

**SEYCHELLES**

**INTERNATIONAL BUSINESS COMPANIES ACT, 1994**

**(as amended, 2011)**

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##### **PART III**

Word or combination of words

## **PART I – PRELIMINARY**

### **Short title and commencement**

1. This Act may be cited as the International Business Companies Act, 1994, and shall come into operation on such date as the Minister may appoint by notice published in the Gazette.

### **Interpretation**

2.(1) In this Act -

“accounting records” means documents relating to assets and liabilities of the company including receipts and expenditure, sales and purchases and other transactions;

“Articles” means the Articles of Association of a company incorporated under this Act;

“authorised capital”, in relation to a company, means the sum of the aggregate par value of all shares which the company is authorised by its Memorandum to issue plus the amount, if any, stated in its Memorandum as authorised capital to be represented by shares without par value which the company is authorised by its Memorandum to issue;

“Capital”, in relation to a company, means the sum of the aggregate par value of all the outstanding shares with par value of a company and shares with par value held by the company as treasury shares plus -

- (a) the aggregate of the amounts designated as capital of all outstanding shares without par value of the company and shares without par value held by the company as treasury shares, and
- (b) the amounts as are from time to time transferred from surplus to capital by a resolution of the directors;

“Companies Act” means the Companies Act, 1972 of Seychelles or any other similar law which replaces the Companies Act, 1972;

“continued” means the continued in accordance with Part VIII;

“court” means the Supreme Court;

“guarantee member” means a person who holds guarantee membership in a company incorporated under this Act, and whose name is entered in the Guarantee Member Register of the company kept under this Act;

“member” means a person who holds shares in a company;

“Memorandum” means the Memorandum of Association of a company incorporated under this Act;

“Register” means the Register of International Business Companies maintained by the Registrar in accordance with section 14(2);

“Registrar” means the Registrar of International Business Companies appointed under section 14;

“securities” includes shares and debt obligations of every kind, and options, warrants and rights to acquire shares or debt obligations;

“shareholder” means –

- (a) a person registered as a shareholder in the Share Register kept under section 28(1); or
- (b) a holder of a bearer share;

“surplus”, in relation to a company, means the excess, if any, at the time of the determination, of total assets of the company over the sum of its total liabilities, as shown in the books of account plus its issued and outstanding share capital;

“treasury shares” means shares of a company that were otherwise acquired by the company and not cancelled.

(2) A company that is incorporated under the laws of a jurisdiction outside Seychelles shall be a company incorporated under this Act if it is continued as a company incorporated under this Act and references to a “company incorporated under this Act” shall be construed accordingly.

(3) Unless otherwise defined in the Articles “resolution of directors” means -

- (a) a resolution approved at a duly constituted meeting of directors or of a committee of directors of a company, by affirmative vote of a simple majority or such larger majority as may be specified in the Articles, of the directors present at the meeting who voted and did not abstain; or
- (b) a resolution consented to in writing by an absolute majority, or such larger majority as may be specified in the Articles, of all the directors or of all the members of the committee, as the case may be, but, where a director is given more than one vote in any circumstances, he shall in the circumstances be counted for the purposes of establishing majorities by the number of votes he casts.

(4) Unless otherwise defined in the Articles “resolution of members” means -

- (a) a resolution approved at a duly constituted meeting of the members of a company by the affirmative vote of -
  - (i) a simple majority, or such larger majority as may be specified in the Articles, of the votes of the shareholders present at the meeting and entitled to vote thereon and who voted and did not abstain; or
  - (ii) a simple majority, or such larger majority as may be specified in the Articles of the votes of the shareholders of each class or series of shares present at the meeting and entitled to vote thereon as a class or series and who voted and did not abstain and of a simple majority or such larger majority as may be specified in the Articles, of the votes of the remaining shareholders entitled to vote thereon present at the meeting and who voted and did not abstain; or
- (b) a resolution consented to in writing by -
  - (i) a simple majority or such larger majority as may be specified in the Articles, of the shareholders entitled to vote thereon, or
  - (ii) a simple majority, or such larger majority as may be specified in the Articles, of the votes of the shareholders entitled to vote thereon as a class or series and of an absolute majority, or such larger majority as may be specified in the Articles, of the votes of the holders of the remaining shares entitled to vote thereon.

(5) The symbol \$ denotes dollars in the currency of the United States of America.

## **PART II - CONSTITUTION OF COMPANIES**

### **Incorporation**

**3.** Subject to the requirements of this Act, one or more persons may, by subscribing to a Memorandum incorporate a company under this Act.

#### **Company limited by shares or guarantee**

**3A.(1)** A company incorporated under this Act may be –

- (a) a company limited by shares and having the liability of its shareholders limited to the amount, if any, unpaid on the shares held by each of them;
- (b) a company limited by guarantee not having a share capital and having the liability of its guarantee members limited to such amount as the members may each undertake to contribute to the assets of the company in the event of its being wound up; or
- (c) a company limited by guarantee and having a share capital.

**(2)** In the case of a company limited by guarantee, whether or not having a share capital, at least one of its members shall be a guarantee member and where the company has a share capital, a guarantee member may also be a shareholder.

#### **Restrictions on incorporation**

**4.** A company shall not be incorporated under this Act unless immediately upon its incorporation the company is an International Business Company.

#### **Requirements of International Business Company**

**5.(1)** For the purposes of this Act, an International Business Company is a company that does not -

- (a) carry on business in Seychelles;
- (b) own an interest in immovable property situate in Seychelles, or a lease of immovable property situate in Seychelles otherwise than as referred to in subsection (2)(e);
- (c) carry on banking as defined in the Financial Institutions Act, 2004;
- (d) carry on business as an insurance or a reinsurance company; or
- (e) carry on international corporate services, international trustee services or foundation services as defined in the International Corporate Service Providers Act, 2003.

**(2)** For the purposes of subsection (1)(a), an International Business Company shall not be treated as carrying on business in Seychelles by reason only that -

- (a) it makes or maintains deposits with a person carrying on business within Seychelles;

- (b) it makes or maintains professional contact with counsel and attorneys, accountants, bookkeepers, trust companies, management companies, investment advisers or other similar persons carrying on business within Seychelles;
- (c) it prepares or maintains its books and records within Seychelles;
- (d) it holds, within Seychelles, meetings of its directors or members;
- (e) it holds a lease of property for use as an office from which to communicate with members or where books and records of the company are prepared or maintained;
- (f) it holds shares, debt obligations or other securities in a company incorporated under this Act or under the Companies Act;
- (g) it holds bonds, treasury bills and other securities issued by the Government of Seychelles or the Central Bank of Seychelles;
- (h) shares, debt obligations or other securities in the company are owned by any person resident in Seychelles or by any company incorporated under this Act or under the Companies Act;
- (i) it owns or manages a vessel registered in the Republic under the Merchant Shipping Act, or an aircraft, so registered under the Seychelles Civil Aviation Authority Act, 2005;
- (j) it operates as a mutual fund under the Mutual Fund and Hedge Fund Act, 2008.

#### **Effect of failure to satisfy requirement of section 5**

**6.(1)** Without prejudice to section 97, if a company is incorporated under this Act without having satisfied the requirements prescribed for an International Business Company by section 5, the company shall, or if having satisfied the requirements it subsequently ceases to satisfy those requirements for a continuous period of more than 30 days, upon the expiration of that period, notify the Registrar of that fact.

**(2)** A company that contravenes subsection (1) shall be liable to a penalty of \$100 for each day or part thereof during which the contravention continues.

**(3)** A director who knowingly permits the contravention of subsection (1) shall be liable to a penalty of \$100 for each day or part thereof during which the contravention continues.

#### **Personal liabilities**

**7.** A member, director, officer, agent or liquidator of a company incorporated under this Act shall not be liable for any debt, obligation or default of the company unless it is proved that he did not act in good faith or unless it is specifically provided in this Act or in any other law for the time being in force in Seychelles and except in so far as he may be liable for his own conduct or acts.

#### **Business objects or purposes**

**8.** A company may be incorporated under this Act for any object or purpose not prohibited by this Act or by any other law for the time being in force in Seychelles.

## **Powers**

**9.(1)** Subject to any limitations in its Memorandum or Articles, this Act or any other law for the time being in force in Seychelles, a company incorporated under this Act has the power, irrespective of corporate benefit, to perform all acts and engage in all activities necessary or conducive to the conduct, promotion or attainment of the objects or purposes of the company, including the power to do the following -

- (a) issue registered shares or shares issued to bearer or both;
- (b) issue the following -
  - (i) voting shares;
  - (ii) non-voting shares;
  - (iii) shares that may have more or less than one vote per share;
  - (iv) shares that may be voted only on certain matters or only upon the occurrence of certain events;
  - (v) shares that may be voted only when held by persons who meet specified requirements;
  - (vi) no par value shares;
  - (vii) unnumbered shares;
- (c) issue common shares, preferred shares, or redeemable shares;
- (d) issue shares that entitle participation only in certain assets;
- (e) issue options, warrants or rights, or instruments of a similar nature, to acquire any securities of the company;
- (f) issue securities that, at the option of the holder thereof or of the company or upon the happening of a specified event, are convertible into, or exchangeable for, other securities in the company or any property then owned or to be owned by the company;
- (g) purchase, redeem or otherwise acquire and hold its own shares;
- (h) guarantee a liability or obligation of any person and to secure any of its obligations by mortgage, pledge or other charge, of any of its assets for that purpose; and
- (i) protect the assets of the company for the benefit of the company, its creditors and its members, and at the discretion of the directors, for any person having a direct or indirect interest in the company.

**(2)** For the purpose of subsection (1)(i), notwithstanding any other provision of this Act or of any other law for the time being in force in Seychelles to the contrary save the law as to fraudulent preference and the law as to dispositions made with intent to defraud creditors, the directors may cause the company to transfer any of its assets in trust to one or more trustees and, with respect to such transfer, the directors may provide that the company, its creditors, its members or any person having a direct or indirect interest in the company, or any of them, may be the beneficiaries, creditors, members, certificate holders, partners or holders of any other similar interest.

## **Validity of acts of company**



**10.(1)** An act of a company incorporated under this Act and a transfer of movable or immovable property by or to a company so incorporated is not invalid by reason only of the fact that the company was without capacity or power to perform the act or to transfer or receive the property, but the lack of capacity or power may be pleaded in the following cases -

- (a) in proceedings by a member against the company to prohibit the performance of any act or the transfer of immovable or movable property by or to the company; or
- (b) in proceedings by the company, whether acting directly or through a receiver, trustee or other legal representative or through members in a derivative action, against the incumbent or former directors of the company for loss or damage due to their unauthorised act.

**(2)** For the purposes of subsection (1)(a), the court may set aside and prohibit the performance of a contract if -

- (a) the unauthorised act or transfer sought to be set aside or prohibited is being, or is to be, performed or made under any contract to which the company is a party;
- (b) all the parties to the contract are parties to the proceedings; and
- (c) it appears fair and reasonable in the circumstances to set aside or prohibit the performance of the contract, and in so doing the court may, in applying this subsection, award to the company or to the other parties such compensation as may be reasonable except that in determining the amount of compensation the court shall not take into account anticipated profits to be derived from the performance of the contract.

#### **Name of company**

**11.(1)** Any word or combination of words set out in the first column of Part III of the Schedule, or the abbreviation of that word or combination of words set out in the second column of the Part, shall form part of the name of every company incorporated under this Act, provided that a company incorporated under the laws of a jurisdiction outside Seychelles and continued as a company incorporated under this Act may use the name designated in the articles of continuation.

**(2)** Subject to subsection (1), the name of a company may be expressed in any language but where the name is not in a national language a translation and transliteration of the name in English or French shall be given.

**(3)** No company shall be incorporated under this Act under a name that -

- (a) is identical with that of a statutory corporation or that under which a company in existence is already incorporated under this Act or registered under the Companies Act or so nearly resembles the name of another company as to be calculated to deceive, except where the company in existence gives its consent;
- (b) contains the words “Assurance”, “Bank”, “Building Society”, “Chamber of Commerce”, “Chartered”, “Cooperative”, “Imperial”, “Insurance”, “Municipal”, “Trust”, “Foundation”, or a word conveying a similar meaning, or any other word that, in the opinion of the Registrar, suggests or is calculated to suggest the patronage of or any connection with Seychelles or the Government of Seychelles or with the Government of any other country or the Government of that country;
- (c) is indecent, offensive or, in the opinion of the Registrar is otherwise objectionable or misleading or being confused with another company wherever registered, or is a registered trademark in Seychelles or elsewhere, of a product.

**(4)** A company may amend its Memorandum to change its name.

- (5) Where a company is incorporated under a name that -
- (a) is identical with a name under which a company in existence was incorporated under this Act or registered under the Companies Act;
  - (b) so nearly resembles the name of another company in existence which was incorporated under this Act or registered under the Companies Act as to be calculated to deceive or confuse, the Registrar may, whether or not the consent of the company in existence has been obtained pursuant to subsection (3)(a), give notice to the last registered company to change its name and if it fails to do so within 60 days from the date of the notice the Registrar shall direct the company to change its name to such name as the Registrar deems appropriate, and the Registrar shall publish a notice of the change in the Gazette; or
  - (c) is indecent, offensive or, in the opinion of the Registrar is otherwise objectionable or is capable of being misleading or being confused with another company wherever registered, or is a registered trademark in Seychelles or elsewhere of a product.
- (6) Subject to subsections (3) and (5), where a company changes its name, the Registrar shall enter the new name on the Register in place of the former name, and shall issue a new certificate of incorporation indicating the change of name.
- (7) A change of name does not affect any rights or obligations of a company, or render defective any legal proceedings by or against a company, and all legal proceedings that have been commenced against a company by its former name may be continued against it in its new name.
- (8) Subject to subsection (3), the Registrar may, upon a request made by any registered agent and payment of the prescribed fee, reserve for 30 days a name for future adoption by a company under this Act;
- (9) On the expiry of the period of 30 days referred to in subsection (8), the Registrar may, on a request by the registered agent and payment of the fee set out in Part 1 of the Schedule, for each 30 day period thereafter, continue reserving such name for future adoption by a company under this Act.

