

# GUIDE TO INTERNATIONAL BUSINESS COMPANIES IN SEYCHELLES

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## PREFACE

This Guide is concerned primarily with “international business companies”, being companies incorporated under the International Business Companies Act, 1994; little reference has, therefore, been made to those provisions of the Companies Ordinance, 1972 which regulate the carrying on of business by local companies in Seychelles as well as for those offshore business companies whose business purpose excludes them from being incorporated under the International Business Companies Act, 1994, including banks and insurance companies. Companies wishing to benefit from the various double taxation treaties to which the Seychelles are a party should also be formed under the Companies Ordinance, but apply for special licences pursuant to the Companies (Special Licences) Act, 2003. Please see our “Guide to Special Licence Companies in Seychelles” for more information.

We recognise that this Guide will not completely answer detailed questions which clients and their advisers may have; it is not intended to be comprehensive. If any such questions arise in relation to the contents, they may be addressed to any member of the team, using the [contact information](#) provided at the end of this Guide.

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## 1. INTRODUCTION

The Seychelles' statute law on companies is contained in the Companies Ordinance, 1972 (**Companies Ordinance**) which was modelled on the old UK Companies Act. However, for investors looking to benefit from Seychelles as an offshore jurisdiction, companies can be formed under the International Business Companies Act, 1994 (**IBC Act**) and the majority of companies incorporated for the purpose of offshore business are incorporated pursuant to the IBC Act.

All references to legislative provisions herein are to the IBC Act, unless otherwise stated.

## PART A: SEYCHELLES COMPANIES

### 2. CLASSIFICATION

The IBC Act provides solely for companies incorporated under the IBC Act and a company so incorporated is referred to as an "international business company" (**IBC**).

A company incorporated as an IBC is allowed to carry on business outside the Seychelles and is restricted from owning or leasing immovable property situated in the Seychelles (except where the IBC 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) and cannot carry on banking business or business as an insurance or reinsurance company or the business of providing the registered office for companies. For such business activities, a separate licence is required and the company must be incorporated under the Companies Ordinance and then apply for separate licences as provided for in relevant legislation.

An IBC is subject to relaxed statutory requirements and the salient issues are as follows:

- the name of the company may be in any language <sup>1</sup>;
- have at least one director and one shareholder (although there is no residency requirement, nor nationality stipulations);
- proper accounting records are required to be maintained that are sufficient to show and correctly explain the IBC's transactions and to enable the financial position of the IBC to be determined with reasonable accuracy at any time and for accounts to be prepared;
- registered shares may be issued in any currency;
- no minimum capital requirements;
- the only documents of the company that are on the public record are the Memorandum and Articles of Association;
- shareholder(s), director(s) and officer(s) need not make any returns; and
- meetings of shareholder(s) and director(s) are not required to be held in Seychelles.

### 3. INCORPORATION

An application for incorporation of an IBC is submitted to the Registrar of Companies at the Seychelles International Business Authority (the Registrar) and must include the memorandum and articles of association (§14(1)).

Where the Registrar is satisfied that the application for incorporation of a company complies with the IBC Act and upon payment of the prescribed fees, the Registrar will register the memorandum and articles of association on the Register of International Business Companies as maintained by the Registrar and thereafter issue a certificate of incorporation in respect of the IBC (§14(2) & (3)).

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<sup>1</sup> But where the name is not in a national language a translation and transliteration of the name in English or French shall be given.

The approval of name reservations and registration and incorporation of a new IBC can be completed on the same day.

#### 4. IBC MEMORANDUM AND ARTICLES OF ASSOCIATION

A certificate of incorporation issued by the Registrar is *prima facie* evidence that all the requirements of the IBC Act have been complied with, in respect of the incorporation (§16).

The IBC Act requires that a company should have a memorandum and articles of association, which may be written in English or French. If they are written in a language other than English or French, they shall be accompanied by a translation in the English or French language certified by the registered agent of the company.

Under the memorandum and articles of association the company, the board, and each director and member have the same rights, powers, duties and obligations set out in the IBC Act, except to the extent that they are restricted, limited or modified by the memorandum. In effect, an IBC's memorandum and articles of association act as a binding contract between (i) the company and each member; and (ii) each member, in accordance with its terms and provisions (§12(4) & 13(3)). Subject to any limitation in its Memorandum or Articles, an IBC may amend its memorandum or articles by a resolution of members or, where permitted by its memorandum or articles or by the IBC Act, by a resolution of directors.

##### 4.1 Memorandum

The memorandum of every IBC 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. Once the memorandum is registered it will bind the company and its members (§12(3), (4)).

The memorandum must state (§12(1)):

- the name of the company;
- the address within Seychelles of the registered office of the company;
- the name and address within Seychelles of the registered agent of the company;
- the objects or purposes for which the company is to be incorporated (although the company may include a statement, which denotes that the company is to be incorporated for all objects and purposes and to engage in all activities that are not prohibited under any law for the time being in force in Seychelles. This statement effectively provides that all acts and activities that are not illegal are a part of the objects or purposes of the company, subject to any limitations in the memorandum);
- the currency in which shares in the company shall be issued;
- 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;
- 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;
- a statement of the designation, 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;

- 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;
- a statement that the company shall not carry on any banking, insurance, reinsurance or trust business;
- a statement that the liability of the members is limited;
- 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 guarantee member for:
  - the payment of the liabilities of the company contracted or otherwise incurred before that member ceased to be a guarantee member;
  - the costs, charges and expenses of winding up; and
  - the adjustment of the rights of contributories among themselves.

#### 4.2 Articles of Association

The articles of association of every IBC 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. Once the articles of association are registered (within 30 days following the date of incorporation) it will bind the company and its members (§13).

Subject to any limitations in the IBC Act and the IBC's memorandum and articles of association, an IBC 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 IBC (§9(1)).

In addition, a person is not deemed to have notice or knowledge of the contents of a company's constitution (or any other document relating to a company) merely because the constitution (or document) is registered with the Registrar or is available for inspection at an office of the company.

#### 4.3 Names and Change of Name

The Registrar will not register a company (or register a change of the name of a company or reserve a name) if the name is identical with that of a statutory corporation or that under which a company in existence is already incorporated under the IBC Act or registered under the Companies Ordinance or so nearly resembles the name of another company as to be calculated to deceive, except where the company in existence gives its consent (§11). The Registrar will also not register a company with a name that includes the word "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. However, the Registrar may permit the incorporation of a company under a name that includes the word "Seychelles" if the registrar thinks fit to do so. Further, no name will be registered which 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 (§11(3)). The IBC Act also provides a list of words (Part III of the Schedule) from which any word or combination of words or the abbreviation of that word or combination of words found therein must form part of the name of every IBC, provided that a company incorporated under the laws of a jurisdiction outside Seychelles and continued as an IBC, they may use the name designated in the articles of continuation (§11(1)).

