APPLEBY

Guide to Companies in Seychelles

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PREFACE

This is the First Edition of the Guide, which we have produced for the information of our clients and professional colleagues.

This Guide is concerned primarily with the various types of companies, incorporated under the Companies Ordinance, 1972, the International Business Act, 1994, the Companies (Special Licence) Act, 2003 and used by businesses trading in the Seychelles as well as offshore businesses, such as banks, insurance companies and mutual funds, which are not permitted to be set as International Business Companies in the Seychelles.

The provisions of the International Business Companies Act 1994, the Companies (Special Licence) Act, 2003 and the Protected Cell Companies Act, 2003, regulate the carrying on of business by offshore companies in the Seychelles.

This Guide is divided into three sections and their respective subparts:

1. Companies Ordinance, 1972
    - Seychelles Companies
    - Overseas Companies in Seychelles
    - Compromises, Arrangements and Amalgamations
    - Mergers and Takeovers
    - General Information
2. International Business Act, 1994
    - International Business Companies
    - Protection of Members and Creditors
    - Mergers and Consolidation
    - Continuation
    - General Information
3. Companies (Special Licence) Act, 2003
    - Special Licence Companies
    - Continuation
    - General Information

It is recognised that this Guide will not completely answer the detailed questions that clients and their advisers may have. The Guide's intention is to provide an outline of the Seychelles' legal and regulatory environment in relation to companies, and to set out, briefly, the registration and/or formation procedures for the setting up of such entities. The Guide is, therefore, designed as a starting-point for a more detailed and comprehensive review of the issues covered herein.

All references in this Guide to "dollars" or "$" are to US dollars, and all references to "rupees" or "Rs" are to Seychelles rupees.

Whilst we have made every effort to ensure the accuracy of the statements made herein, we accept no liability for any errors. In all cases, expert legal advice from a qualified practitioner in the Seychelles should be obtained. Appleby would be pleased to assist in this regard.

Appleby
Victoria, Mahé
Seychelles
September 2009

INTRODUCTION

Formation and administration of companies in the Seychelles is governed by three main pieces of legislation: the English law inspired Companies Ordinance, 1972 (the Ordinance), used, for the most part, to incorporate companies to do business within the Seychelles, the International Business Companies Act 1994 (IBC Act), the Company Special Licence Act, 2003 (CSL Act) which provides for the incorporation of offshore companies called International Business Companies (IBCs), used by persons wishing to carry on business outside the Seychelles, not only as holding companies and/or investment companies but also to carry on business within other jurisdictions.

Notwithstanding the fact that IBCs remain the most popular choice of vehicle for persons wishing to carry on business outside the Seychelles, with the vast majority of offshore companies incorporated as same under the International Business Companies Act 1994, companies incorporated under the Ordinance, have, however, been regularly used by businesses to carry on business outside the Seychelles; more especially by banks, insurance companies and mutual funds, which are not permitted, in law, to be set up as IBCs in the Seychelles. Companies incorporated under the Ordinance, in fact, offer a sound alternative to IBCs inasmuch as these companies can be incorporated with a corporate structure similar to that of an IBC, where a member's liability is limited by shares.

This Guide is concerned with those companies, incorporated under the Ordinance, which are used both by businesses trading in the Seychelles as well as offshore businesses such as banks, insurance companies and mutual funds, which are not permitted, in law, to be set up as IBCs in the Seychelles. This Guide briefly sets out the requirements for the formation, incorporation and administration of such Companies.

SECTION 1: COMPANIES ORDINANCE, 1972

PART A: SEYCHELLES COMPANIES

1. Classification

The Ordinance provides for several types and categories of companies:

Company Types	Company Categories
Companies limited by shares Companies limited by guarantee Companies limited by shares and guarantee (hybrid) Existing Companies Overseas Companies	Proprietary Company, otherwise known as a Pty. Ltd (the equivalent of a private company). A Proprietary Company may comprise between two and 50 members with limited liability. Limited Company (the equivalent of a public limited company) with unlimited number of shareholders.

2. Incorporation of Companies, Memorandum and Articles of Association

The Companies Ordinance, 1972 ("the Ordinance") provides that two or more persons may form a limited liability company (§3(1)) by subscribing their names to a memorandum of association and otherwise complying with the requirements of the Ordinance in respect of registration.

a. Memorandum

The memorandum of every company shall be in English and shall contain the following (§4):

- Name of the company
- Registered Office to be situated in Seychelles
- Objects of the company
- That liability of members of the company is limited.
- The number of shares that the company may issue and the nominal value
- The total nominal value of all the shares which the Company may issue
- The total nominal values of all the shares of each class of shares which the company may issue
- if the company has different classes of shares, the rights and obligations of each class of shares

The subscribers of the memorandum of a company which is not a proprietary company shall write opposite their signature to the memorandum the number of shared in the company which they agree to take, being not less in total than one-tenth of all the shares the company may issue (except shares to be allotted for a consideration other than cash) (§5(1)).

b. Articles of Association

There may be in the case of any company be registered, with the memorandum, articles of association signed by the subscribers of the memorandum and prescribing regulations for the company (§7). The

Articles of Association must be in English and signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature (§9).

c. Registration

The memorandum and the articles, if any shall be delivered to the Registrar , and he shall retain and register them (§10(1)). Upon registration the Registrar shall issue a certificate of incorporation (§11(1)).

d. Alterations to the memorandum and articles

A company may add or alter the provisions of its memorandum by way of special resolution (§18(1)). However, no company may alter the provisions of its memorandum that its registered office is to be situated in Seychelles (§18(2)). Moreover, the share capital of a company may be altered only in the ways specified in sections 59 and 63 (§18(3)) of the Ordinance.

Subject to the provisions of the Ordinance and to the conditions contained in its memorandum, a company may by resolution alter its articles (§20(1)).

e. Registration of alteration of memorandum or articles

A company which has altered its memorandum or articles shall give notice of the date, form and effect of the registration to the Registrar (§22(1)), provided that no application has been made to court to cancel the alteration of the memorandum or articles or if such an application is made, or if two or more such applications are made, within fifteen days after the drawing up of the order embodying the decision of the court on the last of such applications to be heard, and in that case the notice given to the Registrar shall be accompanied by office copies of the orders made by the court on all such applications.

f. Fetter of Company's Power

Following the principles enunciated in the UK case of Russell v Northern Bank Development Corporation Ltd [1992] 3 All ER 588 (HL) a company is barred from contractually agreeing to fetter its statutory powers, i.e. those powers reserved to the shareholders. Thus, for example, a contract made by a company that it will not exercise its statutory power to alter its articles is deemed to be unenforceable.

This bar against the company fettering its statutory powers is specifically included in the Ordinance (§33(2)), which specifically provide that the capacity of a company shall not be limited by any provision of its memorandum or articles as to its objects or powers, or as to the powers of its directors or of meetings of its members to act in its name or on its behalf.

Accordingly, the memorandum and articles of a company may not fetter the powers conferred to it, its directors and/or members by the Ordinance.

3. Management and Administration

a. Registered Office, Registered Agent and Management Company

Every company must have a registered office in the Seychelles (§4). In fact, no company may alter the provisions of its memorandum that its registered office is to not be situated in Seychelles (§18(2)).

The above requirements apply for both domestic as well as overseas companies in the Seychelles

b. Memorandum and Articles of Association

See Part 2 above.

c. Requirements for Officers or Representatives in Seychelles

Every company must have a secretary who may be an individual, a company or body corporate, or a firm (as from time to time constituted) (§179(1)). However, anything required or authorised to be done by or to the secretary may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by or to any assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or to any officer of the company authorised generally or specially in that behalf by the directors (§179(2)).

d. Directors

While the Ordinance decrees the directors of a company shall have power to do all acts on the companies behalf which are necessary for or incidental to the promotion and carrying on of the business of a company as stated in its memorandum, or the achievement of the purposes there stated, and all persons dealing with the company, whether shareholders or not, may act accordingly (§34), there is no precise definition under the Ordinance as to who is a "director".

The Companies Act defines the term as including any person occupying the position of director by whatever name called, and any person in accordance with whose directions or instructions the directors of a company are accustomed to act, but does not include a holding company or a substantial shareholder merely by virtue of its or his position as such.

An important point to note is that despite the power of the Board to manage the affairs of a company, the Ordinance identifies a number of instances where, unless same has been approved by a special resolution of the shareholders, or is contingent on a special resolution being passed, powers of the directors as restricted.

The Ordinance requires that every company shall have at least two directors (§162). There is, however, no requirement under the Ordinance that directors be ordinarily resident in the Seychelles.

Subject to the provisions of the Ordinance, a director of a company may be appointed only by an ordinary resolution passed at a general meeting of the company for a period not exceeding five years, but any director may be reappointed in like manner on any number of occasions for a period not exceeding five years on each reappointment (§163).

The memorandum or articles of a company may prescribe the maximum and minimum number of directors of the company who shall be appointed (being not less than two directors), and such a maximum or minimum number may be varied from time to time by an ordinary resolution passed at a general meeting, but so that the minimum number is not less than two (§163).

The memorandum or articles may appoint or provide for the appointment of the first directors of the company, but unless the first directors are appointed by a general meeting of the company, they shall all cease to hold office at the termination of the first annual general meeting of the company, but shall be eligible for reappointment at that meeting (§163).

If a casual vacancy occurs in the office of a director, the directors may fill it, and the person appointed by them shall retire at the termination of the next succeeding annual general meeting, but shall be eligible for reappointment at that meeting (§163).

Any provision in the memorandum or articles of a company by which a director may be appointed in any other manner than the manner provided by the Ordinance shall be invalid (§163). In fact, a person shall not be capable of being appointed as director of a company by a company's memorandum and articles.

The Ordinance further provides that where the memorandum or articles of a company provides for the reappointment of a director at the expiration of his term of office without the passing of a resolution by a general meeting to that effect if no other person is or has been appointed by a general meeting in his place, but such a director shall not be reappointed under this subsection if an ordinary resolution is or has been passed at a general meeting that the vacant directorship shall not be filled, or if a resolution for the re-appointment of the director is defeated (§163).

The Ordinance also provide that at the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one-fifth of the directors for the time being, or, if their number is not five or a multiple of five, then the number nearest one-fifth, shall retire from office (§56).