### **Memorandum**

**12.(1)** The Memorandum shall include the following particulars-

- (a) the name of the company;
- (b) the address within Seychelles of the registered office of the company;
- (c) the name and address within Seychelles of the registered agent of the company;
- (d) subject to subsection (2), the objects or purposes for which the company is to be incorporated;
- (e) the currency in which shares in the company shall be issued;
- (f) a statement of the authorised capital of the company setting forth the aggregate of the par value of the shares that the company is authorised to issue and the amount, if any, to be represented by shares without par value that the company is authorised to issue;
- (g) a statement of the number of classes and series of shares, the number of shares of each such class and series and the par value of shares with par value and that the shares may be without par value if this is the case;

- (h) a statement of the designations, powers, preferences and rights, and the qualifications, limitations or restrictions of each class and series of shares that the company is authorised to issue, unless the directors are to be authorised to fix any such designations, powers, preferences, rights, qualifications, and in that case, an express grant of such authority as may be desired to grant to the directors to fix by resolution any such designations, powers, preferences, rights, qualifications, limitations and restrictions that have not been fixed by the Memorandum;
- (i) a statement of the number of shares to be issued as registered shares and as shares issued to bearer, unless the directors are authorised to determine at their discretion whether shares are to be issued as registered shares or to bearer and in that case an express grant of such authority as may be desired shall be given to empower the directors to issue shares as registered shares or to bearer as they may determine by resolution of the directors;
- (j) whether registered shares may be exchanged for shares issued to bearer and whether shares issued to bearer may be exchanged for registered shares; and
- (k) if shares issued to bearer are authorised to be issued, the manner in which a required notice to members is to be given to the holders of shares issued to bearer;
- (l) in the case of a limited life or duration company, the period, which shall not exceed 50 years, of the duration of the life of the company;
- (m) a statement that the company shall not carry on any banking, insurance, reinsurance or trust business;
- (n) a statement that the liability of the members is limited;
- (o) in the case of a company limited by guarantee and with or without a share capital, a statement to the effect that every guarantee member of the company undertakes to contribute up to a specified amount to the assets of the company in the event of its being wound up while that member is a guarantee member or within six months of that member ceasing to be a guarantee member for –
  - (i) the payment of the liabilities of the company contracted or otherwise incurred before that member ceased to be a guarantee member;
  - (ii) the costs, charges and expenses of winding up; and
  - (iii) the adjustment of the rights of contributories among themselves.

(2) For the purposes of subsection (1)(d), if the Memorandum contains a statement either alone or with other objects or purposes that the object or purpose of the company is to engage in any act or activity that is not prohibited under any law for the time being in force in Seychelles, the effect of that statement is to make all acts and activities, that are not illegal, part of the objects or purposes of the company, subject to any limitations in the Memorandum.

(3) The Memorandum shall be subscribed to by one or more persons in the presence of another person who shall write his full name and address and sign as a witness.

(4) The Memorandum, when registered, binds the company and its members from time to time to the same extent as if each member had subscribed his name and affixed his seal thereto and as if there were contained in the Memorandum, on the part of himself, his heirs, executors and administrators, a covenant to observe the provisions of the Memorandum, subject to this Act.

(5) The Memorandum may be written in the English or French language or if written in a language other than English or French shall be accompanied by a translation in the English or French language certified by the registered agent of the company of the Memorandum.

## **Articles**

**13.(1)** The Articles, if not submitted for registration with the Memorandum shall be submitted within 30 days following the date of incorporation.

**(2)** The Articles shall be subscribed to by each subscriber of the Memorandum in the presence of another person who shall write his full name and address and sign as a witness.

**(3)** The Articles, when registered, bind the company and its members from time to time to the same extent as if each member had subscribed his name and affixed his seal thereto and as if there were contained in the Articles, on the part of himself, his heirs, executors and administrators, a covenant to observe the provisions of the Articles, subject to this Act.

**(4)** The Articles may be written in the English or French language or if written in a language other than in English or French shall be accompanied by a translation in the English or French language certified by the registered agent of the company of the Articles.

## **Registrar and incorporation of companies**

**14.(1)** For the purposes of this Act the Minister shall appoint a Registrar of International Business Companies.

**(2)** The Memorandum and Articles shall, on application made to the Registrar, be registered by the Registrar in a register to be maintained by him and to be known as the Register of International Business Companies.

**(3)** Upon registration of the Memorandum, the Registrar shall issue a certificate of incorporation under his hand certifying that the company is incorporated.

**(4)** The Minister may appoint a diplomatic or consular officer of Seychelles or any other person or body in a country or jurisdiction outside Seychelles to perform in that country or jurisdiction such of the functions of the Registrar as may be delegated to the officer, person or body by the Minister and, subject to subsection (6) any act or thing done by or before the diplomatic or consular officer or the other person or body appointed by the Minister shall be valid and effectual as if done by or before the Registrar.

**(5)** The Minister may establish a branch office in a country or jurisdiction referred to in subsection (4) for the performance by or before the diplomatic or consular officer or the other person or body of the functions of the Registrar delegated to the officer or other person or body under that subsection.

**(6)** A diplomatic or consular officer or other person or body shall before performing the functions delegated to the officer or other person or body under subsection (4) consult the Registrar and act in accordance with the instructions of the Registrar.

**(7)** A diplomatic or consular officer or other person or body shall, as soon as practicable, forward to the Registrar copies of all applications made to the officer or other person or body and certificates or other documents issued by the officer or other person or body, a record of all fees and any penalty collected by the officer or other person or body under this Act and those fees and the penalty.

**(8)** Any act done or certificate or document made or issued under this Act by a diplomatic or consular officer or person or body referred to in subsection (4) shall be deemed to be an act done or certificate or document made or issued by the Registrar under this Act.

## **Certificate of incorporation**

**15.** Where the Registrar issues a certificate of incorporation of a company, the company is, from the date shown on the certificate of incorporation, a body corporate under the name contained in the Memorandum subject to any limitations imposed by the Memorandum and to the provisions of this Act.

#### **Certificate to be evidence of compliance**

**16.** A certificate of incorporation of a company incorporated under this Act issued by the Registrar shall be **prima facie** evidence of compliance with all requirements of this Act in respect of incorporation.

#### **Amendment of Memorandum of Articles**

**17.(1)** Subject to any limitation in its Memorandum or Articles, a company incorporated under this Act may amend its Memorandum or Articles by a resolution of members or, where permitted by its Memorandum or Articles or by this Act, by a resolution of directors.

**(2)** A limited life company may by resolution alter its Memorandum to extend the period of the duration of the company to such period or periods not exceeding in aggregate 99 years from the date of its incorporation.

**(3)** Subject to section 39A, a company that amends its Memorandum or Articles shall submit an extract of the resolution effecting the amendment certified by the registered agent of the company to the Registrar within 14 days after the resolution is passed, and the Registrar shall retain and register the extract, provided the company may at any time thereafter file with the Registrar a restated Memorandum or Articles as so amended.

**(4)** An amendment to the Memorandum or Articles has effect from the time the amendment is registered by the Registrar.

**(5)** A company that contravenes subsection (3) shall be liable to a penalty of \$50 for each day or part thereof during which the contravention continues.

**(6)** A director who knowingly permits the contravention of subsection (3) shall be liable to a penalty of \$50 for each day or part thereof during which the contravention continues.

#### **Copies of Memorandum and Articles to members**

**18.** A copy of the Memorandum and a copy of the Articles shall be given to any member who requests a copy on payment by the member of such amount as the directors may determine to be reasonably necessary to defray the costs of preparing and furnishing them.

### **PART III - CAPITAL AND DIVIDENDS**

#### **Consideration of Shares**

**19.** Subject to any limitations in the Memorandum or Articles, each share in a company incorporated under this Act shall be issued for money or other valuable consideration.

#### **Amount of consideration**

**20.(1)** Subject to any limitations in the Memorandum or Articles, shares in a company incorporated under this Act may be issued for such amount as may be determined from time to time by the directors, except that in the case of shares with par value the amount shall not be less than the par value; and, in the absence of fraud, the decision of the directors as to the value of the consideration received by the company in respect of the issue is conclusive, unless a question of law is involved.

**(2)** Subject to any limitations in the Memorandum or Articles, treasury shares and unissued shares may be disposed of by a company incorporated under this Act on such terms and conditions as the directors may determine.

#### **Fractional share**

**21.** Subject to any limitations in its Memorandum or Articles, a company incorporated under this Act may issue fractions of a share and unless and to the extent otherwise provided in the Memorandum or Articles, a fractional share has the corresponding fractional liabilities, limitations, preferences, privileges, qualifications, restrictions, rights and other attributes of a share of the same class or series of shares.

#### **Capital and surplus accounts**

**22.(1)** Where a company incorporated under this Act issues a share with par value, the consideration in respect of the share constitutes capital to the extent of the par value and the excess constitutes surplus.

**(2)** Subject to any limitations in the Memorandum or Articles, where a company incorporated under this Act issues a share without par value, the consideration in respect of the share constitutes capital to the extent designated by the directors and the excess constitutes surplus, except that the directors shall designate as capital an amount of the consideration that shall be at least equal to the amount that the share is entitled to as a preference, if any, in the assets of the company upon liquidation of the company.

**(3)** Upon the disposition by a company incorporated under this Act of a treasury share, the consideration in respect of the share shall be added to surplus.

#### **Dividend of shares**

**23.(1)** A share issued as a dividend by a company incorporated under this Act shall be treated for all purposes as having been issued for money equal to the surplus that has been transferred to capital upon the issue of the share.

**(2)** In the case of a dividend of authorised but unissued shares with par value, an amount equal to the aggregate par value of the shares shall be transferred from surplus to capital at the time of the distribution.

**(3)** In the case of a dividend of authorised but unissued shares without par value, the amount designated by the directors shall be transferred from surplus to capital at the time of the distribution, except that the directors shall designate as capital an amount that is at least equal to the amount that the shares are entitled to as preference, if any, in the assets of the company upon liquidation of the company.

**(4)** A division of the issued and outstanding shares of a class or series of shares into a larger number of shares of the same class or series having proportionately small par value does not constitute a dividend of shares.

#### **Increase or reduction of authorised capital**

**24.(1)** Subject to any limitations in its Memorandum or Articles, a company incorporated under this Act may, by a resolution of directors, amend its Memorandum to increase or reduce its authorised capital, and in connection

therewith, the company may -

- (a) increase or reduce the number of shares which the company may issue;
- (b) increase or reduce the par value of any of its shares; or
- (c) effect any combination under paragraphs (a) and (b).

(2) Where a company reduces its authorised capital under subsection (1), then, for purposes of computing capital of the company, any capital that immediately before the reduction was represented by shares but immediately following the reduction is no longer represented by shares shall be deemed to be surplus transferred from capital to surplus.

(3) A company incorporated under this Act shall, in writing, inform the Registrar of any increase or decrease of its authorised capital within 30 days after the resolution.

(4) A company that contravenes subsection (3) shall be liable to a penalty of \$25 for each day or part thereof during which the contravention continues.

(5) A director who knowingly permits the contravention of subsection (3) shall be liable to a penalty of \$25 for each day or part thereof during which the contravention continues.

#### **Division and combination**

25.(1) A company incorporated under this Act may amend its Memorandum -

- (a) to divide the shares, including issued shares, of a class or series into a larger number of shares of the same class or series; or
- (b) to combine the shares, including issued shares of a class or series into a smaller number of shares of the same class or series.

(2) Where shares are divided or combined under subsection (1), the aggregate par value of the new shares shall be equal to the aggregate par value of the original shares.

#### **Nature of share**

26. Shares of a company incorporated under this Act are movable property and are not of the nature of immovable property.

#### **Share certificates**

27.(1) A company incorporated under this Act shall state in its Articles whether or not certificates in respect of its shares shall be issued.

(2) Where a company incorporated under this Act issues certificates in respect of its shares, the certificates shall be evidenced by the signature of a director or officer of the company; and the Articles may provide for the signatures to be facsimiles.

(3) A certificate issued in accordance with subsection (2) specifying a share held by a member of the company shall be **prima facie** evidence of the title of the member to the share specified therein.

### Share register

**28.(1)** A company incorporated under this Act shall cause to be kept one or more registers to be known as Share Registers containing -

- (a) the names and addresses of the persons who hold registered shares in the company;
- (b) the number of each class and series of registered shares held by each person;
- (c) the date on which the name of each person was entered in the Share Register;
- (d) the date on which any person ceased to be a member;
- (e) in the case of shares issued to bearer –
  - (i) the names and addresses of the persons who hold bearer shares in the company;
  - (ii) the number of each class and series of bearer shares held by each holder thereof;
  - (iii) the date on which the name of each holder of bearer shares was entered in the Share Register;
  - (iv) the date on which any holder of bearer shares ceased to be a member;
- (f) with respect to each certificate for shares issued to bearer -
  - (i) the identifying number of the certificate;
  - (ii) the number of each class or series of shares issued to bearer specified therein, and
  - (iii) the date of issue of the certificate;

but the company may delete from the Share Register information relating to shares issued to bearer that have been cancelled.

**(2)** The Share Register may be in such form as the directors may approve but if it is in magnetic, electronic or other data storage form, the company shall be able to produce legible evidence of its contents.

**(3)** A copy of the Share Register, commencing from the date of the registration of the company, shall be kept at the office of the company referred to in section 38 or such other place in Seychelles as the Directors determine and the company shall inform its registered agent of the address of the other place.

**(4)** The Share Register shall be **prima facie** evidence of any matters directed or authorised by this Act to be contained therein.

**(5)** A company that contravenes this section shall be liable to a penalty of \$25 for each day or part thereof during which the contravention continues.

**(6)** A director who knowingly permits the contravention of this section shall be liable to a penalty of \$25 for each day or part thereof during which the contravention continues.

### Guarantee Member Register



**28A.(1)** A company incorporated under this Act, which is limited by guarantee, shall cause to be kept one or more registers to be known as the Guarantee Member Register, which shall contain –

- (a) the names and addresses of each guarantee member;
- (b) the class or series of guarantee membership held by each guarantee member;
- (c) the date on which the name of each guarantee member was entered in the Guarantee Member Register; and
- (d) the date on which any person ceased to be a guarantee member.

(2) The Guarantee Member Register may be in such form as the directors may approve, but if it is in magnetic, electronic or other data storage form, the company must be able to produce legible evidence of its contents.

(3) A copy of the Guarantee Member Register, commencing from the date of the registration of the company, shall be kept at the office of the company referred to in section 38 or such other place as may be determined by the directors, and the company shall inform the registered agent of the address of the other place.

(4) The Guarantee Member Register shall be prima facie evidence of any matters directed or authorised by this Act to be contained in it.

(5) A company that contravenes subsection (1) or (3) is liable to a penalty of \$25 for each day or part thereof during which the contravention continues.

(6) A director who knowingly permits the contravention of subsection (1) or (3) is liable to a penalty of \$25 for each day or part thereof during which the contravention continues.