The successful name reservation will preserve a name for 90 days, upon payment of the prescribed fee.

An IBC may amend its memorandum to change its name (§11(4)) and where the name of an IBC has been changed (subject to meeting the requirements of the IBC Act) 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 (§11(6)). A change of name will not affect the rights or obligations of the IBC or render defective any legal proceedings by or against the company, and all legal proceedings that have been commenced against an IBC by its former name may be continued against it in its new name (§11(7)).

#### 4.4 Amendment of Memorandum and Articles of Association

Subject to any limitation found therein, the members may alter the IBC's memorandum or articles of association at any time by way of resolution of members, or, where permitted by its memorandum or articles of association or by the IBC Act, by a resolution of directors (§17)(1). An extract of the resolution effecting the amendment certified by the registered agent must be submitted to the Registrar within 14 days after the resolution is passed and the Registrar will 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. The amendment will be effective from the time the amendment is registered by the Registrar (§17)(3).

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 (§17)(2).

#### 4.5 Continuance and Discontinuance

##### Continuance

The IBC Act allows for the continuation of a company holding a special licence under the Companies (Special Licences) Act, 2003 or a company incorporated under the laws of jurisdictions outside Seychelles as an IBC under the IBC Act provided the articles of continuation are approved by a majority of the directors, or the other person who is charged with exercising the powers of the company or by such other manner as may be established by the company for exercising the powers of the company; and the company is entitled to continue as a company incorporated under the IBC Act notwithstanding any provision to the contrary in the laws of the jurisdiction under which it is incorporated.

The articles of continuation must contain (§82(1)(b)):

- the name of the company and the name under which it is being continued;
- the jurisdiction under which it is incorporated;
- the date on which it was incorporated;
- the information required to be included in a memorandum of an IBC (as outlined above);
- the amendments to its memorandum and articles of association, or their equivalent, that are to be effective upon the registration of the articles of continuation.

Once a company is permitted to continue as an IBC (having approved the articles of continuation) the following should be submitted to the Registrar (§83(1)):

- articles of continuation;
- a copy of the company's memorandum and articles of association, or their equivalent; and
- evidence satisfactory to the Registrar that the company, is in good standing.

Upon receiving the submission, the Registrar shall register the documents in the Register and issue a certificate of continuation under his hand certifying that the company is incorporated under the IBC Act (§83(3)). Once issued, the certificate of continuation issued by the Registrar shall be *prima facie* evidence of compliance with all requirements of the IBC Act in respect of continuation (§84).

A company wishing to continue under the IBC Act, also has the capacity under the IBC Act to submit, along with the articles of continuation, a written authorisation 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 (§83(1)(b)). This allows the company, which has approved the articles of continuation, to be approved as continued but the Registrar is required not to permit any person to inspect the submitted documents nor divulge any information in respect thereof (§83 (2)). Once notice is received pursuant to the written authorisation, then the Registrar shall register the documents and issue the certificate of continuation under his hand certifying that the company is incorporated under this Act (§83(3)(b)). The company may, rescind its written authorisation by delivering a written notice of rescission to the registrar prior to the registration of submitted documents (§83(5)). If no notice is received pursuant to the written authorisation within one year immediately following the date on which the submission was made, the articles of continuation are rescinded (§83(6)).

It is important to note that no new legal entity is created as a result of a continuing company becoming registered in Seychelles, and the identity of the body corporate constituted by the continuing company or its continuity as a legal entity will not be prejudiced or affected. The property, rights or obligations of the continuing company will not be affected nor will any proceedings by or against the continuing company (§85).

#### **Discontinuance**

An IBC may also continue as a company incorporated under the laws of a jurisdiction outside Seychelles subject to any limitations in its memorandum or articles. The continuation shall be in the manner provided under those laws, provided that such continuance has been approved by a resolution of directors or members (§86(1)).

An IBC continuing as a company incorporated under the laws of a jurisdiction outside Seychelles does not cease to be a company incorporated under the IBC Act unless it has paid all its fees and any penalty required to be paid under the IBC Act and the laws of the jurisdiction outside Seychelles permit the continuation and the IBC has complied with those laws.

Where an IBC continues under the laws of a jurisdiction outside Seychelles, the Registrar will strike off the name of the IBC from the Registrar and publish a notice of the striking off in the Gazette (§86(3)(a)).

The removal of a discontinued company from the register of companies does not result in the identity of the body corporate or its continuity as a legal entity being prejudiced or affected. The property, rights, or obligations of the IBC as well as any proceedings by or against it will not be affected. Likewise, proceedings that could have been commenced or continued by or against a discontinuing company before it was struck off the register may be commenced or continued by or against the IBC that continues in existence after its striking off of the register (§86(c) & (d)).

#### **4.6 Striking-Off**

The Registrar may, under the IBC Act, serve on an IBC, a notice that its name be struck off the Register, where the Registrar has reasonable cause to believe that an IBC:

- no longer satisfies the requirements of the Act for an IBC; or
- 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 name of the IBC may as well be struck off the register in the following circumstances:

- Where the IBC fails to comply with a request for information from the Seychelles Revenue Commission; or

- Where the IBC fails to pay any penalty imposed by the Registrar under the IBC Act.

## 5. MANAGEMENT AND ADMINISTRATION

### 5.1 Registered Office, Registered Agent and Management Company

Every IBC must have a registered office in Seychelles which shall be the same address as that of its registered agent. A change in registered office by the directors must be notified to the Registrar (§38). Every IBC must also have a registered agent in Seychelles to which all applications to be submitted to the Registrar under the IBC Act, by an IBC shall be made. The registered agent shall verify in writing the signature of any person appearing on the application or document and the registered agent may accept service on behalf of the IBC and any service accepted by the registered agent shall be deemed to have been accepted by the IBC. The IBC must within 14 days after changing its registered agent in Seychelles, notify the Registrar of the name and address of its new registered agent and the change shall have effect on the date the Registrar receives the notice of change (§39).

A registered agent in Seychelles is required to hold a licence issued by the Seychelles International Business Authority, which provides for the agent to carry on international corporate services under the International Corporate Service Providers Act 2003.

### 5.2 Constitution

See Part A: 4.1 above.

### 5.3 Requirements for Officers or Representatives in Seychelles

As stated above, an IBC must have a minimum of one director and one shareholder, which may or may not be natural persons and may or may not be in Seychelles. There are no statutory requirements for an IBC to have a company secretary or specific officers in Seychelles or otherwise.

