the applicant. Applicants will have a period of 3 months for resubmission of the application.
- (b) Applications not submitted within the 3-months cut-off period will be considered as void and a new application would have to be lodged along with payment of the required application fee, should the applicant remain interested in proceeding further with the application.

This document is not exhaustive or binding on the Authority. The licensing regime requires the Authority to exercise discretion. How the Authority does this will depend on the applicant's particular circumstances.

7. Granting of licence

When dealing with an application, the Authority will not grant a licence unless it is satisfied that the applicant:

- (a) Is a company incorporated under the Companies Act or under the laws of a recognized jurisdiction;
- (b) has at least 2 (two) natural person appointed as fit and proper directors;
- (c) Employs at least one individual who is licensed as a representative under section 52 of the Act
- (d) Has a minimum paid-up capital of US\$ 100,000
- (e) Complies with the insurance requirement under section 73
- (f) Satisfies the Authority that it is a fit and proper person to be licensed as a dealer
- (g) Will be able, if licensed, to comply with any financial resources regulations that may apply to it
- (h) Has specified premises under section 47(c) that are suitable for keeping records or other documents
- (i) The compliance officer is fit and proper
- (j) Have physical place of business within the jurisdiction (refer to Appendix 3)

Note: The Authority has discretion in granting or refusing a licence. The Authority may in dealing with an application take into consideration matters other than those mentioned above including, but not limited to, ensuring that all other parties to an application (e.g. legal advisors and company secretaries) are of satisfactory repute. In the event that the application is successful and the licence is issued, the Authority may publish on its website or other publications, the name of the licensee and contact details.

7.1 Restricted Securities Dealer Licence

Upon assessment of the application, the Authority may grant a Restricted Securities Dealer Licence by:

- (a) Limiting the number of clients to whom the licensee may provide services, or
- (b) Limiting the licensee to providing services only to the clients named in the licence or a schedule thereto, or
- (c) Setting the minimum value of an individual client's investment.

Should the application be successful, the Authority will issue the licence (with any conditions) upon payment of the relevant annual licence fee. The licence fee payable for Securities Dealer is US\$ 2,500.

7.2 Fitness and Propriety

When considering the fitness and propriety of the applicant the Authority shall have regard to the applicant's:

- (a) financial status
- (b) educational or other qualifications or experience having regard to the nature of the application
- (c) ability to perform his proposed function competently, honestly and fairly
- (d) reputation, character, financial integrity and reliability
- (e) satisfactory completion of any examination requirements prescribed by the Authority

7.3 Conditions to a Securities Dealer Licence

Activities permitted under the Securities Dealer Licence are only those that are contained within the licence and are limited to only such business as stated. The Securities Dealer must comply with the conditions contained in its licence.

The Authority may impose conditions on a licensee which includes, but is not limited to:

- (a) Limiting the nature and scope of the business carried on by the licensee, including the type of securities that may be dealt with by the Securities Dealer
- (b) Specifying whether or not the Securities Dealer may hold client's assets
- (c) Requiring the Securities Dealer or senior officer or manager of the licensee to acquire and maintain membership of a recognized overseas securities exchange.

8. Granting of Exemption

To qualify for an exemption, the applicant must:

- (a) be a member of a recognised overseas securities exchange or a Seychelles Securities Exchange
- (b) be in good standing and hold a current licence or other authorisation to deal in securities under the laws of a recognised jurisdiction.

8.1 Application for exemption from the licensing requirement

An application for exemption from the requirement to obtain a Securities Dealer licence may be submitted by a Securities Dealer, licensed under the laws of a Recognised Jurisdiction that meets the requirements of section 45(1) (b).

An application for exemption submitted to the Authority for an “Exempt Overseas Securities Dealer” must comprise of the following documents:

- (a) A cover letter signed by the applicant or the agent of the applicant
- (b) A completed Application Form
- (c) Certified true copies of the constitutional documents of the applicant ((Refer to Appendix 2)
- (d) Certified copy of the current valid license or other authorisation to operate as a Securities Dealer under the laws of a Recognised Jurisdiction
- (e) Proof of membership of a recognised overseas Securities Exchange or a Seychelles Securities Exchange
- (f) The last audited financial statements of the controlling owners of the applicant

During processing of the application, the Authority may request for additional information or supporting documents for the purpose of determining the application.