### **Rectification of Share Register**

**29.(1)** If -

- (a) information that is required to be entered in the Share Register under section 28 is omitted therefrom or inaccurately entered therein; or
- (b) there is unreasonable delay in entering the information in the Share Register,

a member of the company, or any person who is aggrieved by the omission, inaccuracy or delay may apply to the court for an order that the Share Register be rectified, and the court may either grant or refuse the application, with or without costs to be paid by the applicant, or order the rectification of the Share Register and may direct the company to pay all costs of the application and any damages the applicant may have sustained.

(2) The court may, in any proceedings under subsection (1) determine -

- (a) any question relating to the right of a person who is a party to the proceedings to have his name entered in or omitted from the Share Register, whether the question arises between -
  - (i) two or more members or alleged members; or
  - (ii) between members or alleged members and the company, and
- (b) generally any question that may be necessary or expedient to be determined for the rectification of the Share Register.

### **Transfer of registered shares**

**30.(1)** Subject to any limitations in the Memorandum or Articles, registered shares of a company incorporated under this Act may be transferred by a written instrument of transfer signed by the transferor and containing, save in the case of bearer shares, the name and address of the transferee.

**(2)** In the absence of a written instrument of transfer mentioned in subsection (1), the directors may accept such evidence of a transfer of shares as they consider appropriate.

**(3)** A company shall not be required to treat a transferee of a registered share in the company as a member until the transferee's name has been entered in the Share Register.

**(4)** Subject to any limitations in its Memorandum or Articles, a company incorporated under this Act shall, on the application of the transferor or transferee of a registered share in the company, enter in its Share Register the name of the transferee of the share.

**(5)** A share issued to bearer shall be transferable by delivery of the certificate relating to the share and notification of transfer as defined in subsection (6).

**(6)** Notification of a transfer of a bearer share in a company incorporated under this Act shall be effected by delivery to the company's registered agent in Seychelles of a written notice signed by the transferor stating the name and address of the transferor and the transferee, and the date on which the certificate relating to the share was delivered to the transferee.

**(7)** Upon receipt of the notice referred to in subsection (6), the registered agent in Seychelles shall cause to be entered in the Share Register –

- (a)* the name and address of the transferee as the holder of the relevant bearer share; and
- (b)* the date on which the transferor ceased to be the holder of the relevant bearer share, which shall be deemed to be the date on which the registered agent received notification of transfer.

**(8)** A company that contravenes subsection (6) is liable to a penalty of \$25 for each day or part thereof during which the contravention continues.

**(9)** A director who knowingly permits the contravention of subsection (7) is liable to a penalty of \$25 for each day or part thereof during which the contravention continues.

### **Transfer of bearer shares**

**31.** A transfer of registered shares of a deceased or bankrupt member of a company incorporated under this Act, made by its personal representative, guardian or trustee, as the case may be, or owned by a person as a result of a transfer from a member by operation of law, is of the same validity as if the personal representative, guardian, trustee or transferee respectively had been the registered holder of the shares at the time of the execution of the instrument of transfer.

### **Seizure**

**32.(1)** Where a governmental authority, whether it is legally constituted or not, in any jurisdiction outside Seychelles -

- (a)* by or in connection with a nationalisation, expropriation, confiscation, coercion, force or duress, or similar action; or

- (b) by or in connection with the imposition of any confiscatory tax, assessment or other governmental charge,

takes or seizes any shares or other interest in a company incorporated under this Act, the company itself or a person holding shares or any other interest in a company, including an interest as a creditor, may apply to the court for an order that the company disregard the taking or seizure and continue to treat the person who would have held shares or any other interest in the company but for the taking or seizure of the shares or other interest as continuing to hold the shares or other interest.

(2) Without affecting subsection (1), where a person whose shares or other interest have been taken or seized as referred to in subsection (1) is other than a natural person, the person making the application under subsection (1) or the company itself, may apply to the court for an additional order for the company to treat the persons believed by the company to have held the direct or indirect beneficial interests in the shares or other interests in the company as the holder of those shares or other interest.

(3) The court may, upon application made to it under subsection (1) or (2) -

- (a) grant such relief as it considers equitable and proper; and
- (b) order that any shares of or other interests in the company vest in such person or authority as the court may appoint and for such purposes as the court may determine.

#### **Acquisition of shares**

**33.(1)** Subject to any limitations in its Memorandum or Articles, a company incorporated under this Act may purchase, redeem or otherwise acquire and hold its own shares but only out of surplus or in exchange for newly issued shares of equal value.

(2) No purchase, redemption or other acquisition permitted under subsection (1) shall be made unless the directors determine that immediately after the purchase, redemption or other acquisition -

- (a) the company will be able to satisfy its liabilities as they become due in the ordinary course of its business; and
- (b) the realizable value of the assets of the company will not be less than the sum of its total liabilities, other than deferred taxes, as shown in the books of account, and its issued and outstanding share capital,

and, in the absence of fraud, the decision of the directors as to the realizable value of the assets of the company is conclusive unless a question of law is involved.

(3) A determination by the directors under subsection (2) is not required where shares are purchased, redeemed or otherwise acquired -

- (a) pursuant to a right of a member to have his shares redeemed or to have his shares exchanged for money or other property of the company;
- (b) in exchange for newly issued shares in the company;
- (c) by virtue of the provisions of section 79; and
- (d) pursuant to an order of the court.

(4) Subject to any limitations in the Memorandum or Articles, shares that a company purchases, redeems or otherwise acquires may be cancelled or held as treasury shares unless the shares are purchased, redeemed or otherwise acquired out of capital pursuant to section 35, in which case they shall be cancelled; and upon the

cancellation of a share, the amount included as capital of the company with respect to that share shall be deducted from the capital of the company.

#### **Treasury shares disabled in respect of voting and dividends**

**34.** Where shares in a company incorporated under this Act -

- (a) are held by the company as treasury shares; or
- (b) are held by another company of which the first company holds, directly or indirectly, shares having more than 50 percent of the votes in the election of directors of the other company,

the shareholders of the first company are not entitled to vote or to have dividends paid thereon and shall not be treated as outstanding for any purpose under this Act except for the purpose of determining the capital of the first company.

#### **Increase or reduction of capital**

**35.(1)** Subject to any limitations in the Memorandum or Articles and subsections (3) and (4), the capital of a company incorporated under this Act may by resolution of directors, be -

- (a) increased by transferring an amount out of the surplus of the company to capital; or
- (b) reduced by -
  - (i) returning to members any amount received by the company upon the issue of any of its shares, the amount being surplus to the company;
  - (ii) cancelling any capital that is lost or not represented by assets having realizable value; or
  - (iii) transferring capital to surplus for the purpose of purchasing, redeeming or otherwise acquiring shares that the directors have resolved to purchase, redeem or otherwise acquire.

**(2)** Where a company reduces its capital under subsection (1), the company may -

- (a) return to members any amount received by the company upon the issue of its shares;
- (b) purchase, redeem or otherwise acquire its shares out of capital; or
- (c) cancel any capital that is lost or not represented by assets having a realizable value.

**(3)** No reduction of capital shall be effected that reduces the capital of the company to an amount that is less than the sum of -

- (a) the aggregate of -
  - (i) all outstanding shares with par value, and
  - (ii) all shares with par value held by the company as treasury shares; and
- (b) the aggregates of the amounts designated as capital of -

- (i) all outstanding shares without par value; and
- (ii) all shares without par value held by the company as treasury shares that are entitled to a preference, if any, in the assets of the company upon liquidation of the company.

(4) No reduction of capital shall be effected under subsection (1) unless the directors determine that immediately after the reduction-

- (a) the company will be able to satisfy its liabilities as they become due in the ordinary course of its business; and
- (b) the realizable value of the assets of the company will not be less than its total liabilities, other than deferred taxes, as shown in the books of account, and its remaining issued and outstanding share capital,

and, in the absence of fraud, the decision of the directors as to the realizable value of the assets of the company is conclusive unless a question of law is involved.

#### **Dividends**

**36.(1)** Subject to any limitations in its Memorandum or Articles a company incorporated under this Act may, by a resolution of directors, declare and pay dividends in money, shares or other property.

(2) Dividends shall only be declared and paid if the directors determine that immediately after the payment of the dividend -

- (a) the company will be able to satisfy its liabilities as they become due in the ordinary course of its business; and
- (b) the realizable value of the assets of the company will not be less than the sum of its total liabilities, other than deferred taxes, as shown in the books of account, and its issued and outstanding share capital,

and, in the absence of fraud, the decision of the directors as to the realizable value of the assets of the company is conclusive unless a question of law is involved.

#### **Appreciation of assets**

**37.** Subject to any limitations in its Memorandum or Articles a company incorporated under this Act may, by a resolution of directors, include in the computation of surplus for any purpose under this Act the net unrealised appreciation of assets of the company, and, in the absence of fraud, the decision as to the value of the assets is conclusive, unless a question of law is involved.

### **PART IV - REGISTERED OFFICE AND AGENT**

#### **Registered office**

**38.(1)** A company incorporated under this Act shall at all times have a registered office in Seychelles which shall be the same address as that of its registered agent.

(2) The directors of the company may change the address of the registered office of the company, which change shall be notified to the Registrar.

(3) Where a company has not been struck off prior to the International Business Companies (Amendment) Act, 2011, the company shall comply with the provisions of this section within three months of the commencement of this Act.

### **Registered agent**

**39.(1)** A company incorporated under this Act shall at all times have a registered agent in Seychelles who is licensed to provide international corporate services under the International Corporate Service Providers Act, 2003.

(2) An application made or a document required to be submitted to the Registrar under this Act, by a company incorporated under this Act shall be made or submitted through the registered agent who shall verify in writing the signature of any person appearing on the application or document.

(3) The registered agent shall accept service on behalf of the company of any notice by the Registrar, and any service of such notice accepted by its registered agent shall be deemed to have been accepted by the company.

### **Procedure upon change of registered agent**

**39A.(1)** A company upon amending its Memorandum to effect a change of its registered agent or situation of its registered office shall, notwithstanding section 17(3), submit a copy of the extract of the resolution effecting the amendment certified by its registered agent to the Registrar within 14 days after the resolution is passed.

(2) The Registrar shall retain and register the extract of the resolution referred to under subsection (1), provided the company may at any time thereafter file with the Registrar a restated Memorandum or Articles as so amended.

(3) The registered agent referred to in subsection (1) shall, either by itself or by consenting in writing to an incoming registered agent, submit the certified extract of the resolution to the Registrar, unless –

- (a) the first mentioned registered agent has not been authorised in writing by the company to consent to the change of registered agent or registered office; or
- (b) all fees due to the first mentioned registered agent have not been paid.

(4) A registered agent may resign as the registered agent of a company incorporated under this Act –

- (a) by giving written notice in accordance with any relevant agreement or in the absence thereof by giving not less than 30 days written notice of resignation to a person specified in subsection (5);
- (b) by providing together with the written notice a list of the names of approved registered agents in Seychelles and their addresses; and
- (c) by filing with the Registrar a copy of the notice before the expiration of the period of notice.

(5) A notice under subsection (4) shall be served on a director of the company or the person from whom the registered agent last received instructions concerning the company.

(6) Where a company appoints a new registered agent before the expiration of the notice of resignation of the outgoing registered agent shall take effect on the date of appointment of the new registered agent.

### **Penalty for contravening section 38 and 39**

**40.(1)** A company that contravenes section 38 or 39(1), (2) or (3) shall be liable to a penalty of \$25 for each day or part thereof during which the contravention continues.

**(2)** A director who knowingly permits the contravention of section 38 or 39(1), (2) or (3) shall be liable to a penalty of \$25 for each day or part thereof during which the contravention continues.

## **PART V - DIRECTORS, OFFICERS, AGENTS AND LIQUIDATORS**

### **Management by directors**

**41.** Subject to any limitations in its Memorandum or Articles, the business and affairs of a company incorporated under this Act shall be managed by a board of directors that consists of one or more persons who may be individuals or companies.

### **Elections and removal of directors**

**42.(1)** The first directors of a company incorporated under this Act shall be elected by the subscribers to the Memorandum; and thereafter, the directors shall be elected by the members for such term as the members may determine and where permitted by the Memorandum or Articles of a company incorporated under this Act, the directors may also elect directors for such term as the directors may determine.

**(2)** Each director holds office until his successor takes office or until his earlier death, resignation or removal or in the case of a company upon the making of an order for the winding up or dissolution of the company or upon the removal of a defunct company otherwise than pursuant to a winding-up order.

**(3)** Subject to any limitations in the Memorandum or Articles -

- (a)* a director shall cease to hold the office of director if a majority of the directors, require his resignation in writing;
- (b)* a director may resign his office by giving written notice of his resignation to the company and the resignation has effect from the date the notice is received by the company or from such later date as may be specified in the notice.

**(4)** Subject to any limitations in the Memorandum or Articles, a vacancy in the board of directors may be filled by a resolution of members or of a majority of the remaining directors.

### **Number of directors**

**43.** The number of directors shall be fixed by the Articles and, subject to any limitations in the Memorandum or Articles, the Articles may be amended to change the number of directors.

### **Powers of directors**

**44.** The directors shall have all the powers of the company that are not reserved to the members under this Act or in the Memorandum or Articles.

### **Emoluments of directors**

**45.** Subject to any limitations in the Memorandum or Articles, the directors may, by a resolution of directors, fix the emoluments of directors in respect of services to be rendered in any capacity to the company.

### **Committee of directors**

**46.(1)** The directors may, by a resolution of directors, designate one or more committees, each consisting of one or more directors.

**(2)** Subject to any limitations in the Memorandum or Articles, each committee has such powers and authority of the directors, including the power and authority to affix the common seal, if any, of the company, as are set forth in the resolution of directors establishing the committee, except that no committee has any power or authority with respect to the matters requiring a resolution of directors under section 2(3).

### **Meeting of directors**

**47.(1)** Subject to any limitations in the Memorandum or Articles, the directors of a company incorporated under this Act may meet at such times and in such manner and places within or outside Seychelles as the directors may determine to be necessary or desirable.

**(2)** A director shall be deemed to be present at a meeting of directors if -

- (a)* he participates by telephone or other electronic means; and
- (b)* all directors participating in the meeting are able to hear each other and recognise each other's voice and for this purpose participation constitutes prima facie proof of recognition.

### **Notice of meetings of directors**

**48.(1)** Subject to a requirement in the Memorandum or Articles to give longer notice, a director shall be given not less than 2 days notice of meetings of directors.

**(2)** Notwithstanding subsection (1) but subject to any limitations in the Memorandum or Articles, a meeting of directors held in contravention of that subsection is valid if all the directors, or such majority thereof as may be specified in the Memorandum or Articles entitled to vote at the meeting, have waived the notice of the meeting; and for this purpose, the presence of a director at the meeting shall be deemed to constitute waiver on his part.