The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day, those to retire shall (unless they otherwise agree among themselves) be determined by lot (§57). A retiring director shall be eligible for re-election (§58).

Every company, incorporated under the Ordinance is requires to keep at its registered office a register of directors (and secretaries) of the company (§169(1)). The register shall contain the following particulars with respect to each director: his present Christian name and surname, any former Christian name or surname, his usual residential address, his nationality, his business occupation (if any), and particulars of any other directorships held by him (§169(2)).

The company shall, within 15 days from the appointment and/or change of any director or secretary, send to the Registrar a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors or in its secretary or in any of the particulars contained in the register, specifying the date of the change (§169(4) & (5)).

Where the company or any officer of the company in default of any of the above provisions, the company and/or any officer of the company shall be guilty of an offence punishable by a fine not exceeding Rs100 for every day during the first month that the default continues, two hundred and fifty rupees for every day during the next two months that default continues, and five hundred rupees for every day that default continues thereafter (§169(7)).

i. Director's Duties

The duties of directors have been extensively codified in the Ordinance such that every director, in exercising his powers and discharging his duties, must, inter alia (§171(1)):

- to exercise their powers in accordance with this Ordinance and within the limits and subject to the conditions and restrictions established by the company's memorandum and articles;

- to obtain the authorisation of a general meeting before doing any act or entering into any transaction for which the authorisation or consent of a general meeting is required by this Ordinance or by the company's memorandum or articles;
- to exercise their powers in good faith in what they reasonably consider to be the interests of the shareholders of the company as a whole and for the respective purposes for which such powers are explicitly or impliedly conferred;
- to account to the company for any monetary gain, or the value of any other gain or advantage, obtained by them in connection with the exercise of their powers, or by reason of their position as directors of the company, except remuneration, pensions, provisions and compensation for loss of office in respect of their directorships of any company which are lawfully authorised or approved by a resolution passed by a general meeting and (where necessary) by a meeting of a class of shareholders;
- not to make use of any information received by them respectively as directors otherwise than for the benefit of the shareholders of the company as a whole, either during their respective terms of office or thereafter;
- not to compete with the company or become a director or officer of a competing company, unless a general meeting by ordinary resolution authorises the director concerned to do so in any specific case;
- if directors have any interest, whether direct or indirect, immediate or prospective, in any contract or transaction or proposed contract or transaction with the company, to disclose each of their respective interests to the meeting of the directors of the company at which the contract or transaction is first taken into consideration, or to the first meeting of the directors held after the interest arises (whichever is the later), and in such written disclosure to state the nature and extent of their respective interests and the effect or probable effect on them of the contract or transaction; and
- not to use any assets of the company for any illegal or improper purpose, and not to do, or knowingly allow to be done, anything by which the company's assets may be damaged or lost (otherwise than in the ordinary course of carrying on its business);

  (i) to transfer forthwith to the company all cash or assets acquired on its behalf (whether before or after its incorporation) or as the result of employing its cash or assets, and until such transfer is effected to hold such cash or assets on behalf of the company and to use it only for the purposes of the company;

  (j) to attend meetings of the directors of the company with reasonable regularity, unless prevented from so doing by illness or other reasonable excuse

These duties set out above shall be owed to the company and not to the members, shareholders, debenture holders or creditors of the Company (§171(2)).

A director who is in breach of his duties to the company shall be deemed to have either, as prescribed under the Ordinance for designated breaches, committed a serious breach of duty under the Ordinance and/or, in given circumstances, shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or by imprisonment for not more than two years, or to both such fine and such imprisonment, but a person shall not be sentenced to a term of imprisonment unless the court is satisfied that he acted wilfully.

The Ordinance also responds to the potential for conflict confronting directors in group company structures and joint venture scenarios. In doing so, the Ordinance has extended the duties of directors beyond the traditional principle that fiduciary duties are owed only to the company. The Ordinance (§179(7)) provides that, if a company holds a subsidiary, directors of the company and the subsidiary shall owe the same duties as prescribed under the Ordinance as though the company and the subsidiary were one company and the company owned the subsidiary's assets and undertaking(§179(7)).

ii. Director's Interests

As set out under Part A: 5.d.i above, if directors have any interest, whether direct or indirect, immediate or prospective, in any contract or transaction or proposed contract or transaction with the company, to disclose each of their respective interests to the meeting of the directors of the company at which the contract or transaction is first taken into consideration, or to the first meeting of the directors held after the interest arises (whichever is the later), and in such written disclosure to state the nature and extent of their respective interests and the effect or probable effect on them of the contract or transaction.

Any director in breach of his duty to disclose any interest in the manner set out above shall be guilty of an offence punishable by a fine not exceeding ten thousand rupees or by imprisonment for not more than two years, or to both such fine and such imprisonment, but a person shall not be sentenced to a term of imprisonment unless the court is satisfied that he acted willfully.

iii. Indemnities

A company is prohibited from indemnifying a director in defending or settling any claim or proceedings relating to liability in respect of any negligence, default or breach of duty of which he may be guilty in relation to the company(§181).

Accordingly, subject to the Ordinance, any provision, whether contained in the memorandum or articles of a company or in any contract with a company or otherwise, for exempting any officer or auditor of the company from, or indemnifying him against, liability in respect of any negligence, default or breach of duty of which he may be guilty in relation to the company shall be void (§181).

Under the Ordinance, a company may, however, indemnify any such officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour, or in which he is acquitted (§181) or in any application where relief is granted to him by the Court.

e. Board Meetings

Directors, under the Ordinance, may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors. It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from Seychelles (§65).

The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two (§66).

The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose (§67).

The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting (§68).

The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any instructions that may be given to it by the directors (§69).

A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting (§70).

A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairman shall have a second or casting vote (§71).

All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defeat in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director (§72).

A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held (§73).

The Board must ensure that all minutes are kept of the proceedings at meetings of the Board, including all written resolutions.

The directors shall cause minutes to be made in books provided for the purposes of:

- of all appointments of officers made by the directors;
- of the names of the directors present at each meeting of the directors and of any committee of the directors;
- of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors;

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose (§54).

f. Annual General Meeting

Every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next (§119(1)). Provided that, so long as a company holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

The memorandum or articles of a company may provide that it need not hold an annual general meeting in any year if copies of its balance sheet, profit and loss account, group accounts (if any) and

directors' annual report and auditors' report are sent to every shareholders and every debenture holders at least four weeks before the latest date by which the company is required by section 119(1) to hold an annual meeting, and no shareholder or debenture holder has at least eight weeks before that date served a written notice on the company requiring it to hold an annual general meeting (§141(1)).

This provision (section 141) shall not apply if (§141(2)):

- The auditor's report on any of the said accounts is qualified in any respect, or contains any statements or corrections of statements required to be made in the directors' annual report; or
- The directors' annual report or any of the said accounts shows that the company has suffered a loss in the period to which the accounts relate, or that the fixed dividend in respect of any of the company's preference shares will not be paid in full for that period, or that the dividend recommended by the directors in respect of all classes of the company's shares for that period together with all interim dividends declared during that period exceed the amount of the company's profits for that period; or
- Any members of the company give notice under section 126(1) of the Ordinance of their intention to move a resolution at the annual general meeting; or
- An auditor of the company gives notice to it in writing that he is unwilling to be re-appointed as auditor.

i. Voting Rights

The holders of all shares issued by a company shall be entitled to proportionate voting rights in respect of all resolutions proposed at general meeting of the company and at meetings of holders of the class of shares to which they belong (§118(1)). The holders of all debentures issued by a company shall be entitled to proportionate voting rights in respect of all resolutions at meetings of holders of the class of debentures to which they belong (§118(2)).

ii. Extraordinary general meetings and requisitions of meetings

General meetings of a company which are not annual general meetings in this ordinance are called extraordinary general meetings (§120(1)).

iii. Ordinary and Special Resolutions

Business shall be transacted at general meetings of a company by ordinary resolution, unless the Ordinance or the memorandum or articles require a special resolution (§121(1)). All business which cannot be transacted at a general meeting by an ordinary resolution shall, subject to the provisions of this Ordinance, be transacted by special resolution, and no provision in the mernorandum or articles require a special resolution (§121(2)).

A resolution is passed as an ordinary resolution if it is proposed as such, and of the votes which are cast in favour and against the resolution, more votes are cast in favour of the resolution than are cast against it (§122(1)).

A resolution is passed as a special resolution if it is proposed as such, and not less than three-quarters of the votes which are cast in favour of and against the resolution are cast in favour of it (§122(2)).

An ordinary resolution by a general meeting of a company shall be necessary (§122(3)):

- To appoint a director of the company other than a director appointed under section 163(4), (5), (7) or (8) of the Ordinance;
- To authorize or approve the remuneration to be paid to a director of the company in the circumstances where such authorization or approval is required by section 174(1) and to authorize or approve any other payments or benefits of the kinds mentioned in sections 174(2) and 175(1) of the Ordinance in circumstances where such authorization or approval is required by either of those sections;
- To remove a director of the company under section 168 of the Ordinance;
- To give any authorization to a director which is required by section 171 or 172 of the Ordinance;
- To appoint an auditor of the company;
- To authorize the sale or transfer of the whole or substantially the whole of the company's undertaking or assets (subject or not to its liabilities) to another person;
- To authorize the issue of any of the unissued shares or debentures of a company (other than a proprietary company), or to authorize the re-issue of shares or debentures of such a company (except to the extent that section 173 of the Ordinance otherwise provides);
- To authorize an issue or re-issue of the company's shares for a consideration other than cash, unless the terms of the issue are set out in the company's memorandum in conformity with section 6(1) of the Ordinance;
- To dispose of the profits or revenue reserves of the company, whether by payment of a dividend, by capitalization of profits or revenue reserves and the issue of bonus shares or debentures, by transfer to capital reserve, by the acquisition of shares of the company under paragraph (c) of section 54(2) of the Ordinance, by the redemption of redeemable shares, by allocations to employee share subscription schemes to which the company is a party or otherwise;
- To alter the share capital of the company under section 59 of the Ordinance;
- To authorize the company to alter or abrogate the rights of debenture holders;
- To wind up the company voluntarily under paragraph (b) of section 247(1) of the ordinance; and
- In connection with matters arising in the winding up of the company which by this Ordinance are required to be transacted by ordinary resolution;
- In such other cases as the Ordinance provides.

