

MERJ Group Regulatory Overview (updated 22/09/19)



1. GROUP COMPANIES

Name	Former Name
MERJ Exchange Limited ("MERJ EXCHANGE")	Trop-X (Seychelles) Limited
MERJ Clearing and Settlement Limited ("MERJ CLEAR")	AfriClear Limited
MERJ Depository and Registry Limited ("MERJ DEP")	AfriDep Limited

- MERJ EXCHANGE – listed public company (on the Main Board of MERJ EXCHANGE)
- MERJ CLEAR – 100% owned by MERJ EXCHANGE
- MERJ DEP– 100% owned by MERJ EXCHANGE

2. LICENSES

Company	License(s)/Authorisation(s)	Law	Regulator
MERJ EXCHANGE	Securities Exchange	Securities Act 2007	Seychelles Financial Services Authority
MERJ CLEAR	Clearing Agency	Securities Act 2007	Seychelles Financial Services Authority
MERJ CLEAR	Clearing System Operator	National Payment Systems Act 2014	Central Bank of Seychelles
MERJ CLEAR	Settlement System Operator	National Payment Systems Act 2014	Central Bank of Seychelles
MERJ DEP	Securities Facility	Securities Act 2007	Seychelles Financial Services Authority

Note: license status is viewable at the website of the Seychelles Financial Services Authority here <https://www.fsaseychelles.sc/index.php/regulated-entities/capital-markets>. Letters from Central Bank of Seychelles approving status under NPSA available.

3. REGULATORY STATUS/APPROVAL OVERVIEW

MERJ EXCHANGE

- Live markets – Equities Market (secondary), Debt Market (secondary)
- Other approved markets/products -
 - Derivatives Market - secondary market for derivative securities. The Securities Act allows for derivatives of all types whether traded on margin or not on any underlying property, index or instrument including crypto assets.
 - Primary Market ("MERJ PRIMARY") –
 - Fundraising – the MERJ securities exchange license allows us to operate a primary market matching global issuers of securities with global buyers. MERJ intends to apply its standard Listing Rules to issuers to qualify for fundraising on MERJ PRIMARY.
 - Issuance/Distribution/Maintenance – MERJ DEP as a regulated securities facility is able to provide services to issuers to support issuance, distribution and maintenance of all “eligible assets”
 - Digital Assets – MERJ is able to provide a market for various digital assets either in the form of Exchange Traded Products (i.e. fully collateralized non-interest bearing debt instruments) or via standardized physically settled contracts.

- Participation Options – MERJ is implementing a “hybrid” exchange model with a combination of full members, introducing brokers and direct clients allowed to invest/trade on its markets
 - Full Membership – direct membership providing the ability to connect external platforms and act as an intermediary to clients or carry on the business of a market maker is available for licensed Seychelles securities dealers and any securities broker/deal licensed and also a member of an exchange in any “recognized jurisdiction” listed in Schedule 2 of the Securities Act
 - Trader Participants – the updated Market Rules permit direct participation by other global investors and traders provided they are trading on a proprietary basis only. MERJ will restrict access to certain categories of investors from certain countries based on domestic laws and regulations in those countries in order to mitigate its risk.
 - DMA Access – direct market access is permitted for global clients of Members

MERJ CLEAR – provides clearing and settlement services for instruments traded on the exchange

- Licenses
 - Clearing agency – currently acting as a central counterparty, conducting pre-trade risk screening (i.e. pre-validating cash and assets) and settling on a RTGS basis all transactions matched on the exchange ATS. Note: the Securities Act was written primarily for a derivatives exchange which partially necessitated this model. However, it has its advantages and might provide additional comfort for participants given our proposed direct participation model going forward where a retail trade may otherwise be the counterparty to a financial institution.
 - Operator of a clearing and settlement system – as an authorized operator of a clearing and settlement system regulated by the Central Bank of Seychelles pursuant to the National Payments Systems Act 2014, MERJ Clear operates the system used for clearing and settlement (i.e. both the “funds” and “asset” legs) of transactions matched on MERJ EXCHANGE
- Participation
 - Pre-validated Trade Participants (PCAP) – direct participation is permitted and available for exchange members, their clients (e.g. those trading on a DMA basis) and other direct ATS participants for all instruments traded on a pre-validated trade basis. The latter two recent additions to our framework will allow global investors and institutions to be direct participants of the clearing agency and clearing and settlement system (i.e. no banks, no custodians, no counterparty risk, costs and inefficiencies of having to use a local broker for this).
 - Derivatives Participants (DCAPs)– direct clearing agency participation is available for qualifying global institutions providing clearing and lending services for derivative instruments.
 - General Participants - direct clearing agency participation is available for qualifying global institutions (note: it is not anticipated that MERJ will have GCAPs unless/until the unlikely event that we move to a different settlement model)

MERJ DEP – provides registry, depository and ancillary services to support the exchange

- Registry services – maintaining the electronic ownership register for equities and debt instruments for Seychelles and global issuers (where permitted by foreign law) including where maintained in conjunction with a blockchain platform
- Depository services – safekeeping and related depository services for traditional securities and “DLT Assets” (i.e. digital securities, fiat backed stable coins, cryptocurrencies, utility tokens and hybrids of same)
- Issuance services – issuing and distributing securities in dematerialized form, including as security tokens on a blockchain platform

4. RULES FRAMEWORK

MERJ EXCHANGE

- Market Rules (Equities and Debt)
- Listing Rules

MERJ CLEAR

- Clearing Agency Rules

MERJ DEP

- Securities Facility Rules

5. LEGAL UNDERPINNINGS OF SECURITY TOKENS

There are no specific laws in Seychelles relating to securities tokens in particular. However, a combination of existing provisions of relevant Seychelles laws, MERJ licenses and MERJ rules framework supports everything required to give full legal status to tokenization, rights of token holders, legal certainty pertaining to “on chain” transfers, requirements in terms of maintaining a statutory register of record holders and similar.