**(3)** The inadvertent failure to give notice of a meeting to a director, or the fact that a director has not received the notice, does not invalidate the meeting.

### **Quorum for meetings of directors**

**49.** The quorum for a meeting of directors is that fixed by the Memorandum or Articles; but where no quorum is so fixed a meeting of directors is properly constituted for all purposes if at the commencement of the meeting one half of the total number of directors are present in person or by alternate.



### **Consents**

**50.** Subject to any limitations in the Memorandum or Articles, an action that may be taken by the directors or a committee of directors at a meeting may also be taken by a resolution of directors or a committee of directors consented to in writing or by telex, telefax, telegram, cable or other written electronic communication, without the need for any notice.

### **Alternate for a director**

**51.(1)** Subject to any limitations in the Memorandum or Articles, a director may by a written instrument appoint an alternate who need not be a director.

**(2)** An alternate for a director appointed under subsection (1) shall be entitled to attend meetings in the absence of the director who appointed him and to vote or consent in the place of the director.

### **Officers**

**52.(1)** The directors may, by a resolution of directors appoint any person, including a person who is a director, to be an officer or agent of the company.

**(2)** Subject to any limitations in the Memorandum or Articles, each officer or agent has such powers and authority of the directors, including the power and authority to affix the common seal, if any, of the company, as are set forth in the Articles or in the resolution of directors appointing the officer or agent, except that no officer or agent has any power or authority with respect to the matters requiring a resolution of directors under section 44 and this section.

**(3)** The directors may remove an officer or agent appointed under subsection (1) and may revoke or vary a power conferred on him under subsection (2).

### **Standard of care**

**53.** Every director, officer, agent and liquidator of a company incorporated under this Act, in performing his functions, shall act honestly and in good faith with a view to the best interests of the company and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

### **Reliance on records and reports**

**54.** Every director, officer, agent and liquidator of a company incorporated under this Act, in performing his functions is entitled to rely upon the Share Register kept under section 28, the books of accounts and records and the minutes and copies of consents to resolutions kept under section 65 and any report made to the company by any other director, officer, agent or liquidator or by any person selected by the company to make the report.

### **Conflict of interest**

**55.(1)** Subject to any limitations in the Memorandum or Articles, if the requirements of subsection (2) are satisfied, no agreement or transaction between -

(a) a company incorporated under this Act; and

- (b) one or more of its directors or liquidators, or any person in which any director or liquidator has a financial interest or to whom any director or liquidator is related, including as a director or liquidator of that other person,

is void or voidable for this reason only or by reason only that the director or liquidator is present at the meeting of directors or liquidators, at the meeting of the committee of directors or liquidators, that approves the agreement or transaction or that the vote or consent of the director or liquidator is counted for that purpose.

(2) An agreement or transaction referred to in subsection (1) is valid if -

- (a) the material facts of the interest of each director or liquidator in the agreement or transaction and his interest in or relationship to any other party to the agreement or transaction are disclosed in good faith or are known by the members entitled to vote at a meeting of members; and
- (b) the agreement or transaction is approved or ratified by a resolution of members.

(3) Subject to any limitations in the Memorandum or Articles, a director or liquidator who has an interest in any particular business to be considered at a meeting of directors, liquidators or members may be counted for purposes of determining whether the meeting is duly constituted in accordance with section 49 or otherwise.

### **Indemnities**

**56.(1)** Subject to subsection (2) and any limitations in its Memorandum or Articles, a company incorporated under this Act may indemnify against all expenses, including legal fees, and against all judgements, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings any person who -

- (a) is or was a party or is threatened to be made a party to any threatened, pending or completed proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that the person is or was a director, an officer or a liquidator of the company; or
- (b) is or was, at the request of the company, serving as a director, officer or liquidator of, or in any other capacity is or was acting for, another company or a partnership, joint venture, trust or other enterprise.

(2) Subsection (1) only applies to a person referred to in that subsection if the person acted honestly and in good faith with a view to the best interests of the company and in the case of criminal proceedings, the person had no reasonable cause to believe that his conduct was unlawful.

(3) The decision of the directors as to whether the person acted honestly and in good faith and with a view to the best interests of the company and as to whether the person had no reasonable cause to believe that his conduct was unlawful is, in the absence of fraud, sufficient for the purposes of this section, unless a question of law is involved.

(4) The termination of any proceedings by any judgement, order, settlement, conviction or the entering of a **nolle prosequi** does not, by itself, create a presumption that the person did not act honestly and in good faith and with a view to the best interests of the company or that the person had reasonable cause to believe that his conduct was unlawful.

(5) If a person referred to in subsection (1) has been successful in defence of any proceedings referred to in subsection (1), the person is entitled to be indemnified against all expenses, including legal fees, and against all judgements, fines and amounts paid in settlement and reasonably incurred by the person in connection with the proceedings.

## **Insurance**

**57.** A company incorporated under this Act may purchase and maintain insurance in relation to any person who is or was a director, an officer or a liquidator of the company, or who at the request of the company is or was serving as a director, an officer or a liquidator of, or in any other capacity is or was acting for, another company or a partnership, joint venture, trust or other enterprise, against any liability asserted against the person and incurred by the person in that capacity, whether or not the company has or would have had the power to indemnify the person against the liability under section 56(1).

## **PART VI - PROTECTION OF MEMBERS AND CREDITORS**

### **Meetings of members**

**58.(1)** Subject to any limitations in the Memorandum or Articles, the directors of a company incorporated under this Act may convene meetings of the members of the company at such times and in such manner and places within or outside Seychelles as the directors consider necessary or desirable.

**(2)** Subject to a provision in the Memorandum or Articles for a lesser percentage, upon the written request of members holding more than 50 percent of the votes of the outstanding voting shares in the company, the directors shall convene a meeting of members.

**(3)** Subject to any limitations in the Memorandum or Articles, a member shall be deemed to be present at a meeting of members if -

- (a)* he participates by telephone or other electronic means; and
- (b)* all members participating in the meeting are able to hear each other and recognise each other's voice and for this purpose participation constitutes prima facie proof of recognition.

**(4)** A member may be represented at a meeting of members by a proxy who may speak and vote on behalf of the member.

**(5)** The following provisions apply in respect of joint ownership of shares -

- (a)* if 2 or more persons hold shares jointly each of them may be present in person or by proxy at a meeting of members and may speak as member;
- (b)* if only one of them is present in person or by proxy, he may vote on behalf of all of them; and
- (c)* if 2 or more are present in person or by proxy, they shall vote as one.

### **Notice of meetings of members**

**59.(1)** Subject to a requirement in the Memorandum or Articles to give longer notice, the directors shall give not less than 7 days notice of meetings of members to those persons whose names on the date the notice is given appear as members in the Share Register referred to in section 28 and are entitled to vote at the meeting.

**(2)** Notwithstanding subsection (1) but subject to any limitations in the Memorandum or Articles, a meeting of members held in contravention of the requirement to give notice is valid if members holding a 90 percent majority, or such lesser majority as may be specified in the Memorandum or Articles, of -

- (a) the total number of the shares of the members entitled to vote on all the matters to be considered at the meeting; or
- (b) the votes of each class or series of shares where members are entitled to vote thereon as a class or series together with an absolute majority of the remaining votes,

have waived notice of the meeting; and for this purpose, the presence of a member at the meeting shall be deemed to constitute waiver on his part.

(3) The inadvertent failure of the directors to give notice of a meeting to a member, or the fact that a member has not received the notice, does not invalidate the meeting.

### **Quorum for meeting of members**

60. The quorum for a meeting of members for purposes of a resolution of members is that fixed by the Memorandum or Articles; but where no quorum is so fixed, a meeting of members is properly constituted for all purposes if at the commencement of the meeting there are present in person or by proxy shareholders representing more than one-half of the shares of each class or series thereof.

### **Voting by members**

61.(1) Except as otherwise provided in the Memorandum or Articles, all shares vote as one class and each whole share has one vote.

(2) The directors of a company incorporated under this Act may fix the date notice is given of a meeting as the record date for determining those shares that are entitled to vote at the meeting.

### **Consent of members**

62. Subject to any limitations in the Memorandum or Articles, an action that may be taken by members at a meeting of members may also be taken by a resolution of all members consented to in writing or by telex, telegram, telefax, cable or other written electronic communication, without the need for any notice.

### **Service of notice on members**

63.(1) Any notice, information or written statement required under this Act to be given to members by a company incorporated under this Act shall be served -

- (a) in the case of members holding registered shares -
  - (i) in the manner prescribed in the Memorandum or Articles, as the case may be, or
  - (ii) in the absence of a provision in the Memorandum or Articles, by personal service or by mail addressed to each member at the address shown in the Share Register; and
- (b) in the case of members holding shares issued to bearer, in the absence of a provision in the Memorandum or Articles, if the notice, information or written statement is published in the Gazette, a newspaper circulating in Seychelles, a newspaper circulating in the place where the company has its principal office and, where a

company is registered in a branch office, a newspaper circulating in the country or jurisdiction where the branch office is situated.

(2) Subject to a requirement in the Memorandum or Articles to give a specific length of notice, the directors shall give sufficient notice of meetings of members to members holding shares issued to bearer to allow a reasonable opportunity for them to take action in order to secure or exercise the right or privilege, other than the right or privilege to vote, that is the subject of the notice.

#### **Service of process etc., on company**

**64.(1)** Any summons, notice, order, document, process, information or written statement to be served on a company incorporated under this Act may be served by leaving it, or by sending it by registered mail addressed to the company at its registered office, or by leaving it with, or by sending it by registered mail to, the registered agent of the company.

(2) Service of any summons, notice, order, document, process, information or written statement to be served on a company incorporated under this Act may be proved by showing that the summons, notice, order, document, process, information or written statement -

- (a) was mailed in such time as to admit to its being delivered in the normal course of delivery, within the period prescribed for service; and
- (b) was correctly addressed and the postage was prepaid.

#### **Duty to keep accounting records**

- 65.(1)**
- (a) An International Business Company shall keep or cause to be kept proper accounting records –
    - (i) that are sufficient to show and correctly explain the International Business Company's transactions;
    - (ii) to enable the financial position of the International Business Company to be determined with reasonable accuracy at any time; and
    - (iii) to enable for accounts of the International Business Company to be prepared.
  - (b) For the purpose of subsection (1) accounting records shall not be deemed to be kept with respect to a company if they do not give a true and fair view of the International Business Company's affairs and explain its transactions.
  - (c) The accounting records shall be kept at the registered office of the International Business Company or such other place as the directors think fit.
  - (d)
    - (i) Where the accounting records of an International Business Company are kept at a place other than the registered office, the company shall inform the registered agent in writing of the physical address of that place.
    - (ii) Where the place at which the company's accounting records are kept is changed, the company shall within fourteen days inform the registered agent in writing of the change of the physical address.
  - (e) An International Business Company shall retain all accounting records for seven years, from the date of completion of the transactions to which they relate.

- (f) An International Business Company who fails to comply with this section is liable to pay a penalty of US\$25 for each day of non-compliance.
- (g) A director who knowingly fails to comply with this section is liable to pay a penalty of US\$25 for each day of non-compliance.

(2) A company incorporated under this Act shall keep -

- (a) minutes of all meetings of -
  - (i) directors,
  - (ii) members,
  - (iii) committees of directors,
  - (iv) committees of officers,
  - (v) committees of members;
- (b) copies of all resolutions consented to by -
  - (i) directors,
  - (ii) members,
  - (iii) committees of directors,
  - (iv) committees of officers,
  - (v) committees of members; and
- (c) a register of all its directors and officers consisting of the following details –
  - (i) the name and address of each director or officer;
  - (ii) the date on which each person is appointed as a director or officer;
  - (iii) the date a person ceases to be a director or officer; and
  - (iv) such other information as may be prescribed by the Minister in the regulations.
- (d) A company shall comply with the provisions of this section within three months of the commencement of the International Business Companies (Amendment) Act, 2011.

(3) The documents required to be kept under subsection (2)(a) and (b) shall be kept at the registered office of the company or such other place as the directors determine and the company shall inform the registered agent of the address of the other place.

(4) The register required to be kept under subsection (2) shall be kept at the registered office of the company or such other place in Seychelles as the directors determine, and the company shall inform the registered agent of the address of the other place.

(5) A company that contravenes this section shall be liable to a penalty of \$25 for each day or part thereof during which the contravention continues.

(6) A director who knowingly permits the contravention of this section shall be liable to a penalty of \$25 for each day or part thereof during which the contravention continues.

- (7) The register referred to in subsection (2) shall be kept in such form as the director thinks fit.

### **Inspection of books and records**

**66.(1)** A member of a company incorporated under this Act may, in person or by attorney and in furtherance of a proper purpose, request in writing specifying the purposes, to inspect during normal business hours the Share Register of the company or the books, records, minutes and consents kept by the company and to make copies or extracts therefrom.

(2) For purposes of subsection (1), a proper purpose is a purpose reasonably related to the member's interest as a member.

(3) If a request under subsection (1) is submitted by an attorney for a member, the request shall be accompanied by a power of attorney authorizing the attorney to act for the member.

(4) If the company, by a resolution of directors, determines that it is not in the best interest of the company or of any other member of the company to comply with a request under subsection (1), the company may refuse the request.

(5) Upon refusal by the company of a request under subsection (1), the member may before the expiration of a period of 90 days of his receiving notice of the refusal, apply to a the court for an order to allow the inspection.

### **Contracts**

**67.(1)** Contracts may be entered into on behalf of a company incorporated under this Act as follows -

- (a) a contract that, if entered into between individuals, is required by law to be in writing and signed by the parties, may be entered into by or on behalf of the company in writing and signed by a person acting under the express or implied authority of the company, and may, in the same manner, be varied or discharged; and
- (b) a contract that, if entered into between individuals, is valid although entered into orally, and not reduced to writing, may be entered into orally by or on behalf of the company by a person acting under the express or implied authority of the company, and may, in the same manner, be varied or discharged.

(2) A contract entered into in accordance with this section is valid and is binding on the company and its successors and all other parties to the contract.

### **Promoter's contracts**

**68.(1)** A person who enters into a written contract in the name of or on behalf of a company incorporated under this Act before the company comes into existence, shall be personally bound by the contract and is entitled to the benefits of the contract, except where -

- (a) the contract specifically provides otherwise; or
- (b) subject to any provisions of the contract to the contrary, the company adopts the contract, under subsection (2).

(2) Within a period of 90 days after a company incorporated under this Act comes into existence, the company may, by any action or conduct signifying its intention to be bound thereby, adopt a written contract entered into in its name or on its behalf before it came into existence.