A special resolution by a general meeting of a company shall be required (§122(4)):

- To alter the company's memorandum or articles (except to the extent that alterations may be effected by ordinary resolution under section 59 of the Ordinance);
- To allot shares or debentures of a proprietary company otherwise than in proportion to the respective nominal values of the share holding of the existing shareholders;
- To wind the company up voluntarily under paragraph (a) of section 247 (1); and
- In connection with matters arising in the winding up of the company which by this Ordinance are required to be transacted by special resolution;
- In such other cases as this Ordinance provides.

A declaration in writing signed by all the persons entitled to attend a general meeting of a company, or by all the persons entitled to attend a meeting of a class of shareholders or debenture holders, shall have the same effect as a resolution in the same terms passed at a meeting duly called and held (§133).

g. Minutes

Every company shall cause minutes of all proceedings of general meetings, meetings of classes of shareholders and debenture holders, and meetings of the directors and committees of the directors of the company to be entered in books kept for that purpose (§137(1)).

h. Auditors

Every company shall at each annual meeting appoint an auditor or auditors to hold office from the conclusion of that, until the conclusion of the next annual general meeting (§155(1)). Where at an annual general meeting no auditors are appointed or reappointed, the Registrar may appoint a person to fill the vacancy (§155(3)).

A person shall not be qualified for appointment as auditor of a company unless either (§157(1)):

- He is a member of a body of accountants (whether established in or outside Seychelles) for the time being recognized for the purposes of this section by the Minister; or
- He is for the time being authorized by the Registrar to be so appointed, either as having similar qualifications, or as having obtained adequate knowledge and experience in the course of his employment by a member of a body of accountants recognized for the purposes of the above paragraph, or as having practiced as an accountant in Seychelles before the coming into force of this Ordinance.

None of the following persons shall be qualified for appointment as auditor of a company (§157(2)):

- An officer or servant of the company;
- A person who is a partner of or in the employment of an officer or servant of the company;
- A body corporate;
- A person who is disqualified from being appointed to be a director of any company by an order of the court made under section 165(1) of the Ordinance.

The auditors of a company shall make a report to the members and debenture holders of the company on the accounts examined by them, and on every balance sheet, every profit and loss account and all group accounts laid before an annual general meeting of the company, or if the company avails itself of section 141 of the ordinance, all such accounts circulated to its shareholders and debenture holders, during their tenure of office (§158(1)). The auditors report shall be read out at the annual general meeting and shall be open to inspection by any person entitled to attend the meeting (§157(2)).

i. Records and Financial Statements

Every company shall cause to be kept in the English language proper books of account with respect to (§139(1)):

- All sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
- The assets and liabilities of the company.

The directors of every company shall lay before each annual general meeting of the company a profit and loss account for the period (§140(1)). The directors shall cause to be made out and to be laid before each annual general meeting a balance sheet as at the date to which the profit and loss account is made up (§140(2)).

j. Registration of charges

It is not lawful for a company to register a transfer of shares or debentures of the company unless a transfer in proper form and duly signed by the transferor and transferee has been delivered to the company (§88(1)). On the application of the transferor of any share or debenture in a company, the company shall enter in its register of members or debenture holders the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee (§88(2)). If a company refuses to register a transfer of any shares or debentures, the company shall, within two months after the date on which the transfer was lodged with the company, send to the transferor and the transferee notice of the refusal and its reasons thereof (§88(3)).

4. Share Capital and Debentures

a. Prospectuses and allotments

According to the Ordinance no prospectus shall be issued in the name or on account of a company before it is incorporated (§40(1)). Moreover, a prospectus is issued to the public if it is issued to more than twenty-five persons (§40(16a)).

Return of allotments

A company shall within one month after allotting any of its shares or debentures deliver to the registrar a return of allotments, stating the number of the shares or debentures comprised in the allotments, the names, addresses and descriptions of the allottees, the issue price of the shares or debentures and the amount paid up or credited as paid up on each share or debenture (§51(1a)). In the case shares or debentures allotted as fully or partly paid up otherwise than in cash, the company shall within one month after allotting any of its shares or debentures deliver to the Registrar a copy of the contract in writing constituting the title of the allottee to the allotment together with a copy of the contract of sale, exchange or for the other consideration in respect of which that allotment was made, and a return stating the number of shares or debentures so allotted, the extent to which they are credited as paid up, and the consideration for which they have been allotted.

b. Commissions, financial assistance for the acquisition of shares and debentures, and acquisitions of shares of a company by itself

(i) Power to pay commission

It shall be lawful for a company to pay commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares or debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares or debentures of the company, only if (§52(1)):

- the payment of the commission is authorized by the articles; and
- the commission paid or agreed to be paid does not exceed ten per cent of the price at which the shares or debentures are issued or the amount or rate authorized by the articles, whichever is the less; and
- the amount or rate per centum of the commission paid or agreed to be paid is disclosed in the prospectus, or if there is no prospectus, in the registration statement in respect of the shares or debentures; and
- the number of shares or debentures which persons have for a commission agreed to underwrite firmly is disclosed in manner aforesaid.

(ii) Prohibition of financial assistance

It shall not be unlawful for a company to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription made, or to be made, by any person of or for any shares or debentures of the company, or of a company which belongs to the same group of companies as the company (§53(1)). Nothing in section 53 (1) shall be taken to prohibit:

- where the lending of money is part of the ordinary business of the company;
- the gratuitous provision by the company, in accordance with any scheme authorized by an ordinary resolution passed at a general meeting of the company;
- the making of loans to employees;
- the provision of money, guarantees, or securities by a company under an employee share subscription scheme to which it is a party.

(iii) Acquisition by a company of shares of itself or its holding company

A company may not acquire or contract any shares issued or re-issued by itself or its holding company, or any derivative interest in such shares, whether directly or by means of an agent, nominee or trustee or otherwise (§34(1)). However, nothing in section 34(1) shall prevent the transfer or surrender of shares to a company (§34(2)):

- if the shares are fully paid and no consideration is given or paid for them by the company; or
- if the shares are held in the company to which the transfer or surrender is made, and are replaced immediately by other shares allotted to the persons making the transfer or surrender, being shares having unpaid upon them not less than the amount unpaid on the shares which are transferred or surrendered; or
- if the shares are fully paid and are transferred, to the company as an agent, nominee or trustee under an arrangement in which it has no beneficial interest other than its right to remuneration and to indemnity for its expenses.

c. Payment for shares

The issue price of a share shall not be less than its nominal value (§55(1)). The issue price of shares issued to be paid for in cash shall be paid to the company within five years after they are issued (§56(1)). If shares are issued for a consideration other than cash, the shares shall not be allotted until the assets constituting consideration have been transferred to the company (§57(1)). The following is required for an allotment of shares for a consideration other than cash (§27(2)):

- the directors of the company shall have passed a resolution that the allotment shall be made;
- the resolution shall state the nature of the consideration, its value and the extent to which the shares to be issued in respect of it will be credited as paid up by virtue of it; and
- the resolution must have been approved by an ordinary resolution passed by a general meeting of the company.

Section 56 and 57 of the Ordinance shall not apply to the subscribers of the memorandum of a company (§58(1)).

d. Alteration and redemption of share capital

A company may by ordinary resolution alter the contents of its memorandum as follows, that is to say, it may (§59(1)):

- Increase its share capital by new shares of such nominal value as it thinks expedient; or
- Consolidate and divide all or any shares of its shares of larger nominal value; or
- Convert all or any of its fully paid shares into stock, and reconvert that stock into fully paid shares; or
- Subdivide its shares, or any of them, into shares of a smaller nominal value than is fixed by the memorandum, so, however, that in the subdivision the proportion between the part of the nominal value paid and the part unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived; or
- Cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, diminish the amount of its nominal capital by the amount of the shares so cancelled.

A cancellation of shares in pursuance of section 59 shall not be deemed to be reduction of share capital within the meaning of the Ordinance.

A company may issue shares which by the terms of issue will be redeemed, or at the option of the company may be redeemed, provided that (§60(1)):

- No such shares shall be redeemed except out of profits or revenue reserves of the company which would otherwise be available for the payment of dividends, or out of the proceeds of a fresh issue of shares made for the purpose of redemption;
- No such shares shall be redeemed unless they are fully paid;
- The premium (if any) payable on redemption, must be provided out of the profits or the revenue reserves of the company which would otherwise be available of the payment of dividends before the shares are redeemed;
- Where such shares are redeemed otherwise than out of the proceeds of a fresh issue of shares, there shall out of the proceeds of the profits or the revenue reserves of the company which would otherwise have been available for dividends, be transferred to capital reserve a sum equal to the nominal value of the shares which are redeemed.

If shares are issued which may be redeemed at the option of the company, the memorandum shall state the terms of the option, and in particular, the earliest date on which the company may redeem the shares and the latest date by which it must redeem them (if such latest date is provided for), and the manner by which the company will exercise its option, whether by itself selecting shares for redemption, or by drawings or ballot or otherwise (§60(2)).

The redemption of shares under this section by a company shall not be deemed to be a reduction of capital within the meaning of the Ordinance (§60(3)). If a company has redeemed or is about to redeem any shares out of the proceeds of a fresh issue of shares, it shall have the power to issue shares whose total nominal values do not exceed the total nominal value of the shares redeemed as though those shares had never been issued (§60(4)).

The section 60 (Redeemable shares) of the Ordinance does not apply to a proprietary company.

If a company has increased its share capital; or consolidated and divided its share capital into shares of larger amount than its existing shares; or converted any shares into stock; or re-converted stock into shares; or subdivided its shares or any of them; or redeemed any shares; or cancelled any shares,

otherwise than in connection with a reduction of share capital under section 63 and 65 of the Ordinance; or taken a transfer or surrender of shares under paragraphs (a), (b) or (c) of section 54(2); or re-issued shares under sections 56(5) or 61 of the Ordinance; it shall within fifteen days after so doing give notice thereof to the Registrar (§62).

e. Reduction of share capital

Subject to confirmation by the court, a company may by special resolution reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, may(§60(4)):

- extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or
- either with or without extinguish or reducing liability on any of its shares, cancel any paid up share capital which is lost or unrepresented by available assets; or
- either with or without extinguishing or reducing liability on any shares, pay off any paid-up share capital which is in excess of the wants of the company;

and may, in connection with the reduction, alter its memorandum by reducing the amount of its nominal capital and the nominal value of its shares.