The directors may by resolution appoint any person (whether or not a director) as an officer or agent of the IBC. Subject to any limitations in the memorandum or articles of association, the officer or agent will have the same powers and authority of the directors, including the power and authority to affix the common seal (if any) of the IBC. The powers of such appointees is limited so that such officers or agents may not appoint further officers or agents and likewise may not fix the emoluments of directors. An officer or agent may be removed by the directors and may also revoke or vary any power conferred on him (§52).

### 5.4 Directors

The IBC Act decrees that a board of director(s) (consisting of one or more persons who may be individuals or companies) of an IBC (together **the Board**) are responsible for and shall have all the powers necessary for managing the business and affairs of the IBC (§41 & §44)).

Subject to any limitations in the IBC's constitution, the business and affairs of the IBC are managed by its Board (§41).

The first directors of an IBC shall be those elected by the subscribers to the memorandum (§42(1)) and will hold a first board of directors meeting to organise the IBC for carrying on business, i.e. appointing a company secretary if required and issuing and allotting shares in the IBC.

The Board may, subject to the IBC Act and the IBC's memorandum or articles of association, designate one or more committees, each consisting of one or more directors (§46(1)). Subject to any limitations in the memorandum or articles of association, each committee has such powers and authority of the directors, including the power and authority to affix the common seal, if any, of the IBC, as are set forth in the resolution of directors, establishing the committee, except that no committee has any



power or authority with respect to such decisions which are required to be made by a “resolution of directors” as defined under the IBC Act (§46(2)).

Directors may be appointed by the members, unless the IBC’s memorandum or articles of association permit the appointments to be made by the directors (§42(1)).

Each director holds office until his successor takes office or until his earlier death, resignation or removal or in the case of an IBC upon the making of an order for the winding up or dissolution of the IBC or upon the removal of a defunct IBC otherwise than pursuant to a winding up order (§42(2)).

A director may resign his office by giving written notice of his resignation to the IBC, which is effective from the date the notice is received by the IBC or from such later date as may be specified in the notice. The director shall cease to hold the office of director if a majority of the directors, require his resignation in writing (§42(3)).

The number of directors shall be fixed by the articles of association and subject to any limitations contained in the memorandum or articles of association, the articles of association may be amended to change the number of directors (§43). Any vacancy in the Board may be filled by a resolution of members or of a majority of the remaining directors, subject to any limitations in the memorandum or articles of association (§42(4)).

The Board may, by resolution of directors, fix the emoluments of directors in respect of services to be rendered in any capacity to the IBC (§45).

### **Director’s Duties**

Every director of an IBC, in performing his functions, shall act honestly and in good faith with a view to the best interests of the IBC and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances (§53).

The IBC Act provides that directors, when performing their functions, are entitled to rely upon the Share Register, books of accounts and records and the minutes and copies of consents to resolutions and any other report made to the IBC by any other director, officer, agent or liquidator or by any person selected by the IBC to make the report (§54).

### **Director’s Interests**

The IBC Act states that subject to any limitations in the memorandum or articles of association, no agreement or transaction between the IBC and one or more of its directors (or any person in which any director has a financial interest or to whom any director is related, including as a director of that other person) is void or voidable for that reason alone or by reason only that the director was present at the meeting of directors or at the meeting of the committee of directors that approved the agreement or transaction or that the vote or consent of the director is counted for that purpose.

However, the IBC Act also provides that if 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 the agreement or transaction is approved or ratified by a resolution of members, then the agreement or transaction will be valid (§55(2)). Further, a director who has an interest in any particular business to be considered at a meeting of directors or members, may be counted for purposes of determining whether the meeting is duly constituted for the purposes of quorum (§55(3)).

### **Indemnities and Insurance**

An IBC is permitted to purchase and maintain insurance in relation to the indemnification of any person (as director, officer, liquidator or serving in such capacity for another entity upon request by the IBC)

(§57) who (a) is or was a party or is threatened to be made a party to any threatened, pending or completed proceedings, whether civil or criminal, administrative or investigative, by reason of the fact that the person is or was a director, an officer or a liquidator of the IBC; or (b) is or was at the request of the IBC, 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 enterprise, against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings (§56(1)).

The indemnification above is only available to such person who has acted honestly and in good faith with a view to the best interests of the IBC and in the case of criminal proceedings, the person had no reasonable cause to believe that his conduct was unlawful (§56(2)). The directors may make the decision as to whether the person acted honestly and in good faith and with a view to the best interests of the IBC and as to whether the person had no reasonable cause to believe that his conduct was unlawful, in the absence of fraud, and such a decision is sufficient, unless a question of law is involved (§56(3)).

## 5.5 Board Meetings

The convening and conduct of a Board meeting will be dependent upon the IBC's memorandum but, if it is silent, the IBC Act allows the directors to meet at such times and in such manner and places within or outside Seychelles as the directors may determine to be necessary or desirable.

A director shall be given not less than two days' notice of meetings of directors, subject to a requirement to the contrary in the memorandum or articles of association. The meeting can then either be held in person, or by means of telephone or other electronic means, providing all the directors are able to hear each other and recognise each other's voice and for this purpose participation constitutes *prima facie* proof of recognition (§47(2)) and a quorum is present. A quorum shall be fixed by the memorandum or articles of association, but where it is not so fixed, a quorum shall be met if at the commencement of the meeting, one half of the total number of directors are present in person or by alternate (§49).

Any 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 (§48(3)).

Unless otherwise defined in the Articles "resolution of directors" means:

- a resolution approved by the directors at a duly constituted meeting of directors or of a committee of directors of an IBC, by affirmative vote of a simple majority or such larger majority as may be specified in the articles of association, of the directors present at the meeting who voted and did not abstain (§2(3)(a));
- a resolution consented to in writing by an absolute majority, or such larger majority as may be specified in the articles of association, 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 (§2(3)(b)).

Subject to any limitations in the memorandum or articles of association, 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 (§50).

The notice of a meeting of directors may be waived provided that if, at that meeting, all the directors, or such majority thereof as may be specified in the memorandum or articles of association entitled to vote at the meeting, have waived the notice of the meeting. For this purpose, the presence of a director at the meeting shall be deemed to constitute waiver on his part (§48(2)).

## 5.6 Meetings of the Members

The convening and conduct of a meeting of the members will be dependent upon the IBC's memorandum but, if it is silent, the IBC Act provides that the directors of the IBC may convene such meeting at such times and in such manner and places within or outside Seychelles as the directors consider necessary or desirable (§58(1)).