- (3) When a company adopts a contract under subsection (2) -
- (a) the company shall be bound by, and entitled to the benefits of, the contract as if the company had been in existence at the date of the contract and had been a party to it; and
  - (b) subject to any provisions of the contract to the contrary, the person who acted in the name of or on behalf of the company ceases to be bound by or entitled to the benefits of the contract.

#### **Notes and bills of exchange**

**69.** Notwithstanding any other written law, a promissory note or bill of exchange shall be deemed to have been made, accepted or endorsed by a company incorporated under this Act if it is made, accepted or endorsed in the name of the company -

- (a) by or on behalf or on account of the company; or
- (b) by a person acting under the express or implied authority of the company,

and if so endorsed, the person signing the endorsement shall not be liable thereon.

#### **Power of attorney**

**70.(1)** A company incorporated under this Act may, by an instrument in writing, authorise a person, either generally or in respect of any specified matters, as its agent to act on behalf of the company and to execute contracts, agreements, deeds and other instruments on behalf of the company.

(2) A contract, agreement, deed or other instrument executed on behalf of the company by an agent appointed under subsection (1), is binding on the company and has the same effect as if it were executed by the company.

(3) A power of attorney under this section applies both within and outside Seychelles.

#### **Authentication and attestation of document**

**71.(1)** A document requiring authentication or attestation by a company incorporated under this Act may be signed by a director, a secretary or by an authorised officer or agent of the company.

(2) If the signature of any director, officer or agent authenticating or attesting any document is verified in writing by the registered agent of a company, the company is bound by the document.

#### **Personal liability**

**72.** If at any time there is no member of a company incorporated under this Act, any person doing business in the name of or on behalf of the company is personally liable for the payment of all debts of the company contracted during the time and the person may be sued therefor without joinder in the proceedings of any other person.



**PART VII - MERGER, CONSOLIDATION, SALE OF ASSETS FORCED REDEMPTIONS,  
ARRANGEMENTS AND DISSENTERS**

**Interpretation**

73. In this Part -

“consolidated company” means the new company that results from the consolidation of 2 or more constituent companies;

“consolidation” means the fusion of 2 or more constituent companies into a new company;

“constituent company” means an existing company that is participating in a merger or consolidation with one or more other existing companies;

“merger” means the merging of 2 or more constituent companies into one of the constituent companies;

“parent company” means a company that owns more than 50 percent of the outstanding voting shares of each class and series of shares in another company: Provided that for the purposes of section 75 it means a company that owns more than 90 percent of such shares as aforesaid;

“subsidiary company” means a company more than 50 percent of whose outstanding voting shares are owned by another company: Provided that for the purposes of section 75 it means a company more than 90 percent of whose shares as aforesaid are owned by another company;

“surviving company” means the constituent company into which one or more other constituent companies are merged.

**Merger and consolidation**

**74.(1)** Two or more companies incorporated under this Act may merge or consolidate in accordance with subsections (2) to (4).

**(2)** The directors of each constituent company that proposes to participate in a merger or consolidation shall approve a written plan of merger or consolidation containing, as the case requires -

- (a) the name of each constituent company and the name of the surviving company or the consolidated company;
- (b) in respect of each constituent company -
  - (i) the designation and number of outstanding shares of each class and series of shares specifying each such class and series entitled to vote on the merger or consolidation, and
  - (ii) a specification of each such class and series, if any, entitled to vote as a class or series;
- (c) the terms and conditions of the proposed merger or consolidation, including the manner and basis of converting shares in each constituent company into shares, debt obligations or other securities in the surviving company or consolidated company, or money or other property, or a combination thereof;
- (d) in respect of a merger, a statement of any amendment to the Memorandum or Articles of the surviving company to be brought about by the merger; and

- (e) in respect of a consolidation, everything required to be included in the Memorandum and Articles for a company incorporated under this Act except statements as to facts not available at the time the plan of consolidation is approved by the directors.

(3) Some or all shares of the same class or series of shares in each constituent company may be converted into a particular or mixed kind of property and other shares of the class or series, or all shares of other classes or series of shares, may be converted into other property.

(4) The following provisions apply in respect of a merger or consolidation under this section -

- (a) the plan of merger or consolidation shall be authorised by a resolution of members and the outstanding shares of a class or series of shares are entitled to vote on the merger or consolidation as a class or series if the Memorandum or Articles so provide or if the plan of merger or consolidation contains any provisions that, if contained in a proposed amendment to the Memorandum or Articles, would entitle the class or series to vote on the proposed amendment as a class or series;
- (b) if a meeting of members is to be held, notice of the meeting, accompanied by a copy of the plan of merger or consolidation, shall be given to each member, whether or not entitled to vote on the merger or consolidation;
- (c) if it is proposed to obtain the written consent of members, a copy of the plan of merger or consolidation shall be given to each member, whether or not entitled to consent to the plan of merger or consolidation;
- (d) after approval of the plan of merger or consolidation by the directors and members of each constituent company, articles of merger or consolidation shall be executed by each company and shall contain -
  - (i) the plan of merger or consolidation and, in the case of consolidation, any statement required to be included in the Memorandum and Articles of a company incorporated under this Act,
  - (ii) the date on which the Memorandum and Articles of each constituent company were registered by the Registrar;
  - (iii) the manner in which the merger or consolidation was authorised with respect to each constituent company;
- (e) the articles of merger or consolidation shall be submitted to the Registrar who shall retain and register them in the Register;
- (f) upon the registration of the articles of merger or consolidation, the Registrar shall issue a certificate under his hand certifying that the articles of merger or consolidation have been registered.

(5) A certificate of merger or consolidation issued by the Registrar shall be **prima facie** evidence of compliance with all requirements of this Act in respect of the merger or consolidation.

### **Merger with subsidiary**

**75.(1)** A parent company incorporated under this Act may merge with one or more subsidiary companies incorporated under this Act without the authorisation of the members of any company, in accordance with subsections (2) to (6), if the surviving company is a company incorporated under this Act and will satisfy the requirements prescribed for an International Business Company by section 5.

(2) The parent company shall approve a written plan of merger containing -

- (a) the name of each constituent company and the name of the surviving company;
- (b) in respect of each constituent company -
  - (i) the designation and number of outstanding shares of each class and series of shares, and
  - (ii) the number of shares of each class and series of shares in each subsidiary company owned by the parent company; and
- (c) the terms and conditions of the proposed merger, including manner and basis of converting shares in each company to be merged into shares, debt obligations or other securities in the surviving company, or money or other property, or a combination thereof.

(3) Some or all shares of the same class or series of shares in each company to be merged may be converted into property of a particular or mixed kind and other shares of the class or all shares of other classes or series of shares, may be converted into other property; but, if the parent company is not the surviving company, shares of each class and series of shares in the parent company may only be converted into similar shares of the surviving company.

(4) A copy of the plan of merger or an outline thereof shall be given to every member of each subsidiary company to be merged unless the giving of that copy or outline has been waived by that member.

(5) Articles of merger shall be executed by the parent company and shall contain -

- (a) the plan of merger;
- (b) the date on which the Memorandum and Articles of each constituent company were registered by the Registrar;
- (c) if the parent company does not own all the shares in each subsidiary company to be merged, the date on which a copy of the plan of merger or an outline thereof was made available to the members of each subsidiary company.

(6) The articles of merger shall be submitted to the Registrar who shall retain and register them in the Register.

(7) Upon the registration of the articles of merger, the Registrar shall issue a certificate under his hand certifying that the articles of merger have been registered.

(8) A certificate of merger issued by the Registrar shall be **prima facie** evidence of compliance with all the requirements of this Act in respect of the merger.

### **Effect of merger or consolidation**

**76.(1)** A merger or consolidation is effective on the date the articles of merger or consolidation are registered by the Registrar or such date subsequent thereto, not exceeding 30 days, as is stated in the articles of merger or consolidation.

(2) As soon as a merger or consolidation becomes effective -

- (a) the surviving company or the consolidated company insofar as is consistent with its Memorandum and Articles, as amended or established by the articles of merger or consolidation, has all rights, privileges, immunities, powers, objects and purposes of each of the constituent companies;

- (b) in the case of a merger, the Memorandum and Articles of the surviving company are automatically amended to the extent, if any, that changes in its Memorandum and Articles are contained in the articles of merger;
- (c) in the case of a consolidation, the statements contained in the articles of consolidation that are required or authorised to be contained in the Memorandum and Articles of a company incorporated under this Act, are the Memorandum and Articles of the consolidated company;
- (d) property of every description, including choses in action and the business of each of the constituent companies, immediately vests in the surviving company or the consolidated company; and
- (e) the surviving company or the consolidated company shall be liable for all claims, debts, liabilities and obligations of each of the constituent companies.

**(3)** Where a merger or consolidation occurs -

- (a) no conviction, judgement, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against a constituent company or against any member, director, officer or agent thereof, is released or impaired by the merger or consolidation; and
- (b) no proceedings, whether civil or criminal pending at the time of a merger or consolidation by or against a constituent company, or against any member, director, officer or agent thereof, are abated or discontinued by the merger or consolidation; but
  - (i) the proceedings may be enforced, prosecuted, settled or compromised by or against the surviving company or the consolidated company or against the member, director, officer or agent, as the case may be, or
  - (ii) the surviving company or the consolidated company may be substituted in the proceedings for a constituent company.

**(4)** The Registrar shall strike off the Register -

- (a) a constituent company that is not the surviving company in a merger;
- (b) a constituent company that participates in a consolidation.

**Merger of consolidation with foreign company**

**77.(1)** One or more companies incorporated under this Act may merge or consolidate with one or more companies incorporated under the laws of jurisdictions outside Seychelles in accordance with subsections (2) to (4), including where one of the constituent companies is a parent company and the other constituent companies are subsidiary companies, if the merger or consolidation is permitted by the laws of the jurisdiction in which the companies incorporated outside Seychelles are incorporated.

**(2)** The following provisions apply in respect of a merger or consolidation under this section -

- (a) a company incorporated under this Act shall comply with the provisions of this Act with respect to the merger or consolidation, as the case may be, of companies incorporated under this Act and a company incorporated under the laws of a jurisdiction outside Seychelles shall comply with the laws of that jurisdiction; and

- (b) if the surviving company or the consolidated company is to be incorporated under the laws of a jurisdiction outside Seychelles, it shall submit to the Registrar -
  - (i) an agreement that a service of process may be effected on it in Seychelles in respect of proceedings for the enforcement of any claim, debt, liability or obligation of a constituent company incorporated under this Act or in respect of proceedings for the enforcement of the rights of a dissenting member of a constituent company incorporated under this Act against a surviving company or the consolidated company,
  - (ii) an irrevocable appointment of the Registrar as its agent to accept service or process in proceedings referred to in subparagraph (i),
  - (iii) an agreement that it will promptly pay to the dissenting members of a constituent company incorporated under this Act the amount, if any, to which they are entitled under this Act with respect to the rights of dissenting members, and
  - (iv) a certificate of merger or consolidation issued by the appropriate authority of the foreign jurisdiction where it is incorporated; or if no certificate of merger is issued by the appropriate authority of the foreign jurisdiction, then, such evidence of the merger or consolidation as the Registrar considers acceptable.

**(3)** The effect under this section of a merger or consolidation shall be the same as in the case of a merger or consolidation under section 74 if the surviving company or the consolidated company is incorporated under this Act, but if the surviving company or the consolidated company is incorporated under the laws of a jurisdiction outside Seychelles, the effect of the merger or consolidation shall be the same as in the case of a merger or consolidation under section 74 except insofar as the laws of the other jurisdiction otherwise provide.

**(4)** If the surviving company or the consolidated company is incorporated under this Act, the merger or consolidation is effective on the date the articles of merger or consolidation are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of merger or consolidation; but if the surviving company or the consolidated company is incorporated under the laws of a jurisdiction outside Seychelles, the merger or consolidation is effective as provided by the laws of that other jurisdiction.

### **Disposition of assets**

**78.** Any sale, transfer, lease, exchange or other disposition of more than 50 percent, by value, of the assets of a company incorporated under this Act, other than a transfer pursuant to the power described under section 9(2), if not made in the usual manner or regular course of the business carried on by the company, shall be as follows -

- (a) the proposed sale, transfer, lease, exchange or other disposition shall be approved by the directors;
- (b) upon approval of the proposed sale, transfer, lease, exchange or other disposition, the directors shall submit the proposal to the members for it to be authorised by a resolution of members;
- (c) if the meeting of members is to be held, notice of the meeting, accompanied by an outline of the proposal, shall be given to each member, whether or not he is entitled to vote on the sale, transfer, lease, exchange or other disposition; and
- (d) if it is proposed to obtain the written consent of members, an outline of the proposal shall be given to each member, whether or not he is entitled to consent to the sale, transfer, lease, exchange or other disposition.

### **Redemption of minority shares**

**79.(1)** Subject to any limitations in the Memorandum or Articles

- (a) members holding 90 percent of the votes of the outstanding shares entitled to vote; and
- (b) members holding 90 percent of the votes of the outstanding shares of each class and series of shares entitled to vote as a class or series,

on a merger or consolidation under section 74, may give a written instruction to one of the constituent companies incorporated under this Act directing the company to redeem the shares held by the remaining members.

**(2)** Upon receipt of the written instruction referred to in subsection (1), the company shall redeem the shares specified in the written instruction irrespective of whether or not the shares are by their terms redeemable.

**(3)** The company shall give written notice to each member whose shares are to be redeemed stating the redemption price and the manner in which the redemption is to be effected.

### **Arrangements**

**80.(1)** In this section “arrangement” means

- (a) a reorganisation or reconstruction of a company incorporated under this Act;
- (b) a merger or consolidation of one or more companies incorporated under this Act with one or more other companies, if the surviving company or the consolidated company is a company incorporated under this Act;
- (c) a separation of two or more businesses carried on by a company incorporated under this Act;
- (d) any combination of any of the things specified in paragraphs (a) to (c).

**(2)** The directors of the company may, by a resolution of directors, approve a plan of arrangement that contains the details of the proposed arrangement.

**(3)** Upon approval of the plan of arrangement by the directors, the company shall make application to the court for approval of the proposed arrangement.

**(4)** The court may, upon an application made to it under subsection (3), make an interim or final order that is not subject to an appeal unless a question of law is involved and in which case notice of appeal shall be given within the period of 20 days immediately following the date of the order, and in making the order the court may -

- (a) determine what notice, if any, of the proposed arrangement is to be given to any person;
- (b) determine whether approval of the proposed arrangement by any person should be obtained and the manner of obtaining the approval;
- (c) determine whether any holder of shares, debt obligations or other securities in the company may dissent from the proposed arrangement and receive payment of the fair value of his shares, debt obligations or other securities under section 81;
- (d) conduct a hearing and permit any interested persons to appear; and
- (e) approve or reject the plan of arrangement as proposed or with such amendments as it may direct.