On reduction of share capital a company may, but shall not be required to, reduce its nominal capital (§63(4)).

Where a company has passed a resolution for reducing share capital, it may apply to the court for an order confirming the reduction (§64(1)).

The Registrar shall register a resolution for reducing share capital which has been confirmed by the court, on delivery to him of a copy of an order confirming the reduction of capital together with a minute approved by the court showing with respect to the share capital of the company as altered by the order (§66(1)):

- the nominal capital of the company;
- the issued share capital of the company; and
- the number and nominal values of shares issued or re-issued by the company and remaining outstanding, and the number and nominal values of such shares comprised in each different class of shares of the company;
- the amount (if any) deemed to be paid up on each shares which the company may issue or re-issue and the nominal values of such shares.

On the registration of the order of the court and minute, and not before, the resolution for reducing share capital as confirmed by the order shall take effect (§66(2)). Notice of the registration shall be publishes in such manner as the court may direct (§66(3)). The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Ordinance with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute (§66(4)).

f. Debentures

If a company issues or agrees to issue debentures of the smae class to more than twenty-five persons in Seychelles, or to any one or more persons with a view to hte debentures or any of them being offered for sale to more than twenty-five persons in Seychelles, the company shall before issuing any of the debentures execute a debenture trust deed in respect of them and procure the execution of the deed by the trustees appointed thereby (§69(1)).

g. Transactions affecting shares and debentures

Shares in a company and derivative interests therein shall be deemed for all purposes to be intangible moveables, and shares may be transferred and derivative interests therein may be created accordingly subject to the following provisions of the Ordinance (§83(1)).

(i) Transfer of shares

Shares and debentures which are not represented by bearer share certificates or bearer debentures may be transferred by a written instrument of transfer signed by the transferor and naming the transferee (§84(1)). There is no requirement to set out the distinguishing numbers (is any) of the shares or debentures in the transfer (§84(2)) and no particular form of words shall be necessary to transfer shares or debentures, provided that words are used which show with reasonable certainty that the person signing the transfer intends to vest the title to shares or debentures in the transferee (§84(3)). No restrictions or condition in a debenture trust deed or in a debenture shall limit the right of any person to transfer a debenture held by him (§85(1)).

A company shall; be under a duty to certificate a transfer of shares or debentures on the presentation to it of a transfer signed by the holder thereof accompanied by delivery to it of the share certificate or debenture in respect of the shares or debentures. A certification shall consist of a statement signed on behalf of the company and written or indorsed on the transfer to the effect that the share certificate or debenture (as the case may be) has been delivered to or lodged with the company (§86(1)).

(ii) Certificates

Every company shall, within two months after the allotment of any of its shares or debentures, and within two months after the date on which a transfer of any such shares or debentures is presented to the company for registration, complete and have ready for delivery to the allottee or transferee a proper certificate or debenture for the shares or the debentures allotted or transferred to him (§87(1)).

A certificate issued by a company and signed on its behalf stating that any shares or debentures of the company held by any person shall be prima facie evidence of the title of that person to the shares or debentures (§89(1)).

(iii) Bearer Share or Debenture

A company may issue bearer share certificates or bearer debentures only if the Financial Secretary grants it permission to do so and no such permission shall be granted to a proprietary company(§90(1)).

(iv) Registration of Charges

Every hypothecation, mortgage or charge shall be registered by the Registrar in a register of charges kept by him separately for each company upon presentation to him of the instrument by which the hypothecation, mortgage or charge is created together with such copies thereof as the Registrar may require and a written application in a form prescribed by section 91(1) of the Ordinance for the registration of the hypothecation, mortgage or charge (§92(1)).

This applies to (§92(2)):

- Hypothecations, mortgages and charges upon or affecting any assets of a company, wherever situated, except rents, rent-charges and annuities granted or reserved out of land; and
- Floating charges and general floating charges created by a company.

h. Dividends and Distributions

Dividends in respect of any class of shares of a company (other than interim dividends in respect of ordinary shares) may be declared only by an ordinary resolution passed at an annual general meeting (§160(1)). However, if the company does not hold an annual general meeting, the dividends recommended by the directors in the directors' annual report shall be deemed to have been declared by an ordinary resolution passed at an annual general meeting held on the day on which the company sends copies of its annual accounts and reports to its members and debenture holders, or if all the issued and outstanding shares of the company are represented by bearer share certificates, on which it publishes an advertisement in compliance with section 141(3) of the Ordinance.

Interim dividends mean dividends declared by directors between annual general meeting of a company under a power for that purpose contained in the memorandum or articles of the company and the revenue reserves of company other than its capital reserves (§160(5)).

Dividends in respect of shares of a company and applications of profits and revenue reserves may be declared or made out only of the profits and the revenue reserves of the company computation as shown by the annual accounts of the company approved by an annual general meeting (§161(1)).

A company may declare a dividend out of the profit on the realisation of a fixed asset only if (§161(7)):

- Any loss sustained on the sale of any other fixed asset in the same or a previous financial year has been written off out of the profits or revenue reserves, or has been eliminated by a cancellation of paid up share capital or a reduction of capital reserve; and
- The net worth of the company is not less than the sum of it paid up share capital and its capital reserve.

PART B: OVERSEAS COMPANIES IN SEYCHELLES

1. Introduction

The Ordinance defines an overseas company as an incorporated or unincorporated body formed under the laws of a country other than Seychelles which has as its object the acquisition of gain by it or its members, but does not include a partnership or limited partnership some or all of whose members are liable for its debts without limit and shares in which are not transferable free from any restrictions.

2. 'Carrying on Business' in the Seychelles

An overseas company shall be considered as "carrying on business" in Seychelles if it:

- enters into two or more contracts with persons resident there, or with companies formed or incorporated there, being contracts which:
  - (i) are entered into in connection with the business or objects which the overseas company carries on or pursues ; and
  - (ii) by their express or implied terms are to be wholly or substantially performed in Seychelles, or may be so performed at the option of any party thereto; or
- appoints an agent who resides or has a place of business in Seychelles to represent the overseas company in connection with the making or performance of two or more contracts which fall within paragraph (a) of this subsection, or in connection with the transactions of the overseas company in Seychelles generally, whether the appointment is made for a fixed period of time or not; or
- owns, possesses or uses assets situate in Seychelles for the purpose of carrying on or pursuing its business or objects, if it obtains or seeks to obtain from those assets directly or indirectly, any revenue, profit or gain, whether realised in Seychelles or not; or
- issues, or is deemed under section 48 to issue, in Seychelles a prospectus offering its shares or debentures for subscription or purchase.

The Ordinance however specifies that an overseas company shall not be considered as entering into a contract, for the purposes of carrying on business, if it subscribes for or purchases shares or debentures of a company incorporated under the Ordinance or of an existing company.

3. Application Procedure

Every overseas company must, within 14 days after the establishment of a place of business in the Seychelles and/or the commencement of business in the Seychelles, must deliver to the Registrar for registration the following particulars (§310(1)):

- a certified copy of the charter, statutes, memorandum and articles of association, certificate or articles of association or incorporation of the company or the other instrument which constitutes the overseas company or contains the regulations which govern it, and, if the instrument is not written in the English language, a certified translation thereof;
- a list of the directors and secretary of the company containing the particulars mentioned in subsection (3);
- the name of the person or persons who has or have been appointed to be the managing agent or agents of the overseas company in Seychelles, and the particulars in respect of that person or each of those persons mentioned in subsection (3); and
- the names of two or more persons who have been appointed to accept on behalf of the company service of process and any notices required to be served on the overseas company, and the particulars in respect of those persons mentioned in subsection (3).

In relation to the Directors, the secretary of the company, the managing agent and the persons appointed to accept service of process on behalf of a company, particulars required are:

- with respect to each individual who is a director, managing agent in Seychelles or person appointed to accept service on behalf of the overseas company in Seychelles, his present Christian name and surname and any former Christian name or surname, his usual residential address, his nationality and his business occupation (if any) or, if he has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships;
- with respect to a company, body corporate or firm which is a director, managing agent or person appointed to accept service on behalf of the overseas company in Seychelles, its corporate or firm name, the country where it was formed or incorporated, and its registered office (if any) and its principal place of business in Seychelles (if any); and
- with respect to the secretary of the overseas company or, where there are joint secretaries, with respect to each of them, (i) in the case of an individual, his present Christian name and surname, any former Christian name and surname and his usual residential address; and (ii) in the case of a company, body corporate or firm, its corporate or firm name and its registered office (if any) and principal place of business in Seychelles (if any).

It is important to note that no new legal entity is created as a result of a continuing company becoming registered in the 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.

Overseas companies are required to have a registered office in the Seychelles and are also required to appoint authorised managing agent who will be required to do, and will be answerable for, all acts, matters and things as are required of and by the company under the Ordinance

4. Registration and Requirements

As set our above companies are required to file with the Registrar, within 14 days after the establishment of a place of business in the Seychelles and/or the commencement of business in the Seychelles, the following particulars (§310(1)):

- a certified copy of the charter, statutes, memorandum and articles of association, certificate or articles of association or incorporation of the company or the other instrument which constitutes the overseas company or contains the regulations which govern it, and, if the instrument is not written in the English language, a certified translation thereof;
- a list of the directors and secretary of the company containing the particulars mentioned in subsection (3);
- the name of the person or persons who has or have been appointed to be the managing agent or agents of the overseas company in Seychelles, and the particulars in respect of that person or each of those persons mentioned in subsection (3); and
- the names of two or more persons who have been appointed to accept on behalf of the company service of process and any notices required to be served on the overseas company, and the particulars in respect of those persons mentioned in subsection (3).