9. Renewal of licence and exemption

The Securities Dealer Licence or Exemption granted under the Act is valid for a period of one year and must be renewed annually.

The Authority will only renew a licence or exemption upon:

- (a) the payment of the annual licence fee
- (b) in the case of an Exempt Securities Dealer, proof that it holds a current licence or other authorisation from a recognised jurisdiction
- (c) submission to the Authority of a declaration of compliance in accordance with Form 10, Schedule 1 of the Securities (Forms and Fees) Regulations, 2008:
 - **omitting the statement** “To: The Central Bank of Seychelles”
and replacing with “To: The Financial Services Authority”

A licensed Securities dealer or an Exempt Overseas Securities Dealer must ensure that formalities for the renewal are undertaken well ahead of the expiry date of the licence or exemption. It is an offence to operate as a Securities Dealer without a valid licence or exemption.

Failure to renew the licence or approval for exemption on time will attract an additional fee equivalent to one-twelfth of that annual fee for each month or part thereof during which the annual fee remains unpaid. Further action may be taken under section 56(2) of the Act for failure to renew the licence or exemption.

10. Compliance Officer

Pursuant to Section 23 of the Financial Services Authority Act, 2013, each licensee should appoint a compliance officer who will be responsible for the maintenance of adequate systems and controls to ensure compliance with the Act, regulations, codes, guidelines and directives issued by the Authority.

The appointed compliance officer may be a member of the board of directors.

Note: As part of a license application, an applicant shall in line with section 4.1 above submit a personal questionnaire form and supporting documents for the proposed compliance officer.

11. Auditor

A Securities Dealer is required to have its accounts audited annually by an auditor. The Auditor has to be a member (and in good standing) of an accountancy body in compliance with section 2(1)(a) of the Act or a member of any other accountancy body as approved by the Authority.

The licensee must appoint an Auditor within 30 days of being licensed under the Act, who is acceptable to the Authority. A director, officer, employee, shareholder or partner of the licensee or a partner or employee of such a person shall not be eligible for appointment as an auditor.

Upon application, the applicant must notify the Authority of their proposed Auditor.

12. Audited Accounts

A licensed Securities Dealer must have its accounts audited annually according to the International Financial Reporting Standards.

Both a licensed Securities Dealer and an exempt Securities Dealer must submit to the Authority its audited accounts within 4 months of the end of each financial year or within such extension period allowed by the Authority.

Under section 75(3), the authority has the power, at any time, to direct a Securities Dealer or Exempt Overseas Securities Dealer to have its accounts audited and submitted to the Authority.

13. Change of ownership of a licensed Securities Dealer

Section 60 (1) of the Act provides that no shares in a licensee which is a company shall be issued, and no issued shares shall be voluntarily transferred or disposed of (including the transfer or disposal of the legal or the beneficial interest in the shares or interests) without the Authority's approval.

14. Notifications to the Authority

Licensees are advised to read carefully the conditions described on the reverse of their licence as they may impose on the licensee's obligations in addition to those specifically mentioned in the Act.

The Authority must be notified, in writing, within 7 days of:

- (a) Any change of:
 - (i) name and address of the licensee
 - (ii) name and address of any accredited representative
 - (iii) name and address of each director, company secretary and shareholder
 - (iv) location of the premises at which records or other documents of the licensed business are kept
- (b) Any disciplinary action taken against the licensee including an order of suspension or revocation of a licence.
- (c) Appointment, Removal or Resignation of an Auditor
- (d) Any change in the business of the licensee which causes it to cease its business as a Securities Dealer or Exempt Overseas Securities Dealer

14.1 Appointment, resignation or removal of Director or officer

A licensed Securities Dealer must notify the Authority of the appointment, resignation or removal of any director or officer and such notification should include a description of the circumstances of the departure.

15. Registers

15.1 Securities Dealer's Register

Per section 79 of the Act, a licensed Securities Dealer shall maintain a register of the securities for which that person has an interest as prescribed in Schedule 1, Form 5 of the Securities (Forms and Fees) Regulations, 2008.

15.2 Inspection of register's kept by the Authority

The Authority maintains separate registers for each type of Securities Dealer licensed under the Act. The registers are open to public inspection during ordinary office hours upon payment of the relevant fees set out in Schedule 2 of the Securities (Forms and Fees) Regulations, 2008.