(5) Where the court makes an order approving a plan of arrangement, the directors of the company, if they are still desirous of executing the plan shall confirm the plan of arrangement as approved by the court whether or not the court has directed any amendments to be made thereto.

(6) The directors of the company, upon confirming the plan of arrangement, shall -

- (a) give notice to the persons to whom the order of the court requires notice to be given; and
- (b) submit the plan of arrangement to those persons for such approval, if any, as the order of the court requires.

(7) After the plan of arrangement has been approved by those persons by whom the order of the court may require approval, articles of arrangement shall be executed by the company and shall contain -

- (a) the plan of arrangement;
- (b) the order of the court approving the plan of arrangement; and
- (c) the manner in which the plan of arrangement was approved, if approval was required by the order of the court.

(8) The articles of arrangement shall be submitted to the Registrar who shall retain and register them in the Register.

(9) Upon registration of the articles of arrangement, the Registrar shall issue a certificate under his hand certifying that the articles of arrangement have been registered.

(10) A certificate of arrangement issued by the Registrar shall be **prima facie** evidence of compliance with all the requirements of this Act in respect of the arrangement.

(11) An arrangement is effective on the date the articles of arrangement are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of arrangement.

### **Rights of dissenters**

**81.(1)** A member of a company incorporated under this Act shall be entitled to payment of the fair value of his shares upon dissenting from -

- (a) a merger, if the company is the surviving company and the member continues to hold the same or similar shares;
- (b) a consolidation, if the company is a constituent company;
- (c) any sale, transfer, lease, exchange or other disposition of more than 50 percent of the assets or business of the company, if not made in the usual or regular course of the business carried on by the company, but not including -
  - (i) a disposition pursuant to an order of the court, having jurisdiction in the matter,
  - (ii) a disposition for money on terms requiring all or substantially all net proceeds to be distributed to the members in accordance with their respective interests within one year after the date of disposition, or
  - (iii) a transfer pursuant to the power described in section 9(2);

- (d) a redemption of his shares by the company pursuant to section 79; and
- (e) an arrangement, if permitted by the court.

(2) A member who desires to exercise his entitlement under subsection (1) shall give to the company, before the meeting of members at which the action is submitted to a vote, or at the meeting but before the vote, written objection to the action; but an objection is not required from a member to whom the company did not give notice of the meeting in accordance with this Act or where the proposed action is authorised by written consent of members without a meeting.

(3) An objection under subsection (2) shall include a statement that the member proposes to demand payment for his shares if the action is taken.

(4) Within 20 days immediately following the date on which the vote of members authorizing the action is taken, or the date on which written consent of members without a meeting is obtained, the company shall give written notice of the authorization or consent to each member who gave written objection or from whom written objection was not required, except those members who vote for, or consented in writing to, the proposed action.

(5) A member to whom the company was required to give notice who elects to dissent shall, within 20 days immediately following the date on which the notice referred to in subsection (4) is given, give to the company a written notice of his decision to elect to dissent, stating -

- (a) his name and address;
- (b) the number and classes or series of shares in respect of which he dissents; and
- (c) a demand for payment of the fair value of his shares;

and a member who elects to dissent from a merger under section 74 shall give to the company a written notice of his decision to elect to dissent within 20 days immediately following the date on which the copy of the plan of merger or an outline thereof is given to him in accordance with section 74.

(6) A member who dissents shall do so in respect of all shares that he holds in the company.

(7) Upon the giving of a notice of election to dissent, the member to whom the notice relates ceases to have any of the rights of a member except the right to be paid the fair value of his shares.

(8) Within 7 days immediately following the date of the expiration of the period within which members may give their notices of election to dissent, or within 7 days immediately following the date on which the proposed action is put into effect, whichever is later, the company or, in the case of a merger or consolidation, the surviving company or the consolidated company, shall make a written offer to each dissenting member to purchase his shares at a specified price that the company determines to be their fair value; and if, within 30 days immediately following the date on which the offer is made, the company making the offer and the dissenting member agree upon the price to be paid for his shares, the company shall pay to the member the amount in money upon the surrender of the certificates representing his shares.

(9) If the company and a dissenting member fail within the period of 30 days referred to in subsection (8) to agree on the price to be paid for the shares owned by the member, within 20 days immediately following the date on which the period of 30 days expires, the following shall apply-

- (a) the company and the dissenting member shall each designate an appraiser;
- (b) the 2 designated appraisers together shall designate a third appraiser;
- (c) the 3 appraisers shall fix the fair value of the shares owned by the dissenting member as of the close of business on the day prior to the date on which the vote of members authorising the action was taken or the date on which written consent of members without a meeting was obtained, excluding any appreciation or depreciation directly or



indirectly induced by the action or its proposal, and that value is binding on the company and the dissenting member for all purposes; and

- (d) the company shall pay to the member the amount in money upon the surrender by him of the certificates representing his shares.

**(10)** Shares acquired by the company pursuant to subsection (8) or (9) shall be cancelled but if the shares are shares of a surviving company, they shall be available for re-issue.

**(11)** The enforcement by a member of his entitlement under this section excludes the enforcement by the member of a right to which he might otherwise be entitled by virtue of his holding shares, except that this section does not exclude the right of the member to institute proceedings to obtain relief on the ground that the action is illegal.

## **PART VIII - CONTINUATION**

### **Continuation**

**82.(1)** A company holding a special licence under the Companies (Special Licences) Act 2003 or a company incorporated under the written laws of a jurisdiction outside Seychelles may, if it will satisfy the requirements prescribed for an International Business Company by section 5, continue as a company incorporated under this Act as follows -

- (a) articles of continuation, written in the English or French language or, if written in a language other than the English or French language, accompanied by a translation in the English or French language certified by the registered agent of the company of the articles of continuation, shall be approved -
- (i) by a majority of the directors or the other person who is charged with exercising the powers of the company, or
  - (ii) in such other manner as may be established by the company for exercising the powers of the company;
- (b) the articles of continuation shall contain -
- (i) the name of the company and the name under which it is being continued,
  - (ii) the written law or the jurisdiction under which it is incorporated,
  - (iii) the date on which it was incorporated,
  - (iv) the information required to be included in a Memorandum under section 12(1), and
  - (v) the amendments to its Memorandum and Articles, or their equivalent, that are to be effective upon the registration of the articles of continuation;
- (c) the articles of continuation, accompanied by a copy of the Memorandum and Articles of the company, or their equivalent, written in the English or French language or, if written in a language other than the English or French language, accompanied by a translation in the English or French language certified by the registered agent of the company of the Memorandum and Articles or their equivalent and, evidence satisfactory to the Registrar that the company, is in good standing, shall be submitted to the Registrar who shall retain and register them in the register; and

- (d) upon the registration of the articles of continuation, the Registrar shall issue a certificate of continuation under his hand certifying that the company is incorporated under this Act.

(2) A company incorporated under the laws of a jurisdiction outside Seychelles shall be entitled to continue as a company incorporated under this Act notwithstanding any provision to the contrary in the laws of the jurisdiction under which it is incorporated.

### **Provisional registration**

**83.(1)** A company holding a special licence under the Companies (Special Licences) Act 2003 or a company incorporated under the written laws of a jurisdiction outside Seychelles that is permitted under section 82 to continue as a company incorporated under this Act, may, after complying with section 82(1)(a) and (b), submit to the Registrar the following documents-

- (a) articles of continuation, accompanied by a copy of its Memorandum and Articles, or their equivalent, written in the English or French language, or if written in a language other than the English or French language accompanied by a translation in the English or French language certified by a director of the company of the Memorandum, Articles, or their equivalent; and
- (b) a written authorization designating one or more persons who may give notice to the Registrar, by telefax, telex, telegram, cable or by registered mail, that the articles of continuation should become effective.

(2) The Registrar shall not, prior to the receipt of the notice referred to in subsection (1), permit any person to inspect the documents referred to in subsection (1) and shall not divulge any information in respect thereof.

(3) Upon receipt of the notice referred to in subsection (1), the Registrar shall-

- (a) register the documents referred to subsection (1) in the Register; and
- (b) issue a certificate of continuation under his hand certifying that the company is incorporated under this Act.

(4) For purposes of subsection (3), the Registrar may rely on a notice referred to in subsection (1) sent, or purported to be sent, by a person named in the written authorization.

(5) Prior to the registration of the documents referred to in subsection (1), a company may rescind the written authorization referred to in subsection (1) by delivering to the Registrar a written notice of rescission.

(6) If the Registrar does not receive a notice referred to in subsection (1) from a person named in the written authorization within one year immediately following the date on which the documents referred to in subsection (1) were submitted to the Registrar, the articles of continuation are rescinded.

(7) A company entitled to submit to the Registrar the documents referred to in subsection (1) may authorize the Registrar to accept as resubmitted the documents referred to in that subsection, before or after the documents previously submitted referred to in subsection (1) have been rescinded.

### **Certificate of continuation**

**84.** A certificate of continuation issued by the Registrar under section 82(1)(d) or under section 83(3) shall be **prima facie** evidence of compliance with all requirements of this Act in respect of continuation.

### **Effect of continuation**

**85.(1)** From the time of the issue by the Registrar of a certificate of continuation under section 82(1)(d) or under section 83(3) -

- (a) the company to which the certificate relates -
  - (i) continues to be a body corporate incorporated under this Act, under the name designated in the articles of continuation,
  - (ii) is capable of exercising all powers of a company incorporated under this Act, and
  - (iii) is no longer to be treated as a company holding a special licence under the Companies (Special Licences) Act 2003 or a company incorporated under the written laws of a jurisdiction outside Seychelles, as the case may be;
- (b) the Memorandum and Articles of the company, or their equivalent, as amended by the articles of continuation, are the Memorandum and Articles of the company;
- (c) property of every description, including choses in action and the business of the company, continues to be vested in the company; and
- (d) the company continues to be liable for all of its claims, debts, liabilities, and obligations.

**(2)** Where a company is continued under this Act -

- (a) no conviction, judgement, ruling, order, claim, debt, liability, or obligation due or to become due and no cause existing, against the company or against any member, director, officer or agent thereof, is released or impaired by its continuation as a company under this Act; and
- (b) no proceedings, whether civil or criminal, pending at the time of the issue by the Registrar of a certificate of continuation under section 82(1)(d) or under section 83(3) by or against the company, or against any member director, officer or agent thereof, are abated or discontinued by its continuation as a company under this Act, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent thereof, as the case may be.

**(3)** All shares in the company that were outstanding prior to the issue by the Registrar of a certificate of continuation under section 82(1)(d) or under section 83(3) in respect of the company shall be deemed to have been issued in conformity with this Act, but a share that at the time of the issue of the certificate of continuation was not fully paid remains unpaid, and until the share is paid up, the member holding the share remains liable for the amount unpaid on the share.

**(4)** If at the time of the issue by the Registrar of a certificate of continuation under section 82(1)(d) or under section 83(3) in respect of the company any provisions of the Memorandum and Articles of the company do not in any respect accord with this Act-

- (a) the provisions of the Memorandum and Articles continue to govern the company until the provisions are amended to accord with this Act or for a period of 2 years immediately following the date of the issue of the certificate of continuation, whichever is the sooner;
- (b) any provisions of the Memorandum and Articles of the company that are in any respect in conflict with this Act cease to govern the company when the provisions are amended to accord with this Act or after expiration of a period of 2 years after the date of issue of the certificate of continuation whichever is the sooner; and

- (c) the company shall make such amendments to its Memorandum and Articles as may be necessary to accord with this Act within a period that is not later than 2 years immediately following the date of the issue of the certificate of continuation.

### **Continuation outside Seychelles**

**86.(1)** Subject to any limitations in its Memorandum or Articles a company incorporated under this Act may, by a resolution of directors or by a resolution of members, continue as a company incorporated under the laws of a jurisdiction outside Seychelles in the manner provided under those laws.

(2) A company incorporated under this Act that continues as a company incorporated under the laws of a jurisdiction outside Seychelles does not cease to be a company incorporated under this Act unless the company has paid all its fees and any penalty required to be paid under this Act and the laws of the jurisdiction outside Seychelles permit the continuation and the company has complied with those laws.

(3) Where a company incorporated under this Act continues under the laws of a jurisdiction outside Seychelles -

- (a) the Registrar shall strike off the name of the company from the Register and publish a notice of the striking off in the Gazette;
- (b) the company continues to be liable for all of its debts, liabilities and obligations that existed prior to its continuation as a company under the laws of the jurisdiction outside Seychelles;
- (c) no conviction, judgement, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing against the company or against any member, director, officer or agent thereof, is released or impaired by its continuation as a company under the laws of the jurisdiction outside Seychelles; and
- (d) no proceedings, whether civil or criminal, pending by or against the company, or against any member, director, officer or agent thereof, are abated or discontinued by its continuation as a company under the laws of the jurisdiction outside Seychelles, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent thereof, as the case may be.

## **PART IX - WINDING-UP, DISSOLUTION AND STRIKING-OFF**

### **Winding-up by resolution of directors**

**87.** A company incorporated under this Act shall commence to wind up and dissolve by a resolution of directors upon the expiration of such time as may be prescribed in its Memorandum or Articles for its existence.

### **Voluntary winding-up and dissolution**

**88.(1)** A company incorporated under this Act that has never issued shares may voluntarily commence to wind up and dissolve by a resolution of directors.

(2) Subject to any limitations in its Memorandum or Articles, a company incorporated under this Act that has previously issued shares may voluntarily commence to wind up and dissolve by a resolution of members.

### **Powers of directors in winding-up and dissolution**

**89.** Upon the commencement of a winding-up and dissolution required under section 87 or permitted under section 88 the directors may-

- (a) authorize a liquidator, by a resolution of directors, to carry on the business of the company only if the liquidator determines that to do so would be necessary or in the best interests of the creditors or members of the company; and
- (b) determine to rescind the articles of dissolution only as permitted under section 93.

### **Duties of liquidators**

**90.(1)** A liquidator shall, upon his appointment in accordance with this Part and upon the commencement of a winding-up and dissolution, proceed -

- (a) to identify all assets of the company;
- (b) to identify all creditors of and claimants against the company;
- (c) to pay or provide for payment of, or to discharge, all claims, debts, liabilities and obligations of the company;
- (d) to distribute any surplus assets of the company to the members in accordance with the Memorandum and Articles;
- (e) to prepare or cause to be prepared a statement of account in respect of the actions and transactions of the liquidator: and
- (f) to send a copy of the statement of account to members if so required by the plan of dissolution required by section 92.