Securities Act

A security is a security whether issued via a paper certificate, maintained in electronic form in an Excel spreadsheet, an SQL database, a cryptographically secured distributed database or some combination of these. The underlying rights of security holders are as described for the particular security. For instance, if a security token is issued to represent ordinary shares, these rights will be in accordance with the company law, the company’s articles, any additional restrictions or provisions disclosed in listing documents, in the smart contract or similar provide all is clearly disclosed to investors.

International Business Companies Act 2016

Section 66

(2) Subject to subsection (3), securities issued by a company listed on a Seychelles Securities Exchange or on a recognised overseas securities exchange may be —

- (a) issued in electronic form;*
- (b) converted from physical form to electronic form or vice versa;*
- (c) transferred by electronic means.*

(3) Notwithstanding any other provision of this Act or other written law, the method of transferring the ownership of securities deposited in or cleared through a clearing agency, recognised overseas clearing agency, securities facility or recognised overseas securities facility shall be a transfer made in accordance with the approved rules.

Securities Facility Rules

MERJ has created a Directive specifically to define important matters that are specific to security tokens such as the following:

- Point of final settlement for “on chain” transfers

- Method of maintaining the statutory register of share/debenture holders
- Transfer restrictions to “eligible holders” only (i.e. those that have passed KYC)
- Forced transfers
- Deposits/withdrawal procedures

6. RELEVANT LAWS

Securities Act –

- <https://seylil.org/sc/legislation/act/2007/8>

National Payment Systems Act –

- <https://seylil.org/sc/sc/legislation/Act%2014%20of%202014%20National%20Payment%20System%20Act%2C%202014.pdf>

Anti-Money Laundering Act –

- <https://greybook.seylil.org/w/se/CAP9A>

International Business Companies Act –

- <https://seylil.org/sc/legislation/act/2016/15>
- <https://sterlingoffshore.com/knowledge-base/offshore-company/seychelles-ibc/>

Note: there have been many amendments since 2016 that are unfortunately not consolidated, but suffice to say that the IBC is a very versatile offshore vehicle suitable for trading companies, investment companies, holding company, property company, etc. It can be structured as a protected cell company as well. Effective tax for non-Seychelles sourced income of all kinds is 0% with no additional withholding tax (i.e. 100% tax neutral).

Foundations Act –

- <https://seylil.org/sc/legislation/act/32-2>
- <https://sterlingoffshore.com/knowledge-base/foundations/seychelles-foundation/>

Note: a Seychelles foundation can be created to carry out any lawful objects which notably include a foundation structured as a “special purpose foundation” with no beneficiaries (see paragraph 3(2) of the Act) which would be a useful structure for projects issuing digital assets that require a separate ongoing governance structure. Income and distributions relating to Seychelles foundations are 100% tax exempt.

Mutual Funds and Hedge Funds Act –

- <https://seylil.org/sc/legislation/act/2008/10>
- <https://sterlingoffshore.com/knowledge-base/offshore-investment/seychelles-mutual-funds-and-hedge-funds-offshore-investment-fund/>

Note: Seychelles mutual funds may hold securities and any other types of assets making it possible for an ETF to include any type of underlying digital assets.

7. INTERNATIONAL ORGANIZATIONS AND STANDARD SETTING BODIES

- **WFE**- MERJ Exchange Limited is an affiliate member of the World Federation of Exchanges. Application for full membership will be sought as soon as our regulator achieves full IOSCO membership.
- **IOSCO** - The Seychelles Financial Services Authority is an associate member of the International Organization of Securities Commissions and has submitted their full membership application.
- **OECD** – Seychelles is currently not on any “blacklists” (i.e. is in good standing) relating to major OECD initiatives relating to availability of beneficial ownership information and tax transparency (i.e. Global Forum on Transparency and Exchange of Information for Tax Purposes) and the latest measures having to do with mitigating “Base Erosion and Profit Shifting” or “BEPS”.
 - **Exchange of Information on Request (EOIR)** – largely compliant
<https://www.oecd.org/tax/transparency/exchange-of-information-on-request/ratings/>
 - **Base Erosion and Profit Shifting (BEPS)** – signatory and current tax regime deemed not harmful (OECD has yet to update its website to reflect same)
<http://www.seychellesnewsagency.com/articles/10434/OECD+deems+Seychelles+preferential+tax+practice+not+harmful>
 - **Convention on Mutual Administrative Assistance in Tax Matters** – signatory
https://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf
- **FATF** – Seychelles is a full member of the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG). Recently completed its 4th round review by the Financial Action Task Force (FATF) and is in good standing with same.
- **Common Reporting Standard (CRS)** – Seychelles is a signatory to the OECD “Common Reporting Standard” framework and was one of the early adopters implementing this beginning from calendar year 2016 with first reporting in September of 2017. <https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/crs-by-jurisdiction/>
- **FATCA** – Seychelles is a participating jurisdiction recognized by the US Treasury. As such, FFIs in Seychelles are not subject to the 30% withholding tax on US source income.