All members, whose names on the date the notice is given appear as members in the Share Register and are entitled to vote at the meeting shall be given not less than seven days' notice of meetings of members (in the manner provided in the memorandum or articles of association and if silent, by personal service or by mail (§63(1)(a)), subject to a longer notice period requirement existing in the memorandum or articles of association (§59(1)). The meeting can then either be held in person or by proxy, or by means of telephone or other electronic means, providing all the members are able to hear each other and recognise each other's voice and for this purpose participation constitutes *prima facie* proof of recognition (§58(5)) and a quorum is present. A quorum shall be fixed by the memorandum or articles of association, but where it is not so fixed, a quorum shall be met at the commencement of the meeting, when there are present in person or by proxy shareholders representing more than one half of the shares of each class or series thereof (§60).

Any 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 (§59(3)).

The notice of a meeting of members may be waived provided that if, at that meeting, members holding a 90% majority, or such lesser majority as may be specified in the memorandum or articles of association, 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 the notice of the meeting. For this purpose, the presence of a director at the meeting shall be deemed to constitute waiver on his part (§59(2)).

A "resolution of members" is a resolution approved by the members at a duly constituted meeting of members of an IBC, by affirmative vote of: (a) 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 (b) 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 (§2(4)(a)).

### Voting

The IBC Act provides that, except as otherwise provided in the memorandum or articles of association all shares vote as one class and each whole share has one vote (§61(1)).

Where two 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 a member. If only one of them is present in person or by proxy, he may vote on behalf of all of them, however if two or more are present in person or by proxy, they shall vote as one (§58).

### Convening of a Meeting of the Members on Requisition

The directors shall convene a meeting of the members, upon the written request of members holding more than 50% of the votes of the outstanding voting shares in the IBC (§58(2)).

### Resolutions in Writing

Subject to any limitations in the memorandum or articles of association, a resolution consented to in writing (or by telex, telefax, telegram, cable or other written electronic communication), by a simple majority or such larger majority as may be specified in the articles of association, of the shareholders entitled to vote thereon (or entitled to vote as a class thereon) (§2(4)(b)) will be as effective as any action taken by members at a meeting of members, without the need for any notice (§62).

#### 5.7 Auditors

An IBC is not required to appoint an auditor, nor procure audited financials.

#### 5.8 Records

A company must keep at its registered office:

- the Share Register;
- proper accounting records:
  - that are sufficient to show and correctly explain the IBC's transactions;
  - to enable the financial position of the IBC to be determined with reasonable accuracy at any time; and
  - to enable for accounts of the IBC to be prepared.
- minutes of all meetings of directors, members, committees of directors, committees of officers and committees of members;
- copies of all resolutions consented to by directors, members, committees of directors, committees of officers and committees of members;
- the register of all directors and officers (it is a requirement that the Share Register be maintained at all times in the Seychelles).

In respect of accounts an IBC is required to keep proper accounting records which gives a true and fair view of the IBC's affairs and explain its transactions and such records are to be kept for a period of seven years from the date of completion of the transactions that they relate.

Failure to comply with the requirements relating to accounting records are accompanied by penalties of USD100 and to additional penalty of USD25 for each day or part thereof during the period of non-compliance.

#### 5.9 Annual Report/Annual Return

Under the IBC Act, an IBC is required to furnish to the registered agent, a return in the form of a declaration that:

- the IBC is keeping accounting records in accordance with the Act and that such records can be made available through its registered agent; and
- the Share Register located at the registered office is complete and updated.

An IBC that contravenes the above provision shall be liable to a penalty of USD100 and to additional penalty of USD25 for each day or part thereof during which the contravention continues. The same penalty will apply to a director of an IBC who knowingly permits the company to contravene with the requirements relating to annual report/return.

#### 5.10 Employment of Personnel

Work permits are necessary for non-Seychelles persons to be employed. In Seychelles, the relevant permit is a Gainful Occupational Permit (**GOP**) and is issued by the Immigration Division provided

permission has been granted for the work to be undertaken by the Seychelles Investment Bureau and the applicant has received approval from the Department of Employment which will include a confirmation of availability/non-availability of Seychelles Citizens for the post. There are no guidelines as to the length of this permit, only that the application must state the projected length of the permit being requested. The GOP must be obtained before entering Seychelles and normal application turnaround is ten weeks.

Visitor permits are issued for one month upon arrival to those persons who do not hold (or need) a GOP. The Visitor's Permit is initially valid for the period of visit of up to one month. It can be extended for a period of up to three months from the date of issue and capable of further extensions for successive periods not exceeding three months at a time to a maximum period of twelve months.

#### 5.11 **Investments**

As stated above and subject to the IBC Act and an IBC's memorandum and articles of association, an IBC 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 IBC within and outside Seychelles (§9(1)).

#### 5.12 **Registration of Charges**

The IBC Act states that an IBC may apply to the Registrar to register an instrument creating a charge or other security interests over any or all of its assets (§101A(2)). Registration of an instrument constitutes notice to the public of such instrument but registration does not in itself give the instrument priority over an unregistered or subsequently registered hypothecation, mortgage or charge (§101A(4)). Registration of a charge is therefore not compulsory and non-registration of the instrument does not affect the validity or enforceability of an unregistered charge created over the assets of an IBC.

It is commonplace in Seychelles for IBCs entering into a charge instrument to be required by the lender to register the instrument on the register of charges at the Registrar. It is important to note that in practice the Registrar will only accept an application for registration of an instrument creating a charge over the assets of an IBC from the registered agent of the IBC. Any third party may apply for an official search of the IBC from the Registrar. The certificate of official search will indicate the number of charges registered against the IBC, however, the Registrar is not obliged to supply details of any of the registered charges. Particulars of the registered charges will need to be obtained from the registered agent with the consent of the IBC.

#### 5.13 **Contracts**

Like a contract between private persons, the IBC Act provides that a contract made on behalf of the IBC may be made orally or in writing and is valid and binding on the IBC and its successors and all other parties to the contract. However, a contract must be made on behalf of a company in writing, if it would be required to be made in writing, if made between private persons. A contract made in or on behalf of an IBC in writing may be signed by any person acting under its express or implied authority. These requirements apply irrespective of whether or not the contract was entered into in Seychelles or the law governing the contract is the law of Seychelles (§67).

Subject to its constitution, an IBC may, in writing (power of attorney), authorise a person as its agent either generally or in relation to any specific matters, to act on behalf of the IBC and to execute contracts, agreements, deeds and other instruments on behalf of the IBC. Any document so executed by the authorised agent, will be binding on the IBC and has the same effect as if it were executed by the IBC (§70).