**(2)** A transfer, including a prior transfer, described in section 9(2) of all or substantially all of the assets of a company incorporated under this Act for the benefit of the creditors and members of the company, is sufficient to satisfy the requirements of subsection (1)(c) and (d).

### **Powers of liquidators**

**91.(1)** In order to perform the duties imposed on him under section 90, a liquidator has all powers of the company that are not reserved to the members under this Act or in the Memorandum or Articles, including, but not limited to, the power-

- (a) to take custody of the assets of the company and, in connection therewith, to register any property of the company in the name of the liquidator or that of his nominee;
- (b) to sell any assets of the company at public auction or by private sale without any notice;
- (c) to collect the debts and assets due or belonging to the company;
- (d) to borrow money from any person for any purpose that will facilitate the winding-up and dissolution of the company and to pledge or mortgage any property of the company as security for any such borrowing;

- (e) to negotiate, compromise and settle any claim, debt, liability or obligation of the company;
- (f) to prosecute and defend, in the name of the company or in the name of the liquidator or otherwise, any action or other legal proceedings;
- (g) to retain counsel and attorneys, accountants and other advisers and appoint agents;
- (h) to carry on the business of the company, if the liquidator has received authorization to do so in the plan of liquidation or by a resolution of directors permitted under section 89, as the liquidator may determine to be necessary or to be in the best interest of the creditors or members of the company;
- (i) to execute any contract, agreement or other instrument in the name of the company or in the name of the liquidator; and
- (j) to make any distribution in money or in other property or partly in each, and if in other property, to allot the property, or an undivided interest therein, in equal or unequal proportions.

(2) Notwithstanding subsection (1)(h), a liquidator shall not, without the permission of the court, carry on for a period in excess of two years the business of a company that is being wound up and dissolved under this Act.

#### **Plan of dissolution and articles of dissolution**

**92.(1)** The directors of a company required under section 87 or proposing under section 88 to wind up and dissolve the company shall approve a plan of dissolution containing-

- (a) a statement of the reason for the winding-up and dissolution;
- (b) a statement that the company is, and will continue to be, able to discharge or pay or provide for the payment of all claims, debts, liabilities and obligations in full;
- (c) a statement that the winding-up will commence on the date when articles of dissolution are submitted to the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of dissolution;
- (d) a statement of the estimated time required to wind up and dissolve the company;
- (e) a statement as to whether the liquidator is authorised to carry on the business of the company if the liquidator determines that to do so would be necessary or in the best interest of the creditors of members of the company;
- (f) a statement of the name and address of each person to be appointed a liquidator; and
- (g) a statement as to whether the liquidator is required to send to all members a statement of account prepared or caused to be prepared by the liquidator in respect of his actions or transactions.

(2) If a winding-up and dissolution is being effected in a case where section 88(2) is applicable -

- (a) the plan of dissolution shall be authorised by a resolution of members, and the holders of the outstanding shares of a class or series of shares are entitled to vote on the plan of dissolution as a class or series only if the Memorandum or Articles so provide;

- (b) if a meeting of members is to be held, notice of the meeting, accompanied by a copy of the plan of dissolution shall be given to each member, whether or not entitled to vote on the plan of dissolution; and
- (c) if it is proposed to obtain the written consent of members, a copy of the plan of dissolution shall be given to each member, whether or not entitled to consent to the plan of dissolution.

(3) After approval of the plan of dissolution by the directors, and if required, by the members in accordance with subsection (2), articles of dissolution shall be executed by the company and shall contain-

- (a) the plan of dissolution; and
- (b) the manner in which the plan of dissolution was authorised.

(4) The company shall submit the articles of dissolution to the Registrar who shall retain and register them in the Register and within 30 days immediately following the date on which the articles of dissolution are submitted to the Registrar, the company shall cause to be published in the Gazette, a newspaper circulating in Seychelles, a newspaper circulating in a place where the company has its principal office and where a company is registered in a branch office, a newspaper circulating in the country or jurisdiction where the branch office is situated, a notice stating-

- (a) that the company is in dissolution;
- (b) the date of commencement of the dissolution; and
- (c) the names and addresses of the liquidators.

(5) A winding-up and dissolution commences on the date the articles of dissolution are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of dissolution.

(6) A liquidator shall, upon completion of a winding-up and dissolution, submit to the Registrar a statement that the winding-up and dissolution has been completed and upon receiving the notice, the Registrar shall-

- (a) strike the company off the Register; and
- (b) issue a certificate of dissolution under his hand certifying that the company has been dissolved.

(7) Where the Registrar issues a certificate of dissolution under his hand certifying that the company has been dissolved-

- (a) the certificate shall be **prima facie** evidence of compliance with all requirements of this Act in respect of dissolution; and
- (b) the dissolution of the company is effective from the date of the issue of the certificate.

(8) Immediately following the issue by the Registrar of a certificate of dissolution under subsection (6), the liquidator shall cause to be published, in the manner provided in subsection (4), a notice that the company has been dissolved and has been struck off the Register.

(9) A company that contravenes subsection (4) shall be liable to a penalty of \$50 for every day or part thereof during which the contravention continues.

(10) A director of a company who knowingly permits the contravention of subsection (4) by the company or a director or liquidator of a company who contravenes this section shall be liable to a penalty of \$50 for every day or part thereof during which the contravention continues.

### **Rescinding articles of dissolution**

**93.(1)** In the case of a winding-up and dissolution permitted under section 88, a company may, prior to submitting to the Registrar a notice specified in section 92(4), rescind the articles of dissolution by-

- (a) a resolution of directors in the case of a winding-up and dissolution under section 88(1); or
- (b) a resolution of members in the case of a winding-up and dissolution under section 88(2).

**(2)** A company shall submit a copy of a resolution referred to in subsection (1) to the Registrar who shall retain and register it in the Register.

**(3)** Within 30 days immediately following the date on which the resolution referred to in subsection (1) has been submitted to the Registrar, the company shall cause a notice stating that the company has rescinded its intention to wind up and dissolve to be published in the Gazette, in a newspaper circulating in Seychelles, in a newspaper circulating in the country or place where the company has its principal office and when the company is registered in a branch office, in a newspaper circulating in the country or jurisdiction where the branch office is situated.

**(4)** A company that contravenes this section shall be liable to a penalty of \$50 for every day or part thereof during which the contravention continues.

**(5)** A director of a company who knowingly permits the company to contravene this section shall be liable to a penalty of \$50 for every day or part thereof during which the contravention continues.

### **Winding-up and dissolution of company unable to pay its claims**

**94.(1)** Where -

- (a) the directors or, as the case may be, the members of a company that is required under section 87 or permitted under section 88 to wind up and dissolve, at the time of the passing of the resolution to wind up and dissolve the company, have reason to believe that the company will not be able to pay or provide for the payment of or discharge all claims, debts, liabilities and obligations of the company in full; or
- (b) the liquidator after his appointment has reason so to believe, then, the directors, the members or the liquidator, as the case may be, shall immediately give notice of the fact to the Registrar.

**(2)** Where a notice has been given to the Registrar under subsection (1), all winding-up and dissolution proceedings after the notice has been given shall be in accordance with the provisions of the Companies Act relating to a creditors' voluntary winding-up and dissolution and those provisions shall apply **mutatis mutandis** to the winding-up and dissolution of the company.

### **Winding-up and dissolution by court**

**95.** Notwithstanding the provisions of this Act relating to winding-up and dissolution, a company incorporated under this Act may be wound up by the court under any of the circumstances, insofar as they are applicable to a company incorporated under this Act, in which a company incorporated under the Companies Act may be wound up by the court and, in that case, the provisions of the Companies Act relating to winding-up by the court and dissolution apply **mutatis mutandis** to the winding-up and dissolution of the company.



## Receivers and managers

**96.** The provisions of the Companies Act regarding receivers and managers govern **mutatis mutandis** the appointment, duties, powers and liabilities of receivers and managers of the assets of any company incorporated under this Act.

### Striking off

**97.(1)** Notwithstanding section 6, where the Registrar has reasonable cause to believe that a company incorporated under this Act

- (a) no longer satisfies the requirements of this Act for an international business company; or
- (b) conducts business or other activities which are, or are likely to be, contrary to the written laws of Seychelles or detrimental to the reputation of Seychelles,

the Registrar shall serve on the company a notice that the name of the company may be struck off the Register, if the company no longer satisfies the requirements referred to in paragraph (a) or conducts such business or other activities as are referred to in paragraph (b).

(2) If the Registrar does not receive a reply within 30 days immediately following the date of service of the notice referred to in subsection (1), he shall serve on the company another notice that the name of the company may be struck off the Register if a reply to the notice is not received within 30 days immediately following the date thereof and that a notice of the contemplated striking-off will be published in the Gazette.

(3) If the Registrar-

- (a) receives from the company a notice stating that the company no longer satisfies the requirements of this Act for an international business company, or that the company conducts such business or other activities as are referred to in subsection (1)(b);
- (b) does not receive a reply to a notice served on the company under subsection (2) above,

the Registrar shall publish a notice in the *Gazette* that the name of the company will be struck off the Register unless the company or any other person satisfies the Registrar that the name of the company should not be struck off.

(4) At the expiration of a period of 90 days immediately following the date of the publication of the notice under subsection (3), the Registrar shall strike the name of the company off the Register, unless the company or any other person satisfies the Registrar that the name of the company should not be struck off, and the Registrar shall publish notice of the striking-off in the Gazette.

(5) If a company has failed to pay the increased licence fee payable under paragraph 3 of Part II of the Schedule, the Registrar shall, within 30 days immediately following the date specified in section 103, publish in the Gazette and serve on the company a notice stating the amount of the licence fee payable and stating that the name of the Company will be struck off the register if the company fails to pay the licence fee on or before the 31<sup>st</sup> December next ensuing following a period of ninety days from the date on which the licence fee increases by 50 percent under paragraph 4 of part II of the Schedule.

(6) If a company fails to pay the increased licence fee stated in the notice referred to in subsection (5) by the 31<sup>st</sup> December referred to in that subsection, the Registrar shall strike the name of the company off the Register from the 1<sup>st</sup> January next ensuing.

(7) A company that has been struck off the Register under this section remains liable for all claims, debts, liabilities and obligations of the company, and the striking-off does not affect the liability of any of its members, directors, officers or agents.

### **Restoration to Registrar**

**98.(1)** If the name of a company has been struck off the Register under section 97(4) the company, or a creditor, member or liquidator thereof or any person having an interest in the company may within 3 years immediately following the date of striking off, apply to the court to have the name of the company restored to the Register.

**(2)** If upon an application under subsection (1) the court is satisfied that-

- (a)* at the time the name of the company was struck off the Register, the company did satisfy the requirements prescribed for an International Business Company by section 5; and
- (b)* it would be fair and reasonable for the name of the company to be restored to the Register,

the court may order the name of the company to be restored to the Register upon payment to the Registrar of all fees payable by virtue of section 102 and all licence fees payable by virtue of section 103 without any increase for late payment, and upon restoration of the name of the company to the Register, the name of the company is deemed never to have been struck off the Register.

**(3)** If the name of a company has been struck off the Register under section 97(6) the company, or a creditor, member or liquidator thereof, may within 10 years immediately following the date of the striking-off, apply to the Registrar to have the name of the company restored to the Register, and upon payment to the Registrar of -

- (a)* all fees due under section 102;
- (b)* the licence fee stated in the notice referred to in section 97(5); and
- (c)* a licence fee in the amount stated in the notice referred to in paragraph (b) for each year or part thereof during which the name of the company remained struck off the Register.

the Registrar shall restore the name of the company to the Register and upon restoration of the name of the company to the Register, the name of the company shall be deemed never to have been struck off the Register and all acts done and agreements entered into during the period that the company's name remained struck off shall, upon the restoration of the name of the company to the Register, be deemed not to be invalid and unenforceable by reason only of the company's name having been struck off.

**(4)** For purposes of this Part, the appointment of an official liquidator under section 100 operates as an order to restore the name of the company to the Register.

### **Effect of striking off**

**99.(1)** Where the name of a company has been struck off the Register, the company, and the directors, members, liquidators and receivers thereof, may not legally -

- (a)* commence legal proceedings, carry on any business or in any way deal with the assets of the company;
- (b)* defend any legal proceedings, make any claim or claim any right for, or in the name of the company; or
- (c)* act in any way with respect to the affairs of the company.

(2) Notwithstanding subsection (1), where the name of the company has been struck off the Register, the company, or a director, member, liquidator or receiver thereof, may -

- (a) make application for restoration of the name of the company to the Register;
- (b) continue to defend proceedings that were commenced against the company prior to the date of the striking-off; and
- (c) continue to carry on legal proceedings that were instituted on behalf of the company prior to the date of striking-off.

(3) The fact that the name of a company is struck off the Register does not prevent-

- (a) that company from incurring liabilities;
- (b) any creditor from making a claim against that company and pursuing the claim through to judgement or execution; or
- (c) the appointment by the court of an official liquidator for that company under section 100.

#### **Appointment of official liquidator**

**100.** The court may appoint a person to be the official liquidator in respect of a company the name of which has been struck off the Register.

#### **Dissolution of company struck off**

**101.(1)** If the name of a company has been struck off the Register under section 97(4) or (6) and remains struck off continuously for a period of 3 years or 10 years respectively, the company shall be deemed to have been dissolved, but the Registrar may, if it determines that it is in the best interest of the Republic of Seychelles to do so, apply to the court to have the company put into liquidation and for a person shall be appointed as official liquidator.

(2) The duties of an official liquidator in respect of a company in liquidation pursuant to subsection (1) are limited to -

- (a) identifying and taking possession of all assets of the company;
- (b) calling for claims by advertisement in the Gazette and in such other manner as he deems appropriate, requiring all claims to be submitted to him within a period of not less than 90 days immediately following the date of the advertisement; and
- (c) applying those assets that he recovers, notwithstanding any other written law, in the following order of priority -
  - (i) in satisfaction of all licence fees and penalties due to the Registrar, and
  - (ii) in satisfaction **pari passu** of all other claims admitted by the official liquidator.

(3) In order to perform the duties with which he is charged under subsection (2), the official liquidator may exercise such powers as the court may consider reasonable to confer on him.

(4) The official liquidator may require such proof as he considers necessary to substantiate any claim submitted to him and he may admit, reject or settle claims on the basis of the evidence submitted to him.

(5) When the official liquidator has completed his duties, he shall submit a written report of his conduct of the liquidation proceedings to the Registrar and, upon receipt of the report by the Registrar, all assets of the company, wherever situate, that are not disposed of, vest, notwithstanding any other law, in the Republic and the company is dissolved.