In relation to the Directors, the secretary of the company, the managing agent and the persons appointed to accept service of process on behalf of a company, particulars required are:

- with respect to each individual who is a director, managing agent in Seychelles or person appointed to accept service on behalf of the overseas company in Seychelles, his present Christian name and surname and any former Christian name or surname, his usual residential address, his nationality and

his business occupation (if any) or, if he has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships;

- with respect to a company, body corporate or firm which is a director, managing agent or person appointed to accept service on behalf of the overseas company in Seychelles, its corporate or firm name, the country where it was formed or incorporated, and its registered office (if any) and its principal place of business in Seychelles (if any); and
- with respect to the secretary of the overseas company or, where there are joint secretaries, with respect to each of them, (i) in the case of an individual, his present Christian name and surname, any former Christian name and surname and his usual residential address; and (ii) in the case of a company, body corporate or firm, its corporate or firm name and its registered office (if any) and principal place of business in Seychelles (if any).

5. Cessation of business in Seychelles

When any overseas company ceases to have a place of business or to carry on business in Seychelles, it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given the obligation of the overseas company to deliver any document to the Registrar under the Ordinance shall cease provided that if the Registrar is satisfied by any other means that the company neither has a place of business nor carries on business in Seychelles, it shall be lawful for him to make an entry to that effect against the particulars delivered by the overseas company, and thereupon the obligation of the company to deliver any document to the Registrar shall cease (§310).

PART C: Compromises, Arrangements and Amalgamations

1. Compromises and Arrangements

Where a compromise or arrangement is proposed between a company and its shareholders, debenture holders or creditors, or any class of them, the court may on the application of the company or of any person affected by the compromise or arrangement, or in the case of a company being wound up, of the liquidator, order a meeting of the shareholders, debenture holders or creditors, or of the class or classes of shareholders, debenture holders or creditors affected by the compromise or arrangement, to be called and held in such manner as the court directs (§1961)). If two or more classes of shareholders, debenture holders or creditors are affected by the compromise or arrangement, the court shall direct a separate meetings to be held for each such class, and for the purpose of this section creditors shall be deemed to belong to different classes if there is any difference between them as (§196(2)):

- any security or guarantee for the payment of their claims; or
- the order in which their respective claim would rank for payment if an order for the winding up of the company were made on the date when the meeting is to be held; or
- the date when their claims fall due for payment, that is to say, whether their claims are immediately owing and are payable not later than one year after the date of the meeting, or are contingent or not immediately owing or are payable more than one year after that date.

The court shall not approve a compromise or arrangement unless it is satisfied that:

- the notice calling the meeting or each of the meetings held under this section, or a statement accompanying it, contained an adequate explanation of the terms and effect of the compromise or arrangement and sufficiently disclosed the interests mentioned in section 197 of the Ordinance and the effect of the compromise or arrangement on them;
- the persons who voted in favour of the compromise or arrangement at the meeting or at each of the meetings directed by the court, acted in good faith in the interests of the shareholders, debenture holders or creditors for whom the meeting was held, or in good faith in the interests of the class of such persons to which they belong; and
- the compromise or arrangement is fair and reasonable, having regard to the interests of the persons affected thereby, and, if the company is insolvent, the rights of those persons if the company were wound up by the court forthwith.

2. Reconstructions and Amalgamations

Where an application is made to the court for the approval of a compromise or arrangement proposed between a company or any such other persons mentioned under paragraph 1 above, and it is shown to the court that the compromise or arrangement has been proposed for the purpose of or in connection with a scheme for the construction of any company or companies, or the amalgamation of any two or more companies, or for the acquisition of the whole of the shares or debentures, or the whole of a class of shares or debentures, of a company by another company, and that under the scheme the whole or any part of the undertaking, property, shares or debentures of any company concerned in the scheme is to be transferred to another company, the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters (§198(1)):

- the transfer to the transferee company of the whole or any part of the undertaking, property, shares or debentures, or the whole or part of the liabilities, of any transferor company;
- The allotment, transfer or appropriation by the transferee company of any shares or debentures which under the compromise or arrangement are to be allocated, transferred or appropriated by that company to or for any person;

- The continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
- In the case of a reconstruction or amalgamation, the dissolution, without winding up, of any transferor company;
- The provision to be made for any persons, who within such time and in such manner as the court directs, dissent from the compromise or arrangement;
- Such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation or acquisition of shares or debentures shall be fully and effectively carried our.

Where an order is made under this section, every company in relation to which the order is made shall cause a copy of it to be delivered to the Registrar for registration within fourteen days after the order is drawn up, and if default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine (§198(4)).

3. Compulsory Acquisition of shares

Where an offer, invitation, scheme or contract involving the transfer of the whole or part of the shares of any class of a company (in this section referred to as "the transferor company") to another company or body corporate (referred in this section as "the transferee company"), has within two months after the making of the offer in that behalf by the transferee company been accepted or assented to by the holders of not less than nine tenths in the value of the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or a company which belongs to the same group of companies as the transferee company), the transferee company may, at any time within two months after the expiration of the said two months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and when such a notice is given the transferee company shall, unless, on the application made by the dissenting shareholder within two months from the date on which the notice was given, the court, thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which, under the offer, invitation, scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company:

Provide that this subsection shall apply only if:-

(a) the price or consideration to be paid or given under the offer, invitation, scheme or contract is the same for each of the shares to which the offer, invitation, scheme or contract relates;

(b) the offer, invitation, scheme or contract does not provide for any payment of compensation for the loss of office, or as consideration for or in connection with retirement from office, for which the approval of a general meeting or of a meeting of a class of shareholders is required by sections 174, 175 or 176; and

(c) the offer, invitation, scheme or contract provides that any shareholder who wishes to do so may, instead of accepting a consideration other than cash for the transfer of his shares, require the transferee to pay him a specified price in cash.

4. Protection of minority shareholders

Any shareholder of a company who complains that the affairs of the company are being conducted in a manner which is oppressive or unfairly prejudicial to some part of the share holders (including himself) or, in a case falling within section 190(3) of the Ordinance, the Registrar, may make an application by way of petition to the court for an order under section 201 of the Ordinance.

PART D: MERGERS AND TAKEOVERS

1. Introduction

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

2. Friendly Acquisition of a Seychelles company

Friendly acquisitions are usually are 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 set up by the acquirer for the purpose.

As a result of this latter structure, the shares of the Seychelles company which is the target 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.

3. 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 94 of the Securities Act 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 defense mechanisms to takeovers.

4. Defence Mechanisms to a Hostile Bid

a. 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.

b. 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.

c. 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.

d. Shareholders' Meetings

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

e. 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 consent, and a relatively high level of approval to ensure shareholder buy-in and that the directors will not be criticized.

f. 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.

5. Takeover Bids (§198(4))

The provisions on Takeover Bids applies to an offer to acquire shares or debentures, or an invitation to make tenders of shares or debentures, which is addressed by any person, company or body corporate to more than twenty-five persons, if the purpose of the offer or invitation is the acquisition by the offerer, or by any other person on whose behalf the offer or invitation is made, of:

a) all the issued and outstanding shares or debentures of a company (other than the offerer), or all the issued and outstanding shares or debentures of a particular class of such a company; or

b) a specified fraction of such shares or debentures or of such shares or debentures of a particular class; or

c) sufficient shares of a company (other than the offerer) so as to make the offerer or the person on whose behalf the offer or invitation is made (in consequence of the acquisition and of any shares already held by the offerer or that person, or by nominees for either of them) the holding company of that company; or

d) sufficient shares of a company(other than the offerer) so as to make the offerer or the person on whose behalf the offer or invitation is made (in consequence of the acquisition and of any shares already held by the offerer or that person or by nominees for either of them, and of any voting agreements entered into by them or any of them) the right to exercise or control the exercise of not less than twenty per cent of the votes which may be cast in respect of issued and outstanding shares carrying unrestricted voting rights at general meetings of the company; or

e) any shares of a company (other than the offerer) if the offerer or the person on whose behalf the offer or the initiation is made is the company's holding company; or

f) any shares of a company (other than the offeror) if, by any of the means mentioned in paragraph (d) of this subsection, the offerer or person on whose behalf the offer or invitation is made has the right to exercise or control the exercise of not less than twenty per cent of the votes which may be cast in respect of the issued and outstanding shares carrying unrestricted voting rights at general meetings of the company.

An offer or invitation to which this section applies shall be made in writing by a document in the same form and containing the same information sent to all the persons to whom the offer or invitation is addressed and that document shall contain :-

a) a statement of the price or consideration offered for the shares or debentures whose acquisition is sought, or, in the case of an invitation, the range of prices or consideration within which tenders of shares made by the persons to whom the invitation is addressed will be considered by the offerer.

b) a statement of the most recent known price at which any of the shares or debentures which are the subject of the offer or invitation, or any shares or debentures of the class, have been sold on a stock exchange, or if none of them are quoted on a stock exchange, the most recent known price at which a sale of any of them has taken place;

c) if any of the shares or debentures which are the subject of the offer or invitation, or any shares or debentures of the same class, have been quoted on stock exchange within the preceding twelve months, a statement of the prices, or if more than six sales have been taken place within that period, at least six prices at which sales have taken place on a stock exchange during that time, including the highest price and the lowest price at which such sales have taken place;

d) if the offer or invitation provides for the issue or transfer of shares or debentures of any company or body corporate as consideration for the acquisition of the shares or debentures to which the offer or invitation relates, a statement of the prices mentioned in paragraphs (b) and (c) in respect of sales of any shares debentures of the same class (if any);

e) a statement of the price or consideration offered or agreed to be paid to each director and each substantial shareholder of the company, and to each director and each substantial shareholder of a company which belongs to the same group of companies as the company, and to each director of a company which is an associated company of any of those companies, for acquisition from him of any shares or debentures of the same class as the shares or debentures to which the offer or invitation relates;

f) a statement of the amount and the nature of any payment, consideration, compensation, benefit or advantage arranged to be given to, or conferred on, any person mentioned in paragraph (e) in connection with the offer or invitation, whether conditional on acceptance of the offer or invitation by the persons by the persons to whom it is addressed, or by some of them, or not;

g) the date when the offer or invitation will close, being not less than thirty-five days nor more than forty-two days from the date when the offer or invitation is sent to the persons to whom it is addressed;

h) if the offer or invitation is made on behalf of, or the benefit of, any person not named in it as the offerer, the name and address of that person.