16. Exemptions and concessions

Schedule 3 of the Act grants exemptions and concessions from the applicability of certain legislative enactments.

16.1 Business Tax Act

Securities Dealers can benefit from a tax rate of 1.5% applicable on the assessable (gross) and zero withholding tax rate on dividends or interest payable, provided that the substantial activity requirements are met by the Securities dealer.

However, Securities Dealers licensed on or before the 16th October, 2017 can still benefit from the concession mentioned above without the need to meet the substantial activity requirements until 30th June, 2021.

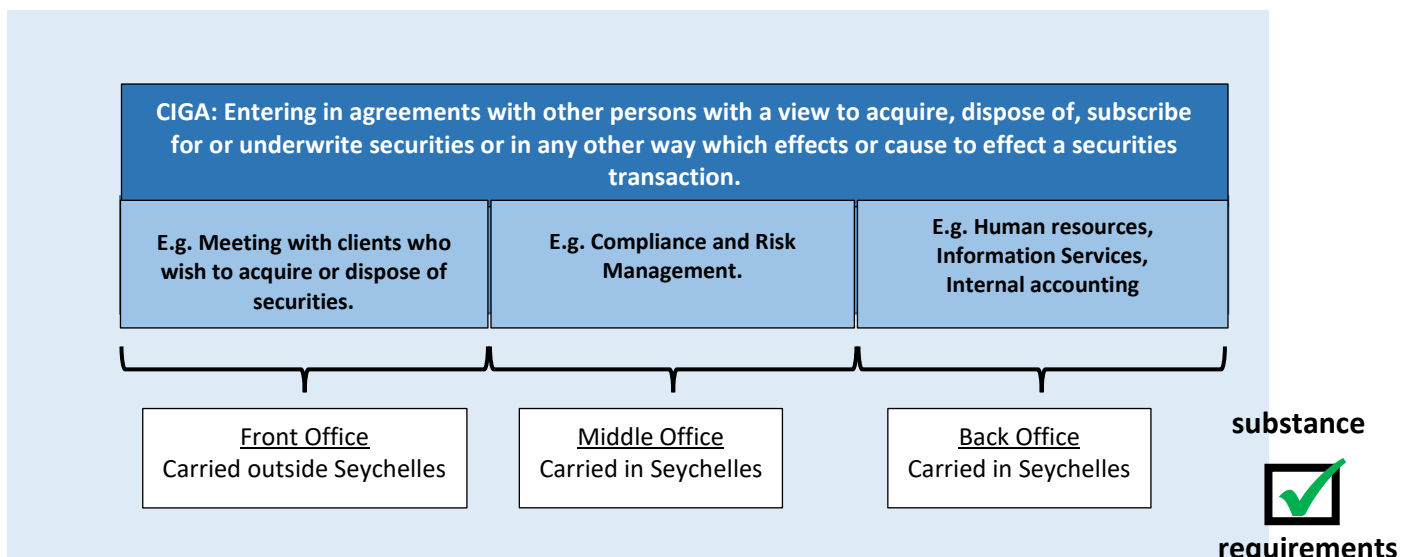
16.2 Substantial Activity Requirements

In order to meet the substantial activity requirements, the Core Income Generating Activities of the Securities Dealer must be undertaken in a physical office in Seychelles by:

- (a) employing an adequate number of suitably qualified persons to carry out the core income generating activities; and
- (b) incurring an adequate amount of operating expenditures for such activities.

The substantial activity requirements are considered to have been met if the middle office and back office activities are conducted in Seychelles even though the front office activities may be undertaken outside Seychelles.

Example:



17. Role of the Authority

The Authority is conferred powers of supervision over the Securities Dealers and Exempt Overseas Securities Dealers by the Act and may in carrying out its supervisory functions:

- (a) issue directions to licensees
- (b) request information or documents from licensees
- (c) revoke a Securities Dealer's Licence
- (d) impose further conditions on a Securities Dealer's Licence
- (e) appoint a person to advise a licensed Securities Dealer on the proper conduct of its business
- (f) revoke the exemption given to an Exempt Overseas Securities Dealer
- (g) appoint a person to assume the control of the affairs of the licensee relating to the licensed business
- (h) suspend a licence granted under the Act for a period of time, or until the happening of an event, as the Authority considers appropriate

The Act also imposes duties on the Authority, most notably, the duty not to disclose any information to a third party except where authorised under a written law.