(6) The official liquidator is entitled to such remuneration out of the assets of the company for his services as the court approves, but if the company is unable to discharge all of its claims, debts, liabilities and obligations, payment of the official liquidator's remuneration shall be a charge on the Consolidated Fund.

(7) No liability attaches to an official liquidator-

- (a) to account to creditors of the company who have not submitted claims within the time allowed by him; or
- (b) for any failure to locate any assets of the company.

### **Company to keep Register of hypothecations**

**101A.(1)** A company incorporated under this Act –

- (a) may keep a register of all hypothecations, mortgages or charges created by the company affecting any of its assets at its registered office or at such other place as the directors may determine; and
- (b) shall inform the company's registered agent in Seychelles of the address of the other place.

(2) A company incorporated under this Act may, by application to the Registrar which shall be in duplicate and contain the information set out in subsection (3), submit for registration –

- (a) the instrument or certified copy of the instrument creating a hypothecation, mortgage or charge over some or all of its assets;
- (b) any instrument or certified copy of the instrument amending any document referred to in paragraph (a); and
- (c) any instrument or certified copy of the instrument releasing or discharging a hypothecation, mortgage or charge over any or all of its assets,

and the Registrar shall register any such instrument or certified copy of the instrument and file the same in the Register.

(3) The Registrar shall maintain a register in chronological order of all instruments or certified copies thereof registered with the Registrar under subsection (2) specifying –

- (a) the name and address of the company creating the hypothecation, mortgage or charge;
- (b) the name and address of the other party to the hypothecation, mortgage or charge;
- (c) the date of the instrument;
- (d) the amount secured; and
- (e) the description of the assets affected by the instruments.

(6) Registration of an instrument under subsection (2) shall constitute notice to the public of such instrument, but registration shall not, of itself, give the instrument priority over an unregistered or subsequently registered hypothecation, mortgage or charge.

(7) Hypothecations, mortgages or charges created by a company incorporated under this Act shall rank in priority among them in the same order as had this section not come into force.

## **PART X - FEES AND PENALTIES**

### **Registration and other specified fees**

**102.(1)** There shall be paid to the Registrar in respect of the matters specified in Part I of the Schedule, the fees so specified.

(2) Notwithstanding any other written law, all fees, licence fees and penalties due under this Act shall be paid in United States Dollars.

### **Licence fees**

**103.** A company the name of which is on the Register on 31st December in any year shall, before the date of the relevant anniversary of its incorporation, pay to the Registrar an annual licence fee specified in Part II of the Schedule.

### **Penalties payable to Registrar**

**104.** Any penalty incurred under this Act shall be paid to the Registrar.

### **Recovery of penalty**

**105.(1)** Any registration or other specified fee, licence fee or penalty payable under this Act that remains unpaid for 30 days immediately following the date on which demand for payment is made by the Registrar is, notwithstanding any other written law, recoverable at the instance of the Attorney-General before a magistrate in civil proceedings as a debt due to the Republic notwithstanding the amount sought to be recovered.

(2) In any proceedings under subsection (1), a certificate signed by the Registrar stating the amount of fee or penalty or both which is due and owing shall be prima facie evidence that the amount is due and owing without proof of the signature.

### **Companies struck off liable for fees etc.**

**106.** A company incorporated under this Act continues to be liable for all registration or other specified fees, licence fees and penalties payable under this Act notwithstanding the name of the company has been struck off the Register and all those fees, licence fees and penalties have priority to all other claims against the assets of the company.

107. *Repealed*

#### **Prior payment of fees**

108. The Registrar may refuse to take action required of him under this Act for which a fee is prescribed until all fees have been paid.

### **PART XI - EXEMPTIONS**

#### **Exemption**

109.(1) A company incorporated under this Act or a shareholder thereof shall not be subject to any tax or duty on income or profits accruing to or deriving from such company or in connection with any transaction to which that company or shareholder, as the case may be, is a party.

(2) Notwithstanding any provision of the Stamp Duty Act 1975 -

- (a) all transfers of property to or by a company incorporated under this Act;
- (b) all transactions in respect of the shares, debt obligations or other securities of a company incorporated under this Act; and
- (c) all other transactions relating to the business of a company incorporated under this Act,

are exempt from the payment of stamp duty.

(3) The Exchange Control Act shall not apply to a company incorporated under this Act or to any transactions relating to the securities of or in such company between the holders of such securities.

(4) The exemptions granted by this section shall remain in force for a period of 20 years from the date of incorporation of a company under this Act, and after such period the exemption shall continue in force unless otherwise provided by a written law.

109A. *Repealed*

### **PART XII - MISCELLANEOUS**

#### **Regulations and Rules of Court**

110.(1) The Minister may make regulations for carrying into effect the provisions of this Act or for prescribing all matters that are required or permitted by this Act to be prescribed and, without prejudice to the generality of the foregoing, the Minister may, subject to subsection 2, amend the Schedule.

(2) Where the Minister under subsection (1) amends the Schedule for the purposes of increasing any fees set out in the Schedule, a company that was already incorporated under this Act at the time of the coming into force of the increased fees shall not be liable to pay any amount by which the fees are increased.

(3) The Chief Justice may make rules of court for regulating proceedings before court under this Act and for specifying fees payable in respect of such proceedings.

### **Form of Certificate**

111. Any certificate or other document required to be issued by the Registrar under this Act shall be in such form as the Registrar may approve.

### **Certificate of good standing**

112.(1) The Registrar shall, upon request by any person issue a certificate of good standing under his hand certifying that a company incorporated under this Act is of good standing if the Registrar is satisfied that -

- (a) the name of the company is on the Register; and
- (b) the company has paid all fees, licence fees and penalties due and payable.

(2) The certificate of good standing issued under subsection (1) shall contain a statement as to whether -

- (a) the company has submitted to the Registrar articles of merger or consolidation that have not yet become effective;
- (b) the company has submitted to the Registrar articles of arrangement that have not yet become effective;
- (c) the company is in the process of being wound-up and dissolved; or
- (d) any proceedings to strike the name of the company off the Register have been instituted.

(3) Where a company is not in good standing as at the date of a request under subsection (1), the Registrar shall issue a certificate of official search under section 113(3) in lieu of a certificate of good standing and no additional fee shall be paid therefor.

### **Inspection of documents**

113.(1) Except as provided in section 83(2) a person may -

- (a)
- (b) inspect the documents kept by the Registrar pursuant to this Act; and
- (c) require a certificate of incorporation, merger, consolidation, arrangement, continuation, dissolution or good standing of a company incorporated under this Act, or a copy or an extract of any document or any part of a document of which he has custody, to be certified by the Registrar and a certificate of incorporation, merger, consolidation, arrangement, continuation, dissolution or good standing or a certified copy of extract shall be prima facie evidence of the matters contained therein.

(2) A document or a copy or an extract of any document or any part of a document certified by the Registrar under subsection (1) is admissible in evidence in any proceedings as if it were the original document.

**(3)** Any person may request the Registrar for a certificate of official search, in respect of any company incorporated under this Act, containing the following particulars –

- (a) the name and registration number of the company;
- (b) the date of its incorporation or continuation in Seychelles;
- (c) its authorised share capital or guarantee amount;
- (d) the name and address of its registered agent;
- (e) the address of its registered office;
- (f) the number of outstanding registered charges;
- (g) the due date of the annual fee;
- (h) the status of the company;
- (i) the date of conversion under this Act, if applicable.

#### **Jurisdiction**

**114.** For purposes of determining matters relating to title and jurisdiction but not for purposes of taxation, the situs of the ownership of shares, debt obligations or other securities of a company incorporated under this Act shall be Seychelles.

#### **Declaration by court**

**115.(1)** A company incorporated under this Act may without the necessity of joining any other party, apply to the court, by petition supported by an affidavit, for a declaration on any question of interpretation of this Act or of the Memorandum or Articles of the Company.

**(2)** A person acting on a declaration made by the court as a result of a petition under subsection (1) shall be deemed, in so far as regards the discharge of any fiduciary or professional duty, to have properly discharged his duties in the subject matter of the petition and in exercising the jurisdiction, the judge may award such costs as may be just.

#### **Court Proceedings**

**116.(1)** Notwithstanding any other written law, a proceeding in respect of a civil matter –

- (a) to which an International Business Company is a party, or
- (b) which relates to the disclosure of –
  - (i) a document in the possession of the Registrar relating to an International Business Company; or
  - (ii) information relating to an International Business Company contained in a document in the possession of the Registrar,



not being a document referred to in section 113(1)(a), shall be heard by a Judge in Chambers.

(2) A judge in a proceeding under subsection (1) may restrict or prohibit the publication of any report of the proceeding or any document filed in the course of the proceeding or give such other direction as is necessary to protect the identity of an International Business Company or a person involved in the Company.

(3) A person who fails to comply with any restriction, prohibition or direction under subsection (2) is guilty of an offence and liable on conviction to a fine of R25,000 and to imprisonment for 2 years.

### **Compliance inspection**

**117.(1)** Subject to section 118, the Registrar for the sole purpose of monitoring and assessing compliance with this Act, may during business hours and after giving reasonable notice to an International Business Company –

- (a) access the registered office of the Company;
- (b) inspect the document to be kept by the Company;
- (c) during or after a compliance inspection request for explanation from the directors of the Company's registered agent.

(2) A person who impedes, prevents or obstructs the Registrar, the officers or employees or authorised agent of the office of the Registrar in the conduct of a compliance inspection commits an offence and is liable on conviction to a fine not exceeding SR 300,000.

### **Non-disclosure**

**118.** The Registrar, the officers, employees, or authorised agent of the office of the Registrar, shall not disclose to a third party any information acquired in the performance of their functions, unless –

- (a) there is a Court order;
- (b) it is a requirement under this Act or any other written laws of Seychelles;
- (c) the information disclosed is in statistical form or otherwise disclosed in such a manner that does not disclose the identity of a person to which the information relates to.

## SCHEDULE

Section 102(1)

### Part I

#### REGISTRATION AND OTHER SPECIFIED FEES

1. There shall be paid to the Registrar the following fees -
  - (a) \$100 upon the registration by the Registrar of a company incorporated under this Act;
  - (b) *Repealed*
  - (c) *Repealed*
  - (d) \$50 upon the registration by the Registrar of an amendment to the Memorandum or Articles of a company incorporated under this Act;
  - (e) \$500 upon the registration by the Registrar of articles of merger or consolidation;
  - (f) \$500 upon the registration by the Registrar of articles of arrangement;
  - (g) \$100 upon the submission to the Registrar of articles of continuation;
  - (h) \$100 upon the registration by the Registrar of articles of dissolution;
  - (i) \$100 upon the registration by the Registrar of resolution rescinding articles of dissolution;
  - (j) \$25 upon the issue by the Registrar of a certificate of incorporation, merger, consolidation, arrangement, continuation, dissolution or good standing other than at the time of the registration of company incorporated under this Act or at the time of the merger, consolidation, arrangement or dissolution, as the case may be, to such company or to its registered agent or shareholder, and \$100 upon the issue of any such document to any other person;
  - (k) \$15 upon the issue by the Registrar of a copy or extract, whether or not certified, of a document or part of a document to a company incorporated under the Act or to its registered agent or to its shareholders, other than a certificate of incorporation, merger, consolidation, arrangement, continuation, dissolution or good standing and \$100 upon the issue of such copy or extract to any other person;
  - (l) \$10 for an inspection of the documents kept by the Registrar pursuant to this Act; by a company incorporated under the Act or by its shareholders and \$100 for an inspection of such documents by any other person;
  - (m) upon the restoration by the Registrar of a company incorporated under this Act, the name of which was struck off the Register -
    - (i) \$300 if the restoration is applied for within 6 months immediately following the striking of the name off the Register; or
    - (ii) \$600 if the restoration is applied for more than 6 months immediately following the striking of the name off the Register;
  - (n) \$10 for an inspection of each entry in the Register of International Business Companies by a company incorporated under this Act or by its registered agents or by its shareholders and \$100 for an inspection of such an entry by any other person.

- (o) \$500 upon submission to the Registrar of document referred to in section 83(1);
- (p) \$100 upon resubmission to the Registrar of the documents referred to in section 83(7);
- (q) \$50 for filing of any other document approved by the Registrar not provided for in the schedule;
- (r) \$25 for the continued reservation of a name to be used by a company;
- (s) \$50 upon submission to the Registrar of an application to register an instrument or certified copy of an instrument creating, amending, releasing or discharging a hypothecation, mortgage or charge;
- (t) \$100 upon conversion, for a company under this Act.

Section 103(1)

## Part II

### Annual Licence Fee

2. A company the name of which is on the Register on 31st December in any year shall before the date of the relevant anniversary of its incorporation under the Act, pay to the Registrar an annual licence fee of US\$100.
3. If a company fails to pay the amount due as the licence fee under paragraph 2 by the date specified therein, the licence fee increases by 10 per cent of that amount.
4. If a company fails to pay the amount due as an increased licence fee under paragraph 3 90 days after the date when it becomes due, then, the licence fee increases by 50 per cent of the licence fee specified in paragraph 2.

## Part III

### Word of Combination of Words

Section 11(1)

WORD OR COMMBINATION OF WORD	ABBREVIATION
Spolecnost s. rvcenin omezenym	S.R.O.
Limita	LTDA.
Compagnie	CIE
Company	CO.
Società per Azioni	S.P.A.
Société par action	s.p.a.
Részvény Társaság	R.T.
Osakkeyhtiä	Oy
Részvénytársaság	Rt
Akciová spolecnost	a.s.
Dionîèko društvo	d.d.
Delniska družba	D.D.
Àksionernoye Obschestvo	A.O.
Osakeyhtiö	OY
Aktiengesellschaft	AG
Anstalt	Est

Gesellschaft mit beschränkter Haftung	GmbH
Société a responsabilité limité	S.à.r.l.
Anpartsselskab	ApS
Aktieselskab	A/S
Società a responsabilità Limitada	S.r.l
Sociedad Limitada	S.L.
Spółka Akcyjna	S.A.
Spółka z ograniczon odpowiedzialnoeco	Sp.z
Private limited company	o.o
Close Corporation	CC
(Proprietary) Limited	(Pty) Ltd
Eteria periorismenis efthynis	E.P.E.
Limited	Ltd
Corporation	Corp.
Incorporated	Inc.
Société Anonyme or sociedad Anomina	S.A.
Public Limited Company	PLC
Societe, a Responosabilité Limitée	S.A.R.L.
Berhad	Bhd
Proprietary	Pty
Namloze Vennootschap	N.V
Besloten Vennootschap	B.V
Aktiengesellschaft	A.G
Limited Life Company	LLC