The IBC Act also provides that a person may enter into a written contract in the name of or on behalf of the IBC prior to its incorporation (**a pre-incorporation contract**) and that such contracts may be

adopted by the IBC once it is incorporated, provided the action taken to adopt the contract is taken within a period of 90 days after the incorporation (§68). Once an IBC adopts a contract, it shall be bound by and entitled to the benefits of the contract as if the IBC had been in existence at the date of the contract and had been a party to it (at which point the person who acted in the name of or on behalf of the IBC, cease to be bound or entitled to the benefits of, the contract (§68 (3)(a) & (b)).

#### 5.14 **Electronic Records**

There is no provision for the retaining of records in any specific form, except the Share Register, which may be in such form as the directors may approve but if it is in magnetic, electronic or other data storage form, the IBC must be able to produce legible evidence of its contents (§28(2)).

### 6. **TAXATION**

An IBC (or a shareholder thereof) is not subject to any tax or duty on income or profits accruing to or deriving from such IBC or in connection with any transaction to which the IBC (or shareholder, as the case may be), is a party (§109(1)).

Notwithstanding any provision of the Stamp Duty Act 1975, (a) all transfers of property to or by an IBC; (b) all transactions in respect of the shares, debt obligations or other securities of an IBC; and (c) all other transactions relating to the business of an IBC, are exempt from the payment of stamp duty (§109(2)).

The Exchange Control Act does not apply to an IBC or to any transactions relating to the securities of or in the IBC between the holders of such securities (§109(3)).

The exemptions above are expressed to remain in force for a period of twenty years from the date of incorporation of a company under the IBC Act (§109(4)).

### 7. **SHARE CAPITAL AND DEBENTURES**

#### 7.1 **Exchange Control**

As stated above, the Exchange Control Act does not apply to an IBC or to any transactions relating to the securities of or in the IBC between the holders of such securities (§109(3)).

#### 7.2 **Shares**

##### (a) **Authorised Capital**

"Authorised Capital" is defined in the IBC Act as 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.

While the IBC Act specifies the basic rights attached to a share, those rights may be varied by a company's memorandum and articles of association and such variation may allow for the issuance of different classes of shares, including fractional shares, and attach thereto any special, preferential or deferred rights, privileges or conditions (§12 & 21).

Subject to any limitations in its memorandum or articles an IBC may by resolution of directors increase or reduce its authorised capital by:

- increasing or reducing the number of shares which the company may issue;
- increasing or reducing the par value of any of its shares; or
- effecting any combination of the above two instances (§24(1)).

Notice of alteration of an IBC's authorised share capital must be filed with the Registrar within 30 days from the resolution authorising such alteration (§24(3)).

Unissued and treasury shares may be disposed of by an IBC on such terms and conditions as the directors may determine (subject to any limitation in the memorandum or articles of association) (§20(2)).

A company may by ordinary resolution divide or subdivide its shares into a larger number or combine its shares into a smaller number (of the same class or series) and the aggregate par value of the new shares shall be equal to the aggregate par value of the original shares, prior to the division or combination (§25).

(b) **Issue Price of Shares**

Before a company issues any shares, the Board must determine the amount of the consideration for which the shares are to be issued but in relation to shares with a par value the Board must ensure that such consideration is not less than the par value (§20(1)). Consideration for such shares may take the form of cash or other valuable consideration (§19). In the absence of fraud, the decision of the directors as to the value of the consideration to be received in respect of the issue, is conclusive (unless a question of law is involved (§20(1))).

Subject to a company's constitution, a company may issue fractions of shares which will have corresponding fractional liabilities, limitations, preferences, privileges, qualifications, restrictions, rights and other attributes as those which relate to the whole share of the same class or series (§21).

(c) **Redemption or Purchase of Shares by a Company**

Subject to the memorandum or articles, the capital of an IBC may be increased by transferring an amount out of the surplus of the company to capital (§35(1)(a)). The capital of an IBC, subject to any limitations in the memorandum or articles of association, may be reduced by:

- returning to members any amount received by the company upon the issue of any of its shares, the amount being surplus to the company (§35(1)(b)(i));
- cancelling any capital that is lost or not represented by assets having realisable value; or (§35(1)(b)(ii))
- 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 (§35(1)(b)(iii)).

Where an IBC reduces its capital, it may:

- return to members any amount received by the company upon the issue of its shares;
- purchase, redeem or otherwise acquire its shares out of capital; or
- cancel any capital that is lost or not represented by assets having a realisable value (§35(2)).

However, the IBC Act states that no reduction of capital will be effected that reduces the capital of the IBC to an amount that is less than the sum of:

- (i) the aggregate of:
  - all outstanding shares with par value, and
  - all shares with par value held by the company as treasury shares; and
- (ii) the aggregates of the amounts designated as capital of:
  - all outstanding shares without par value; and



- 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.

The principle of the preservation of capital of a company requires that these tests be met if the IBC is to redeem or repurchase its shares, including determining that the company is and will be solvent after effecting the redemption or repurchase. The directors must determine that immediately after the reduction of the capital that the IBC will be able to satisfy its liabilities as they become due in the ordinary course of its business and that the realisable value of the assets of the IBC 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. The determination of the directors of the realisable value of the IBC's assets is conclusive, unless a question of law is involved (in the absence of fraud) (§35(4)).

(d) **Acquisition by a Company of its own Shares and Financial Assistance**

There is no prohibition under the IBC Act on the provision of financial assistance by an IBC for the acquisition of its own shares and its holding company etc. Therefore subject to the limitations in its memorandum and articles, an IBC has the power to perform all acts and engage in all activities necessary or conducive to the conduct, promotion or attainment of the objects of the IBC, including not limited to (§9(1)):

- purchase, redeem or otherwise acquire and hold its own shares;
- 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
- protect the assets of the IBC 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.

(e) **Treasury Shares**

Subject to limitations in the memorandum or articles of association, shares that an IBC purchases, redeems or otherwise acquires may be cancelled or held as treasury shares. If the shares are purchased, redeemed or acquired by way of a reduction of capital, out of capital of the IBC, the shares shall be cancelled and the amount included as capital of the IBC, with respect to that share, shall be deducted from the capital of the IBC (§33(4)).

Where shares in an IBC are held by the IBC, or by another company of which the IBC holds shares having more than 50% (directly or indirectly) of the votes in the election of directors of the company, the shareholders of the IBC are not entitled to vote or to have dividends paid thereon and shall not be treated as outstanding for any purpose under the IBC Act except for the purpose of determining the capital of the IBC (§34).

(f) **Register of Members**

All IBCs must maintain one or more share registers, which may be in such form as the directors may approve but if it is in magnetic, electronic or other data storage form, the IBC must be able to produce legible evidence of its contents (§28(1) & §28(2)).

The share register must contain (§28(1)):

- the names and addresses of the persons who hold registered shares in the IBC;
- the number of each class and series of registered shares held by each person;
- the date on which the name of each person was entered in the share register;
- the date on which any person ceased to be a member;



The information relating to bearer shares may be deleted from the share register once such shares have been cancelled.