Appendix 1

Due Diligence Requirements

1. The completed **Personal Questionnaire** Forms by all directors, securities dealer representative, compliance officer and key persons in connection with the application, should be accompanied by:
 - 1 certified true copy of passport(s)
 - 1 recent passport-sized photograph signed at the back by the certifier
 - 1 certified proof of residential address that is not older than three months e.g. utility bill (water and/or electricity) and/or bank statement and/or tenancy agreement
 - 1 original bank reference from each bank with which you are affiliated and/or a report from Credit Rating Agency from Country of Residence (if available)
 - Certified copies of stated higher academic qualifications
 - Certified copies of stated professional qualifications
 - Certified copies of stated membership to professional bodies
 - Detailed job description of your proposed role or position
 - Latest Employment references (if applicable)
 - A list of directorships, partnerships, other business interests or affiliations (if applicable)
 - Original Police Character Reference/certificate not older than three (3) months from the Country in which the applicant resides or its equivalent
 - Tax Clearance Certificate from the Country in which the applicant resides or its equivalent
 - Politically Exposed Person Self-Declaration Form

2. The completed **Questionnaire Form for Shareholders and Beneficial Owners** by all shareholders and beneficial owners who do not have a management position in the company should be accompanied by:
 - 1 certified true copy of passport(s)
 - 1 recent sized passport photograph signed at the back by the certifier
 - Proof of Appointment as Nominee E.g. Declaration of Trust, Deed of Indemnity or its equivalent
 - 1 certified proof of residential address that is not older than three months e.g. utility bill (water and/or electricity) and/or bank statement and/or tenancy agreement
 - 1 original bank reference from each bank with which you are affiliated and/or a report from Credit Rating Agency from Country of Residence (if available)
 - A list of directorships, partnerships, other business interests or affiliations (if applicable)
 - Original Police Character Reference/certificate not older than three (3) months from the Country in which the applicant resides or its equivalent
 - Tax Clearance Certificate from the Country in which the applicant resides or its equivalent
 - Politically Exposed Person Self-Declaration Form
 - Evidence of source of fund/wealth

3. Due Diligence documents for entity shareholders should include the following:

(a) Companies

- Certificate of Incorporation
- Memorandum and Articles of Association
- Notice of Situation of Registered Office or any change thereof
- Particulars of Directors and Secretaries
- Audited financial statements for the past 3 years
- Certificate of Good Standing

(b) Foundations

- Foundation Charter
- Register of Founder(s), Counsellor(s), Beneficiaries and Protector(s) (if applicable)
- Certificate of Good Standing

(c) Trusts

- Trust Deed
- Declaration of Trust
- Register of Trustee(s), Settlor, Beneficiaries and Protector(s) (if applicable)

(d) Limited Partnerships

- Limited Partnership agreement
- Register of General Partner(s) and Limited Partner(s)

Appendix 2

List of Constitutional documents

Certified true copies of the following documents:

- Certificate of Incorporation
- Memorandum and Articles of Association
- Notice of Situation of Registered Office or any change thereof
- Particulars of Directors and Secretaries
- Audited financial statements for the past 3 years

Appendix 3

Proof of Physical place of Business and Office Criteria

Proof of Physical place of Business should include the following:

- Title Deed of Premises or Lease Agreement for premises; or
- Sub Leasing Agreement and consent letter from the owner of the premises stipulating that the lessee can sublease.

The office identified in Seychelles must satisfy, but not limited, to the following criteria:

- To be fully furnished, in safe and suitable working conditions meeting required safety criteria, and appropriate to conduct operation;
- Should not contain any health and safety hazards (e.g. exposed electrical wires, tripping hazards, damaged walls/ceiling/floor, etc...);
- Should have a designated bathroom/toilet area for the staffs;
- Should have a local telephone connected and working. (In the event that it is a mobile phone number, kindly provide proof of registration under the company's name);
- Should have a stable internet connection (e.g. Local Area Network (LAN), Broadband, Wireless Broadband, or Fibreoptics etc...);
- Should have a minimum of one (1) desktop computer/laptop;
- Should have a designated space, either physically or digitally to store and keep business records of the company; and
- Should contain a minimum of one (1) fire extinguisher for fire safety purposes.