



Seychelles introduces a new International Business Companies (IBC) regime

Fundamental changes to the IBC regime in Seychelles are imminent with the enactment of the new IBC Act 2016 (**New Act**).

This New Act is being introduced to address the concerns of the Eastern and Southern Africa Anti-Money Laundering Group (**ESAAMLG**) and to be in line with the Financial Action Task Force (**FATF**) standards and to work towards a re-enforcement of the Anti-Money Laundering framework of the Republic of Seychelles.

This New Act repeals and replaces the IBC legislation (**IBC Act 1994**) and introduces major policy changes in the corporate law regime of the Republic of Seychelles to which all stakeholders would need to comply.

Some of the key reforms include:

Extended list of prohibited activities for IBCs

Prohibited activities that an IBC cannot undertake now include:

- Carrying on securities business in Seychelles (outside of Seychelles allowed, subject to the IBC being licensed to do so in the country in which it carries out such business);
- Carrying on gambling business, including interactive gambling business in Seychelles (outside of Seychelles allowed, subject to the IBC being licensed to do so in the country in which it carries out such business);
- Carrying on business as a mutual fund, unless it is licensed to do so under the Mutual Fund and Hedge Fund Act of Seychelles, or under the laws of a recognised jurisdiction.

IBCs are now allowed to be Protected Cell Companies (PCCs)

This provision aims at building value-added business as PCCs are mostly used for mutual fund structures and are also commonly used for offshore captive insurance business in instances where the insured and the insurer are affiliated parties.

Leasing of Seychelles property by IBCs is no longer permissible

Previously, IBCs could lease a property for use as an office from which to communicate with members or where books and records of the company are prepared or maintained. That provision is not consistent with the general principle that IBCs shall not carry on business in Seychelles. An IBC is intended for business use outside Seychelles; hence, it is sufficient for its local presence to solely be through its registered office provided by its registered agent.

IBCs cannot hold Seychelles' government bonds, treasury bills, etc.

IBCs will no longer be able to hold bonds, treasury bills and other securities issued by the Government of Seychelles or the Central Bank of Seychelles.

Clarifications for IBCs owning or managing vessels registered in Seychelles

An IBC may own or manage a vessel registered in Seychelles and the vessel may visit or be situated in Seychelles waters, provided that the IBC shall not carry on any business in Seychelles, including, without limitation, fishing, charter or tourism business involving the vessel.

New statutory and filing requirements with regards to Annual Returns

- An IBC is not required to submit an annual return in the year of its incorporation or continuation, or conversion into an IBC, under the Act.
- IBCs are now only required to file declarations of records that are not required to be kept in Seychelles (i.e. accounting records, minutes and resolutions) and to include details of the address at which the IBCs accounting records and minutes and resolutions are kept.
- A company which fails to furnish its Annual Return will be liable to a fixed penalty fee of USD\$500 and if a company provides false or misleading return, it shall commit an offence and is liable on conviction to a fine not exceeding USD\$5000.

New record keeping obligations with regards to Beneficial Ownerships

Except for listed IBCs and their subsidiaries, all IBCs are required to keep a Beneficial Owners Register at its registered office address.

New requirements for Register of Directors

- The Register of Directors of the IBC needs to be kept only at its registered office address.
- All IBCs are required to file with the Registrar a copy of its Register of Directors.
- The Register of Directors will be made publicly available (for current IBCs, the Register of Directors will be publicly available after two years following the commencement of the Act).

Register of charges and registration of charges with Registrar

- All IBCs need to keep a register of charges at its registered office address.
- Registration of charges for an IBC is still optional; however, registration of charges will now enable the determination of priorities among secured creditors.
- Whereas only registered agents of IBCs were allowed to lodge applications for registration of charges at the FSA; now a legal practitioner in Seychelles, acting on behalf of the chargee shall also be able to lodge an application for registration of a charge.
- Certain provisions of the Civil Code of Seychelles as it applied to pledges given by IBCs have been disapplied so that the new provisions of the IBC Act now apply.

Complete ban of bearer shares

Bearer shares are prohibited (as was previously the case in recent amendments made to the IBC Act 1994).

New provisions to discourage the practice of having aged shelf companies

The Act now provides for the appointment of the first director(s) within nine months of the date of incorporation of the IBC.

Disqualifications of Directors

The Court may now make an order, for example, prohibiting a person from being a director, secretary or other officer of any IBC where the director may have been involved in fraud, dishonesty, misconduct or other wrongdoing in connection with a company.

Fraudulent or wrongful trading

If any business of an IBC is carried on with intent to defraud creditors (whether of the company or of any other person), or for any fraudulent purpose, every person who is knowingly a party to the carrying on of the business in that manner is guilty of an offence. Provisions will also apply for civil liability in insolvent trading situations.

Memorandum and articles of the IBC

- May contain provisions for the payment of commissions. A company is a separate legal person and who it pays commissions to is a commercial and contractual decision for it.
- An IBC will not be required to state the object of the company in its Memorandum of Association. In such cases, the IBC's object is deemed under the Act to include any activity that is not prohibited under any law for the time being in force in Seychelles. In cases where the objects are specified, the company is limited to carrying on those objects.

Pre-incorporation contracts

The Act removes the current 90-day limit on ratification of pre-incorporation contracts in order to bring Seychelles' position in line with modern corporate law elsewhere.

Transitional provisions

On 26 July 2016, the National Assembly of Seychelles approved the IBC Act 2016. The New Act will come into operation on **1 November 2016**.

With the repealing and replacing of the old IBC Act, under the New Act, every existing IBC shall be deemed to be automatically re-registered under the New Act, with a 12 months transitional period from the commencement date of the New Act for:

- filing of register of directors with the Registrar;
- fulfilment of obligation relating to beneficial owners; and
- compliance with notice of location of minutes and resolutions of members and directors and register of charges.

It shall not be mandatory for an existing IBC to amend its memorandum and articles to comply with the New Act but to the extent that it is inconsistent with the New Act, the provisions of the New Act shall prevail.

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