The share register shall be *prima facie* evidence of any matters directed or authorised by the IBC Act to be contained therein (§28(4)). If such information required to be entered in the share register is omitted therefrom or inaccurately entered therein or is subject to an unreasonable delay, a member of the IBC (or any person aggrieved by the omission, inaccuracy or delay) may apply to the court for an order that the share register be rectified. 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 IBC to pay all costs of the application and any damages the applicant may have sustained (§29).

(g) **Dividends and Distributions**

The Board may, subject to any limitations in the memorandum or articles of association, by a resolution of directors, declare and pay dividends in money, shares or other property. Dividend shall only be declared and paid if the directors determine that immediately after the payment of the dividend:

- the company will be able to satisfy its liabilities as they become due in the ordinary course of its business; and
- the realisable 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 realisable value of the assets of the company is conclusive unless a question of law is involved (§36).

If a share is issued as a dividend by an IBC, it 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. 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. 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. 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.

**Inspection and Member Protection**

A member of an IBC 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 IBC and to make such copies or take extracts. A proper purpose is a purpose reasonably related to the member's interest as a member and the inspection is to be during normal working hours (§66(1) & (2)).

The IBC may refuse the request, if the directors resolve that it is not in the best interest of the IBC or of any other member of the IBC to comply with such a request. If the request is refused, the member may before the expiration of a period of 90 days of his receiving notice of the refusal, apply to the court for an order to allow the inspection (§66(4) & (5)).

## PART B: COMPROMISES WITH CREDITORS AND MERGERS / CONSOLIDATIONS

### 8. MERGERS AND CONSOLIDATIONS

The IBC Act provides that two or more IBCs wishing to merge or consolidate (each a **constituent IBC**) may merge or consolidate as one IBC, whether as a “consolidated IBC” or a “surviving IBC” (§74).

#### 8.1 Merger/Consolidation of Two or more IBCs

The terms of the merger or consolidation shall be contained in a “merger/consolidation plan”, which must be approved by the directors of each constituent IBC setting out, amongst other things (§74(2)):

- the name of each constituent IBC and the name of the surviving IBC or consolidated IBC;
- for all constituent IBCs, 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 a specification of each such class and series, if any, entitled to vote as a class or series;
- the terms and conditions of the proposed merger or consolidation, including the manner and basis of converting shares in each constituent IBC into shares, debt obligations or other securities in the surviving IBC or consolidated IBC, or money or other property, or a combination thereof;
- in respect of a merger, a statement of any amendment to the memorandum or articles of association of the surviving IBC to be brought about by the merger; and
- in respect of a consolidation, everything required to be included in the memorandum and articles of association for an IBC except statements as to facts not available at the time the consolidation plan is approved by the directors.

Some or all shares of the same class or series of shares in each constituent IBC 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 (§74(3)).

#### Approval

The members, by resolutions, must authorise the merger/consolidation plan and the following applies in respect of such a merger/consolidation between constituent IBCs:

- 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 of association so provide or if the merger/consolidation plan contains any provisions that, if contained in a proposed amendment to the memorandum or articles of association, would entitle the class or series to vote on the proposed amendment as a class or series;
- If a meeting of members is to be held, notice of the meeting, accompanied by a copy of the merger/consolidation plan, shall be given to each member, whether or not entitled to vote on the merger or consolidation.

If it is proposed to obtain the written consent of members, a copy of the merger/consolidation plan shall be given to each member, whether or not entitled to consent to the merger/consolidation plan.

After approval of the merger/consolidation plan by the directors and members of each constituent IBC, articles of merger or consolidation shall be executed by each IBC and shall contain - (i) the merger/consolidation plan and, in the case of consolidation, any statement required to be included in the memorandum and articles of association of an IBC; (ii) the date on which the memorandum and articles of association of each constituent IBC were registered by the Registrar; and (iii) the manner in which the merger or consolidation was authorised with respect to each constituent IBC.

## Registration

The articles of merger or consolidation shall be submitted to the Registrar who shall retain and register them in the Register.

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. 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.

### 8.2 Merger of Parent and Subsidiary IBC

Where the merging constituent IBCs include a parent and one or more subsidiary companies and provided that the surviving IBC meets the requirements of an IBC under the IBC Act, no authorisation of the members of any of the constituent IBCs is required (§75).

The parent IBC shall approve a written merger plan containing (§75(2)):

- the name of each constituent IBC and the name of the surviving IBC;
- in respect of each constituent IBC - (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 IBC owned by the parent IBC; and
- the terms and conditions of the proposed merger, including manner and basis of converting shares in each IBC to be merged into shares, debt obligations or other securities in the surviving IBC, or money or other property, or a combination thereof.

Some or all of the shares of the same class or series of shares in each merging constituent IBC may be converted into a particular or mixed kind of property 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 IBC is not the surviving IBC, shares of each class and series of shares in the parent IBC may only be converted into similar shares of the surviving IBC (§75 (3)).

## Approval

The articles of merger shall be executed by the parent IBC and shall contain: (§75(5))

- the merger plan;
- the date on which the memorandum and articles of association of each constituent IBC were registered by the Registrar; and
- if the parent IBC does not own all the shares in each subsidiary IBC to be merged, the date on which a copy of the merger plan or an outline thereof was made available to the members of each subsidiary IBC.

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

## Registration

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

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. 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 (§75(8)).

### 8.3 Merger/Consolidation of IBC and Company Incorporated outside Seychelles (§77)

One or more IBCs may merge or consolidate with one or more companies incorporated under the laws of jurisdictions outside Seychelles in accordance with the IBC Act, including where one of the companies is a parent company and the other 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 (§77(1)).

An IBC shall comply with the provisions of the IBC Act with respect to the merger or consolidation, as the case may be, of IBCs and a company incorporated under the laws of a jurisdiction outside Seychelles shall comply with the laws of that jurisdiction (§77 (2)(a)).

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: (§77(2)(b))

- 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;
- an irrevocable appointment of the Registrar as its agent to accept service or process in proceedings referred to above;
- an agreement that it will promptly pay to the dissenting members of a constituent IBC the amount, if any, to which they are entitled under this Act with respect to the rights of dissenting members; and
- 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.

The effect of this merger or consolidation is the same as in the case of a merger or consolidation of two or more IBCs, if the surviving company or the consolidated company is an IBC. 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, except insofar as the laws of the other jurisdiction otherwise provide (§77(3)).

If the surviving company or the consolidated company is an IBC, 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. 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 (§77(4)).

### 8.4 Post Registration

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 (§77(4)).