Not less than three days before an offer or invitation to which this section applies, or any document which supplements such an offer or invitation, is sent to the persons to whom it is addressed, a copy of it signed by the offerer and by every person on behalf of whom it is made shall be delivered to:

a) the Registrar for registration; and

b) the company in respect of whose shares or debentures the offer or invitation is made.

A copy of any communication (whether written or oral) sent or made by the directors of the company whose shares or debentures are the subject of the offer or invitation to any persons to whom the offer or invitation is addressed in connection with the offer or invitation shall, within two days after the communication is sent or made, be delivered to the Registrar, and that copy shall be authenticated by the signatures of at least two directors.

PART E: General Information

1. Banking facilities

Presently there are 7 banks (Bank of Baroda, Banque Francaise Commerciale Ocean Indien, Barclays Bank, Development Bank of Seychelles, Habib Bank, Nouvobanq, and Seychelles Savings Bank) in operation in the Seychelles which offer a wide variety of world class services as those provided by any other European international bank.

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 details at the end of this Guide.

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

2. Accountants

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3. Winding up & Liquidation

The Ordinance provides for winding up of companies by court or voluntary winding up (§198(4)).

A company may be wound up by the court if:

- The company has by special resolution resolved that the company be wound up by the court;
- The company does not commence its business within a year from its incorporation or suspends its business for a whole year;
- The number of members is reduced below two;
- The company is unable to pay its debts;
- The company is a proprietary company and a ground exists on which the court may take an order expelling a members (other than the petitioner) from membership of the company;
- The court is of the opinion that it is just and equitable that the company should be wound up.

A company may be wound up voluntarily if:

- A general meeting of the company so resolves by special resolution; or
- A general meeting of the company so resolves by an ordinary resolution which states that the company is unable to pay its debts.

A Guide would be prepared shortly for the winding up and liquidation of companies, please refer to same for more information on winding up on liquidations of companies.

SECTION 2: INTERNATIONAL BUSINESS COMPANIES ACT, 1994

PART A: International Business Companies ("IBC")

1. Incorporation

One or more persons may, by subscribing to a Memorandum incorporate a company under the International Business Companies Act, 1994 ("IBC Act") (§3). An IBC is a company that does not (§5(1)):

- Carry on business in Seychelles;
- Own an interest in immovable property situated in Seychelles, or lease of immovable property situated in Seychelles other than 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;
- Carry on banking as defined in the Financial Institutions Act, 2004;
- Carry on business as an insurance or reinsurance company; or
- Carry on international corporate services, international trustee services or foundation services as defined in the International Corporate Service Providers Act, 2003.

An International Business Company shall not be treated as carrying on business in Seychelles by reason only that (§5(2)) –

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

A company incorporated under the IBC Act has the power, irrespective of corporate benefit, to perform all acts and engage in all activities necessary or conducive to the conduct, promotion or attainment of the objects or purposes of the company, including the power to do the following (§9(1)):

- issue registered shares or shares issued to bearer or both;
- issue the following -
  - voting shares;
  - non-voting shares;
  - shares that may have more or less than one vote per share;
  - shares that may be voted only on certain matters or only upon the occurrence of certain events;
  - shares that may be voted only when held by persons who meet specified requirements;
  - no par value shares;

- o unnumbered shares;
- issue common shares, preferred shares, or redeemable shares;
- issue shares that entitle participation only in certain assets;
- issue options, warrants or rights, or instruments of a similar nature, to acquire any securities of the company;
- issue securities that, at the option of the holder thereof or of the company or upon the happening of a specified event, are convertible into, or exchangeable for, other securities in the company or any property then owned or to be owned by the company;
- 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 company for the benefit of the company, its creditors and its members, and at the discretion of the directors, for any person having a direct or indirect interest in the company.

The name of a company may be expressed in any language but where the name is not in a national language a translation and transliteration of the name in English or French shall be given (§11(2)). The IBC Act also contain restrictions as to the name of companies such as the name of the company should not be 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 Act or so nearly resembles the name of another company as to be calculated to deceive, except where the company in existence gives its consent, or contains the words "Assurance", "Bank", "Building Society", "Chamber of Commerce", "Chartered, "Cooperative", "Imperial". "Insurance", "Municipal", "Trust", "Foundation", or a word conveying a similar meaning, or any other word that, in the opinion of the Registrar, suggests or is calculated to suggest the patronage of or any connection with Seychelles or the Government of Seychelles or with the Government of any other country or the Government of that country: Provided however that 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 (§11(3)).

A company may amend its Memorandum to change its name (§11(4)).

2. Constitution

a. Memorandum

The Memorandum shall include the following particulars (§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;
- 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 designations, powers, preferences and rights, and the qualifications, limitations or restrictions of each class and series of shares that the company is authorised to issue, unless the directors are to be authorised to fix any such designations, powers, preferences, rights, qualifications, and in that case, an express grant of such authority as may be desired to grant to the directors to fix by resolution any such designations, powers,

preferences, rights, qualifications, limitations and restrictions that have not been fixed by the Memorandum;

- a statement of the number of shares to be issued as registered shares and as shares issued to bearer, unless the directors are authorised to determine at their discretion whether shares are to be issued as registered shares or to bearer and in that case an express grant of such authority as may be desired shall be given to empower the directors to issue shares as registered shares or to bearer as they may determine by resolution of the directors;
- whether registered shares may be exchanged for shares issued to bearer and whether shares issued to bearer may be exchanged for registered shares; and
- if shares issued to bearer are authorised to be issued, the manner in which a required notice to members is to be given to the holders of shares issued to bearer.
- 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 a 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.

The memorandum, when registered, binds the company and its members (§12(4)). The Memorandum may be written in English or French language or if written in a language other than English or French shall be accompanied by a translation in the English or French language certified by the registered agent of the company of the Memorandum (§12(5)).

b. Articles

The Articles, if not submitted for registration with the Memorandum shall be submitted within 30 days following the date of incorporation (§13(1)). The Articles when registered binds the company and its members (§13(3)).

The Articles, when registered, bind the company and its members from time to time to the same extent as if each member had subscribed his name and affixed his seal thereto and as if there were contained in the Articles, on the part of himself, his heirs, executors and administrators, a covenant to observe the provisions of the Articles, subject to the IBC Act (§13(3)).

The Articles may be written in the English or French language or if written in a language other than in English or French shall be accompanied by a translation in the English or French language certified by the registered agent of the company of the Articles (§13(4)).

c. Registrar of International Business Act

The IBC Act states that for the purposes of the IBC Act the Minister shall appoint a Registrar of International Business Act (§14(1)).

The Memorandum and Articles shall, on application made to the Registrar, be registered by the Registrar in a register to be maintained by him and to be known as the Register of International Business Companies (§14(2)).

Upon registration of the Memorandum, the Registrar shall issue a certificate of incorporation under his hand certifying that the company is incorporated (§14(3)). Where the Registrar issues a certificate of incorporation of a company, the company is, from the date shown on the certificate of incorporation, a body corporate under the name contained in the Memorandum subject to any limitations imposed by the Memorandum and to the provisions of the IBC Act (§15). A certificate of incorporation of a company incorporated under the IBC Act issued by the Registrar shall be prima facie evidence of compliance with all requirements of the IBC Act in respect of incorporation (§16).

d. Amendments to the Memorandum and Articles

Subject to any limitation in its Memorandum or Articles, a company incorporated under the IBC Act 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 (§17(1)).) 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)). A company that amends its Memorandum or Articles shall submit an extract of the resolution effecting the amendment certified by the registered agent of the company to the Registrar within 14 days after the resolution is passed, and the Registrar shall retain and register the extract, provided the company may at any time thereafter file with the Registrar a restated Memorandum or Articles as so amended(§17(3)). An amendment to the Memorandum or Articles has effect from the time the amendment is registered by the Registrar (§17(4)).

3. Management and Administration

a. Registered Office and Agent

A company incorporated under the IBC Act shall at all times have a registered agent in Seychelles who is licensed to provide international corporate services under the International Corporate Service Providers Act, 2003(§38(1)). The directors of the IBC may change the address of the registered office of the company, and same must be notified to the Registrar (§38(2)).

An IBC must at all times have a registered agent in Seychelles (§39(1)). All applications and documents required to be submitted to the Registrar shall be made through the registered agent (§39(2)). Any change in registered agent must be notified to the Registrar not later than 7 days after the change, notifying the name and address of the new registered agent and the change shall take effect on the date the Registrar receives the notice of change (§39(3)).

b. Directors, Officers, Agents and Liquidators

Subject to any limitations in its Memorandum or Articles, the business and affairs of a company incorporated under the IBC Act shall be managed by a board of directors that consists of one or more persons who may be individuals or companies (§41). The first directors are elected by the subscribers to the Memorandum and thereafter the directors shall be elected by the members for such term as the members may determine and where permitted by the Memorandum or Articles of a company incorporated under the IBC Act, the directors may also elect directors for such term as the directors may determine (§42(1)).

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

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

Subject to any limitations in the Memorandum or Articles, a director may by a written instrument appoint an alternate who need not be a director. The alternate for a director appointed shall be entitled to attend meetings in the absence of the director who appointed him and to vote or consent in the place of the director (§51).

4. Capital and Dividends

Subject to any limitations in the Memorandum or Articles, each share in a company incorporated under the IBC Act shall be issued for money or other valuable consideration (§19). Subject to any limitations in the Memorandum or Articles, shares may be issued for such amount as may be determined by the directors, except in the case of shares with par value the amount shall not be less than the par value (§20(1)).

A company may issue fractions of shares with the corresponding fractional liabilities, limitations, preferences, privileges, qualifications, restrictions, rights and other attributes of a share of the same class or series of shares unless restricted by the Memorandum or Articles of Association (§21).

Subject to any limitations in its Memorandum or Articles, a company incorporated under the IBC Act may, by a resolution of directors, amend its Memorandum to increase or reduce its authorised capital, and in connection therewith, the company may (§24(1)):

- increase or reduce the number of shares which the company may issue;
- increase or reduce the par value of any of its shares; or
- effect any combination under the above two paragraphs

An IBC shall in writing inform the Registrar of any increase or decrease of this authorised capital within 30 days after the resolution (§24(3)).