As soon as a merger or consolidation becomes effective: (§76(2))

- the surviving company or the consolidated company insofar as is consistent with its memorandum and articles of association, 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;

- in the case of a merger, the memorandum and articles of association of the surviving company are automatically amended to the extent, if any, that changes in its memorandum and articles of association are contained in the articles of merger;
- 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 association of an IBC, are the memorandum and articles of association of the consolidated company;
- 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
- the surviving company or the consolidated company shall be liable for all claims, debts, liabilities and obligations of each of the constituent IBCs.

Where a merger or consolidation occurs, no conviction, judgment, 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. Further, 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 IBC (§76(3)).

The Registrar shall strike off the Register - a constituent company that is not the surviving company in a merger and a constituent company that participates in a consolidation (§76(4)).

## 9. APPROVAL OF ARRANGEMENTS, MERGERS, CONSOLIDATIONS AND SEPARATIONS BY THE COURT

The directors of an IBC may, by resolution, approve a plan of arrangement that contains the details of the proposed arrangement. An "arrangement" under the IBC Act, includes (a) a reorganisation or reconstruction of an IBC; (b) a merger or consolidation of one or more IBCs (provided that the surviving or consolidated company is an IBC); (c) a separation of two or more businesses carried on by an IBC; or (d) any combination of the above. Once approved by the directors, the company may make an application to the court for the approval of the proposed arrangement (§80(1)-(3)).

The court may 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: (§80(4))

- determine what notice, if any, of the proposed arrangement is to be given to any person;
- determine whether approval of the proposed arrangement by any person should be obtained and the manner of obtaining the approval;
- 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;
- conduct a hearing and permit any interested persons to appear; and
- approve or reject the plan of arrangement as proposed or with such amendments as it may direct.

Where the court makes an order approving a plan of arrangement, the directors of the IBC, 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 (§80(5)).

The directors of the IBC, upon confirming the plan of arrangement, shall give notice to the persons to whom the order of the court requires notice to be given and submit the plan of arrangement to those persons for such approval, if any, as the order of the court requires (§80(6)).

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 IBC and shall contain: (§80(7))

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

### Registration

The articles of arrangement shall be submitted to the Registrar who shall retain and register them in the Register. 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. A certificate of arrangement issued by the Registrar shall be *prima facie* evidence of compliance with all the requirements of the IBC Act in respect of the arrangement (§80(8)-(10)).

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 (§80(11)).

## 10. MINORITY BUY-OUT RIGHTS

Any sale, transfer, lease, exchange or other disposition of more than 50%, by value, of the assets of an IBC, other than a transfer, pursuant to the powers conferred to the directors under the IBC Act, if not made in the usual manner or regular course of the business carried on by the IBC, the following shall be applicable (s78):

- the proposed sale, transfer, lease, exchange or other disposition shall be approved by the directors;
- 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;
- 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
- 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.

In relation to a merger or consolidation of two IBCs, the members holding either 90% of the votes of the outstanding shares (entitled to vote) or 90% of the votes of the outstanding shares of each class and series of shares (entitled to vote as a class or series) may give written notice to one of the constituent IBCs directing it to redeem the shares held by the remaining members (§79(1)).

The IBC shall then 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 and shall redeem the shares specified in the instructions received, irrespective of whether or not the shares are by their terms redeemable (§79(2) & (3)).

Where a member of an IBC dissents from a merger or consolidation or from any sale, transfer, lease, exchange or other disposition of more than 50% of the assets or business of the IBC, (if not made in

the usual or regular course of the business carried on by the IBC, unless otherwise excluded by the IBC Act) he may be entitled to payment of the fair value of his shares (§81(1)).

Such member shall give to the IBC, before the vote in relation to such disposition/merger/consolidation etc., written objection to the action. This notice must state that the member will demand payment for his shares if the action is taken (§81(2) & (3)). The Company must give written notice of the authorisation of the action to each objecting member (or those not required to give notice due to action being authorised by written resolution) within 20 days of the vote or the date on which the written authorisation was obtained (§81(4)). Within 20 days of the receipt of such notice, the member must give to the IBC written notice of his decision to elect to dissent, stating his name, address, number and classes (or series of shares) in respect of which he dissents, and a demand for payment of the fair value of his shares. A dissention in relation to a merger of two or more IBCs, must give his written notice of intent to dissent within 20 days of receiving the copy of the merger plan (or outline thereof) (§81(5)).

A dissenting member must do so in respect of all shares he holds in the IBC (§81(6)) and upon giving such notice, the dissenting member ceases to have any of the rights of a member, other than the right to be paid the fair value of his shares (§81(7)).

Within seven days immediately following the date of the expiration of the period within which members may give their notices of election to dissent, or within seven days immediately following the date on which the proposed action is put into effect, whichever is later, the IBC or, in the case of a merger or consolidation, the surviving IBC or the consolidated IBC, shall make a written offer to each dissenting member to purchase his shares at a specified price that the IBC determines to be their fair value; and if, within 30 days immediately following the date on which the offer is made, the IBC making the offer and the dissenting member agree upon the price to be paid for his shares, the IBC shall pay to the member the amount in money upon the surrender of the certificates representing his shares (§81(8)).

If the IBC and a dissenting member fail, within the period of 30 days, 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, (a) the IBC and the dissenting member shall each designate an appraiser; (b) the two designated appraisers together shall designate a third appraiser; (c) the three 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 IBC and the dissenting member for all purposes; and (d) the IBC shall pay to the member the amount in money upon the surrender by him of the certificates representing his shares (§81(9)).

Shares acquired by the IBC pursuant to above (81 (8) or (9)) shall be cancelled but if the shares are shares of a surviving IBC, they shall be available for re-issue (§81(10)).

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 it does not exclude the right of the member to institute proceedings to obtain relief on the ground that the action is illegal (§81(11)).

## **PART C: MERGERS AND TAKEOVERS**

Seychelles companies have been involved in considerable merger and acquisition activities. These transactions have been both friendly and hostile.



## 11. FRIENDLY ACQUISITION OF A SEYCHELLES COMPANY

Friendly acquisitions are usually accomplished by an acquisition of the share capital of the target Seychelles company pursuant to an offer of shares or cash made by an acquirer. Sometimes the transaction is structured as a direct acquisition of the shares from the existing shareholders of the Seychelles company or, more usually, the transaction is structured as an amalgamation of the target company into another. The Seychelles subsidiary company is set up by the acquirer for this purpose.

As a result of this latter structure, the shares of the target Seychelles company cease to exist in the amalgamation and are replaced by shares issued by the acquirer itself directly to the former shareholders of the Seychelles company. The amalgamated company becomes a wholly-owned subsidiary of the acquirer.

## 12. HOSTILE ACQUISITION OF A SEYCHELLES COMPANY

In the context of a hostile acquisition, a number of alternatives have been used, for example:

- a straight offer of cash for the purchase of shares;
- an offer of shares of the acquirer by way of simple exchange;
- an offer of shares of the acquirer as part of an amalgamation; or
- a combined offer of shares and cash.

In the context of acquisitions, section 124 of the Securities Act 2007 empowers the Minister to make regulations to provide for the making of takeovers and the rights and obligations of persons when a takeover is made. However, to date, no such regulations have been made.

In a transaction involving either an amalgamation or a takeover, a prospectus or a formalised document such as a proxy statement is usually not required under Seychelles law. However, it is highly likely that the rules of the stock exchange on which the shares of the target company are listed will have significant effect on the manner in which a company implements a merger, or deals with an offer. Subject to such rules, it is possible to structure defence mechanisms to takeovers.

## 13. DEFENCE MECHANISMS TO A HOSTILE BID

### Shareholders' Rights Issue Agreement

A shareholders' rights issue agreement, or as it is commonly referred to, a "poison pill", is a plan designed to deter a hostile takeover bid by diluting the percentage shareholding of the acquiring company in the target Seychelles company. A poison pill may be found in a shareholders' agreement or under the provisions of the company's constitution.

Typically the poison pill is triggered by a specified triggering event and grants shareholders, as a "bonus", the right to purchase additional shares in the target Seychelles company in proportion to their current shareholding at a substantial discount to market price, if a hostile person acquires over a certain specified percentage (usually 20%) of the target Seychelles company's voting shares. The hostile person itself is not permitted to purchase shares at a discount. The effect of the poison pill is to dilute the percentage shareholding of the acquiring company in the target Seychelles company, while increasing the proportional interests of the other existing, friendly shareholders. The theory is that the hostile person will not acquire the requisite percentage shareholding to confer voting control of the target company while the plan is in force because of the massive dilution it would face, thus protecting the target Seychelles company from a hostile takeover.

The right of the directors to issue such "bonus" shares is subject always to their statutory duty to act in the best interests of the company. Acting in the best interests of the company does not necessarily mean that directors must obtain the very best price available for each individual share. Further,



directors are entitled to have regard to any number of “proper” issues including “bonuses” to existing shareholders. Moreover, pre-existing contractual obligations to provide such bonuses will, more than likely, determine the issue in advance so that it must be “proper” for the directors to comply with their pre-existing contractual or constitution obligations.

### **Poison Debt**

Another defensive mechanism is the poison debt which generally takes the form of a company issuing debt securities on terms and conditions designed to deter a hostile takeover.

Examples of terms and conditions which may prove a deterrent include:

- covenants that severely restrict the issuer’s ability to sell assets;
- an increase in the interest rates of the debt in the event of a takeover, e.g. issue loan stock with low coupon or at a discount with zero coupon with a provision for repayment at par or at a premium on completion of the takeover;
- an acceleration of the maturity date upon the change of control of the target Seychelles company, i.e. repayment on completion of the takeover; and
- an issuance of debt/securities that are convertible into or carrying rights to subscribe for shares in the target Seychelles company.

### **Voting Poison Pill Plan**

The objective of a voting poison pill plan is to dilute the acquiring company’s voting control. The most effective mechanisms are those that are in place prior to a potential hostile takeover bid. This will help to counter any accusations of *mala fides* on the part of the directors, which may render the plan invalid or expose the directors to liability for breaching their duties of impartiality. Also, given that these plans will require shareholder approval due to variation of share rights, it is easier to obtain the requisite consent when the spectre of a takeover does not loom. As an alternative, these plans may be created in response to a potential takeover and this will usually involve the potential target company issuing securities pursuant to a bonus issue (which possess special voting features), to its existing common shareholders. Many possible structures may be encountered. One form is where the target company issues shares, which do not have special voting privileges at the outset. Upon the occurrence of a specified triggering event, the shareholders, other than an acquiring company, receive super voting privileges. Another possible form is where the target company’s shareholders are issued shares with voting rights that are enhanced with the length of time the securities are held on a continuous basis.

### **Shareholders’ Meetings**

A defensive measure might include building special majorities and procedures for shareholder action, in particular removal of the Board.

### **Concert Parties**

Generally there is nothing in the Seychelles law to prevent shareholders acting together for any lawful purpose including a takeover. Therefore, to counter such “concert parties” it is advisable to create a regime, in the constitution, which sets out the rules for making a bid. The rules of any stock exchange (if the target company is listed) may also require disclosure of concert parties.

The constitution can, for example, define the concept of persons acting in concert, and then transfer their voting rights pro rata to all the other shareholders in certain narrowly defined circumstances. A constitutional amendment to introduce concert party rules will require shareholder’s consent, and a relatively high level of approval to ensure shareholder buy-in and that the directors will not be criticised.

## The Constitution

Bearing in mind that the constitution of a target Seychelles company will always be susceptible to amendment provided the requisite majority for amendment is achieved, it may nevertheless be useful as a defensive mechanism to build into the constitution a list of matters requiring the approval of special majorities. However, restrictions which affect liquidity of the shares may be undesirable or contrary to stock exchange regulations if the company is listed. Also, restrictive provisions in the constitution may unduly hamper the company during ordinary operations. Thus a balance would have to be struck. Typical restrictions would relate to the exercise of votes in certain circumstances, such as unwanted bids, or the disclosure of underlying beneficial interests, with votes in excess of a certain threshold, or in relation to ineligible beneficiaries, being transferred to other shareholders pro rata.

## PART D: GENERAL INFORMATION

### 14. BANKING FACILITIES

Presently there are eight banks (Bank of Baroda, Barclays Bank, BMI, Development Bank of Seychelles, Habib Bank, Mauritius Commercial Bank, Nouvobanq, and Seychelles Savings Bank) in operation in the Seychelles which offer a wide variety of world class services such as those provided by any other European international bank. The financial institutions regulator is the Central Bank of Seychelles (for more information go to [www.cbs.sc](http://www.cbs.sc))

Banks in the Seychelles are free to conduct business in all currencies.

For more details on the operational aspects, management and control, setting up a bank and obtaining a banking licence in the Seychelles please refer to the contact at the end of this Guide.

### 15. ACCOUNTANTS

There are many accounting firms in the Seychelles available to provide accounting and consultancy services to Seychelles entities.

### 16. WINDING UP AND LIQUIDATION

For more information on winding up and liquidations, we invite you to contact the author.

For more specific advice on international business companies in Seychelles, we invite you to contact:

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For the convenience of clients in other time zones, a list of contacts available in each of our jurisdictions may be found [here](#).