An IBC may amend its Memorandum to divide the shares, including issued shares, of a class or series into a larger number of shares of the same class or series; or to combine the shares, including issued shares of a class or series into a smaller number of shares of the same class or series (§25(1)). Where shares have been divided or combined, the aggregate par value of the new shares shall be equal to the aggregate par value of the original shares (§25(2)).

The IBC shall state in its Articles whether or not certificates in respect of its shares shall be issued (§27(1)).

The IBC shall cause to be kept one or more registers to be known as Share Registers containing (§28(1)):

- the names and addresses of the persons who hold registered shares in the company;
- 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;
- in the case of shares issued to bearer -
    - o the names and addresses of the persons who hold bearer shares in the company;
    - o the number of each class and series of bearer shares held by each holder thereof;

- o the date on which the name of each holder of bearer shares was entered in the Share Register;
- o the date on which any holder of bearer shares ceased to be a member.
- with respect to each certificate for shares issued to bearer –
  - o the identifying number of the certificate;
  - o the number of each class or series of shares issued to bearer specified therein, and
  - o the date of issue of the certificate;

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

The share certificate shall be prima facie evidence of any matters directed or authorised by the IBC Act to be contained therein (§28(4)).

Subject to any limitations in the Memorandum or Articles, registered shares of a company incorporated under the IBC Act may be transferred by a written instrument of transfer signed by the transferor and containing, save in the case of bearer shares, the name and address of the transferee (§30(1)). In the absence of a written instrument of transfer the directors may accept such evidence of transfer as they consider appropriate.

A share issued to bearer shall be transferable by delivery of the certificate relating to the share and notification of transfer (§30(5)). Notification of a transfer of a bearer share in an IBC shall be effected by delivery to the company's registered agent in Seychelles of a written notice signed by the transferor stating the name and address of the transferor and the transferee, and the date on which the certificate relating to the share was delivered to the transferee (§30(5)).
Subject to any limitations in its Memorandum or Articles, a company incorporated under the IBC Act may purchase, redeem or otherwise acquire and hold its own shares but only out of surplus or in exchange for newly issued shares of equal value. However, no purchase, redemption or other acquisition permitted shall be made unless the directors determine that immediately after the purchase, redemption or other acquisition:

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

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

Moreover a determination by the directors is not required where shares are purchased, redeemed or otherwise acquired:

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

Subject to any limitations in the Memorandum or Articles, shares that a company purchases, redeems or otherwise acquires may be cancelled or held as treasury shares unless the shares are purchased, redeemed or otherwise acquired out of capital pursuant to section 35 of the IBC Act, in which case they shall be cancelled; and upon the cancellation of a share, the amount included as capital of the company with respect to that share shall be deducted from the capital of the company – (§33)

Subject to any limitations in its Memorandum or Articles a company incorporated under the IBC Act may by a resolution of directors, declare and pay dividends in money, shares or other property (§36). However, dividends shall only be declared and paid if the creditors 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 realizable value of the assets of the company will not be less than the sum of its total liabilities, other than deferred taxes, as shown in the books of account, and its issued and outstanding share capital,

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

PART B: Protection of Members and Creditors

Subject to any limitations in the Memorandum or Articles, the directors of a company incorporated under the IBC Act may convene meetings of the members of the company at such times and in such manner and places within or outside Seychelles as the directors consider necessary and desirable (§58). Subject to a provision in the Memorandum or Articles for a lesser percentage, upon the written request of members holding more than 50 percent of the votes of the outstanding voting shares in the company, the directors shall convene a meeting of members. Additionally subject to any limitations in the Memorandum or Articles, a member shall be deemed to be present at a meeting of members if –

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

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

PART C: Mergers and Consolidation

1. Merger or consolidation of two or more companies

Two or more companies incorporated under the IBC Act may merge or consolidate in accordance with the following provisions (§74)). The directors of each constituent company that proposes to participate in a merger or consolidation shall approve a written plan of merger or consolidation containing, as the case requires -

(a) the name of each constituent company and the name of the surviving company or the consolidated company;

(b) in respect of each constituent company -

(i) the designation and number of outstanding shares of each class and series of shares specifying each such class and series entitled to vote on the merger or consolidation, and

(ii) a specification of each such class and series, if any, entitled to vote as a class or series;

(c) the terms and conditions of the proposed merger or consolidation, including the manner and basis of converting shares in each constituent company into shares, debt obligations or other securities in the surviving company or consolidated company, or money or other property, or a combination thereof;

(d) in respect of a merger, a statement of any amendment to the Memorandum or Articles of the surviving company to be brought about by the merger; and

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

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

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

(i) the plan of merger or consolidation shall be authorised by a resolution of members and the outstanding shares of a class or series of shares are entitled to vote on the merger or consolidation as a class or series if the Memorandum or Articles so provide or if the plan of merger or consolidation contains any provisions that, if contained in a proposed amendment to the Memorandum or Articles, would entitle the class or series to vote on the proposed amendment as a class or series;

(ii) if a meeting of members is to be held, notice of the meeting, accompanied by a copy of the plan of merger or consolidation, shall be given to each member, whether or not entitled to vote on the merger or consolidation;

(iii) if it is proposed to obtain the written consent of members, a copy of the plan of merger or consolidation shall be given to each member, whether or not entitled to consent to the plan of merger or consolidation;

(iv) after approval of the plan of merger or consolidation by the directors and members of each constituent company, articles of merger or consolidation shall be executed by each company and shall contain –

(i) the plan of merger or consolidation and, in the case of consolidation, any statement required to be included in the Memorandum and Articles of a company incorporated under the IBC Act,

(ii) the date on which the Memorandum and Articles of each constituent company were registered by the Registrar;

(iii) the manner in which the merger or consolidation was authorised with respect to each constituent company;

(v) the articles of merger or consolidation shall be submitted to the Registrar who shall retain and register them in the Register;

(vi) 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.

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

2. Merger of Parent company with one or more subsidiary companies

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

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

(a) the name of each constituent company and the name of the surviving company;

(b) in respect of each constituent company -

(i) the designation and number of outstanding shares of each class and series of shares, and

(ii) the number of shares of each class and series of shares in each subsidiary company owned by the parent company; and

(c) the terms and conditions of the proposed merger, including manner and basis of converting shares in each company to be merged into shares, debt obligations or other securities in the surviving company, or money or other property, or a combination thereof.

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

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

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

(a) the plan of merger;

(b) the date on which the Memorandum and Articles of each constituent company were registered by the Registrar;

(c) if the parent company does not own all the shares in each subsidiary company to be merged, the date on which a copy of the plan of merger or an outline thereof was made available to the members of each subsidiary company.

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 the IBC Act in respect of the merger.

3. General Provision

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 (§76)).

4. Merger of one or more IBC with one or more companies incorporated under the laws of jurisdictions outside Seychelles

One or more companies incorporated under the IBC Act may merge or consolidate with one or more companies incorporated under the laws of jurisdictions outside Seychelles in accordance with the following provisions, including where one of the constituent companies is a parent company and the other constituent companies are subsidiary companies, if the merger or consolidation is permitted by the laws of the jurisdiction in which the companies incorporated outside Seychelles are incorporated (§77)).

The following provisions apply in respect of the above merger or consolidation under this section –

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

(b) if the surviving company or the consolidated company is to be incorporated under the laws of a jurisdiction outside Seychelles, it shall submit to the Registrar –

    (i) an agreement that a service of process may be effected on it in Seychelles in respect of proceedings for the enforcement of any claim, debt, liability or obligation of a constituent company incorporated under the IBC Act or in respect of proceedings for the enforcement of the rights of a dissenting member of a constituent company incorporated under the IBC Act against a surviving company or the consolidated company,

    (ii) an irrevocable appointment of the Registrar as its agent to accept service or process in proceedings referred to in subparagraph (i),

    (iii) an agreement that it will promptly pay to the dissenting members of a constituent company incorporated under the IBC Act the amount, if any, to which they are entitled under the IBC Act with respect to the rights of dissenting members, and

    (iv) a certificate of merger or consolidation issued by the appropriate authority of the foreign jurisdiction where it is incorporated; or if no certificate of merger is issued by the appropriate authority of the foreign jurisdiction, then, such evidence of the merger or consolidation as the Registrar considers acceptable.

The effect under this section of a merger or consolidation shall be the same as in the case of a merger or consolidation under section 74 of the IBC Act if the surviving company or the consolidated company is incorporated under the IBC Act, but if the surviving company or the consolidated company is incorporated under the laws of a jurisdiction outside Seychelles, the effect of the merger or consolidation shall be the same

as in the case of a merger or consolidation under section 74 of the IBC Act except insofar as the laws of the other jurisdiction otherwise provide.

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

PART D: Continuation

1. Continuation in Seychelles

A company incorporated under the Companies Act, 1972 or the written laws of a jurisdiction outside Seychelles may, if it will satisfy the requirements prescribed for an International Business Company by section 5 of the IBC Act, continue as a company incorporated under the IBC Act as follows (§82)):

(a) articles of continuation, written in the English or French language or, if written in a language other than the English or French language, accompanied by a translation in the English or French language certifed by the registered agent of the company of the articles of continuation, shall be approved –
 (i) by a majority of the directors or the other person who is charged with exercising the powers of the company, or
 (ii) in such other manner as may be established by the company for exercising the powers of the company;

(b) the articles of continuation shall contain –
 (i) the name of the company and the name under which it is being continued,
 (ii) the written laws or the jurisdiction under which it is incorporated,
 (iii) the date on which it was incorporated,
 (iv) the information required to be included in a Memorandum under section 12(1), and
 (v) the amendments to its Memorandum and Articles, or their equivalent, that are to be effective upon the registration of the articles of continuation;

(c) the articles of continuation, accompanied by a copy of the Memorandum and Articles of the company, or their equivalent, written in the English or French language or, if written in a language other than the English or French language, accompanied by a translation in the English or French language certified by the resident agent of the company of the Memorandum and Articles or their equivalent and, evidence satisfactory to the Registrar that the company, is in good standing, shall be submitted to the Registrar who shall retain and register them in the register; and

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

A company incorporated under the laws of a jurisdiction outside Seychelles shall be 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 following documents will have to be submitted (§83(1)):

(a) articles of continuation, accompanied by a copy of its Memorandum and Articles, or their equivalent, written in the English or French language, or if written in a language other than the English or French language accompanied by a translation in the English or French language certified by a director of the company of the Memorandum, Articles, or their equivalent; and

(b) a written authorization designating one or more persons who may give notice to the Registrar, by telefax, telex, telegram, cable or by registered mail, that the articles of continuation should become effective.

A 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).

2. Continuation outside Seychelles

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

A company incorporated under the Act that continues 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 the company 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 company has complied with those laws.

Where a company incorporated under the IBC Act continues under the laws of a jurisdiction outside Seychelles –

(a) the Registrar shall strike off the name of the company from the Register and publish a notice of the striking off in the Gazette;

(b) the company continues to be liable for all of its debts, liabilities and obligations that existed prior to its continuation as a company under the laws of the jurisdiction outside Seychelles;

(c) no conviction, judgement, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing against the company or against any member, director, officer or agent thereof, is released or impaired by its continuation as a company under the laws of the jurisdiction outside Seychelles; and

(d) no proceedings, whether civil or criminal, pending by or against the company, or against any member, director, officer or agent thereof, are abated or discontinued by its continuation as a company under the laws of the jurisdiction outside Seychelles, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent thereof, as the case may be.

PART E: General Information

1. Registers and Inspection

A company incorporated under the IBC Act shall keep such accounts and records as the directors consider necessary or desirable in order to reflect the financial position of the company (§65(1)).

A company incorporated under the IBC Act shall keep (§65(2)) –

(a) minutes of all meetings of –
  - (i) directors,
  - (ii) members,
  - (iii) committees of directors,
  - (iv) committees of officers,
  - (v) committees of members;

(b) copies of all resolutions consented to by –
  - (i) directors,
  - (ii) members,
  - (iii) committees of directors,
  - (iv) committees of officers,
  - (v) committees of members; and

(c) a register of all its directors and officers.

The books, register, records and minutes required by this section shall be kept at the registered office of the company or such other place as the directors determine and the company shall inform the Registrar of the address of the other place.

A member of a company incorporated under the IBC Act may, in person or by attorney and in furtherance of a proper purpose, request in writing specifying the purposes, to inspect during normal business hours the Share Register of the company or the books, records, minutes and consents kept by the company and to make copies or extracts therefrom (§66). A proper purpose is a purpose reasonably related to the member's interest as a member. If a request is submitted by an attorney for a member, the request shall be accompanied by a power of attorney authorizing the attorney to act for the member. If the company, by a resolution of directors, determines that it is not in the best interest of the company or of any other member of the company to comply with a request, the company may refuse the request. Upon refusal by the company of a request under subsection (1), the member may before the expiration of a period of 90 days of his receiving notice of the refusal, apply to the court for an order to allow the inspection.

2. Fees

a. There shall be paid to the Registrar the following fees (Schedule part 1):

(i) $100 upon the registration by the Registrar of a company incorporated under the IBC Act the authorised capital of which is $5,000 or less;
(ii) $300 upon the registration by the Registrar of a company incorporated under the IBC Act the authorised capital of which does not exceed $50,000 and all the shares of which have a par value;
(iii) $1,000 upon the registration by the Registrar of a company incorporated under the IBC Act the authorised capital of which exceeds $50,000;
(iv) $50 upon the registration by the Registrar of an amendment to the Memorandum or Articles of a company incorporated under the IBC Act;
(v) $500 upon the registration by the Registrar of articles of merger or consolidation, but $700 in the case of articles of merger or consolidation that also constitute the Memorandum of a company the authorised capital of which, exceeds $50,000 or that amend the Memorandum of a surviving company to increase the authorised capital from $50,000 or less to more than $50,000;
(vi) $500 upon the registration by the Registrar of articles of arrangement, but $700 in the case of articles of arrangement that also constitute the Memorandum of a company the authorised capital of which exceeds $50,000 or that amend the Memorandum of a company to increase the authorised capital from $50,000 or less to more than $50,000;
(i) $100 upon the submission to the Registrar of articles of continuation for a company the authorised capital of which does not exceed $5,000
(ii) $300 upon the submission to the Registrar of articles of continuation for a company the authorised capital of which does not exceed $50,000 and shares of which have a par value;
(iii) $350 upon the submission to the Registrar of articles of continuation for a company the authorised capital of which does not exceed $50,000 and shares of which have no par value;
(vii) $1,000 upon the submission to the Registrar of articles of continuation for a company the authorised capital of which exceeds $50,000;
(viii) $100 upon the registration by the Registrar of articles of dissolution;
(ix) $100 upon the registration by the Registrar of resolution rescinding articles of dissolution;
(x) $25 upon the issue by the Registrar of a certificate of incorporation, merger, consolidation, arrangement, continuation, dissolution or good standing other than at the time of the registration of company incorporated under the IBC Act or at the time of the merger, consolidation, arrangement or dissolution, as the case may be to such company or to its

registered agent or shareholder and $100 upon the issue of any such document to any other person.

(xi) $15 upon the issue by the Registrar of a copy or extract, whether or not certified, of a document or part of a document to a company incorporated under the Act or to its registered agent or to its shareholders, other than a certificate of incorporation, merger, consolidation, arrangement, continuation, dissolution or good standing and $100 upon the issue of such copy or extract to any other person;";

(xii) $10 for an inspection of the documents kept by the Registrar pursuant to the IBC Act by a company incorporated under the Act or by its registered agent or by its hareholders and $100 for an inspection of such documents by any other person;";

(xiii) upon the restoration by the Registrar of a company incorporated under the IBC Act, the name of which was struck off the Register–

(i) $300 if the restoration is applied for within 6 months immediately following the striking of the name off the Register; or

(ii) $600 if the restoration is applied for more than 6 months immediately following the striking of the name off the Register;

(xiv) $10 for an inspection of each entry in the Register of International Business Companies by a company incorporated under the Act or by its registered agents or by its shareholders and $100 for an inspection of such an entry by any other person.

(xv) $500 upon submission to the Registrar of document referred to in section 83(1);

(xvi) $100 upon resubmission to the Registrar of the documents referred to in section 83(7);

(xvii) $350 upon the registration by the Registrar of a company incorporated under this IBC Act if the authorised capital of the company does not exceed $50,000 and some or all of its shares have no par value, or

(xviii) $275 upon the registration by the Registrar of a notice of increase or decrease of authorised capital of a company incorporated under the IBC Act, but $600 in the case of a notice of increase of authorised capital from $50,000 or less to more than $50,000.

b. A company the name of which is on the Register on 31st December in any year shall, before the date of the relevant anniversary of its incorporation under the Act pay to the Registrar an annual licence fee as follows –

(i) $100 if its authorised capital does not exceed $5,000;

(ii) $300 if its authorised capital does not exceed $50,000 and its shares have a par value;

(iii) $1,000 if its authorised capital exceeds $50,000; and

(iv) $350 if its authorised capital does not exceed $50,000 and some or all of its shares have no par value, or

c. If a company fails to pay the amount due as the licence fee under paragraph 2 by the date specified therein, the licence fee increases by 10 per cent of that amount.

d. If a company fails to pay the amount due as an increased licence fee under paragraph 3 90 days after the date when it becomes due, then, the licence fee increases by 50 per cent of the licence fee specified in paragraph 2 above.

3. Winding Up, Dissolution & Striking Off

Please refer to Guide on Winding up and Dissolution.

SECTION C: COMPANIES (SPECIAL LICENCES) ACT, 2003

PART A: SPECIAL LICENCE COMPANIES ("CSL")

1. Incorporation

Prior to the incorporation of a CSL in accordance with Companies (Special Licences) Act, 2003 ("CSL Act"), an application shall be made in the prescribed form to the Registrar of Companies through the Authority ("SIBA") requesting that the company be incorporated subject to the approval of the Authority (§5(1)).

The application shall be accompanied by the following documents (§5(2)):

(a) a certificate signed by a legal practitioner practising in Seychelles to the effect that the memorandum and articles of the company comply with the Companies Act, 1972 read with the CSL Act;
(b) names and addresses of shareholders and, where any such shareholder is a nominee, the name and address of the person on whose behalf the shares are held by the nominee;
(c) the memorandum and articles of association duly signed and dated;
(d) a written declaration containing –
  (i) the names and addresses of the directors;
  (ii) the name and address of the secretary;
  (iii) the address of the registered office of the company;
  (iv) a description of each business that the company proposes to engage in;
  (e) the name reservation certificate, if any.

Where approval is granted, the certificate of such approval and the documents referred to in (c), (d) and (e) in triplicate together with the written consent of the directors and the secretary to act as such shall be forwarded by the authority to the Registrar of Companies (§6).

The Registrar of Companies may retain and register the memorandum and articles of a company forwarded under the above paragraph if he is satisfied that they comply with the provisions of the Companies Act, 1972 (§7(1)).

On the registration of the memorandum and articles of a company under the above paragraph, the Registrar of Companies shall issue a certificate under his hand certifying that the company is incorporated under the Companies Act, 1972 and stating the date of the incorporation (§7(2)).

The Authority shall, subject to such regulations as may be made in that behalf, issue a Special Licence to enable the company to carry on its business (§9).

2. Management and Administration

The business and affairs of a relevant company shall be managed by a board of directors consisting of at least two individuals (§12).

A CSL shall at all times have a secretary and such secretary shall be resident of Seychelles or a body corporate incorporated in Seychelles (§13(1)).

3. Share Capital

A CSL shall not issue bearer shares and may issue shares to persons who are nominees of other persons provided that the names and addresses of those other persons are recorded in the register of shares (§11).

PART B: CONTINUATION

1. Continuation of an IBC or a foreign company (§16)

An international business company incorporated under the International Business Companies Act or a company incorporated under the laws of a jurisdiction outside Seychelles may continue as a CSL.

Approval must be sought from the Authority for the continuation of the company. Where the authority grants approval, the certificate of approval together with the articles of continuation, memorandum and articles of the company shall be forwarded to the Registrar of Companies who may retain and register the memorandum and articles in the register if he is satisfied that they comply with the provisions of the CSL Act.

Upon registration of the articles of continuation, the Registrar of Companies shall issue a certificate of continuation. A certificate of continuation issued by the registrar shall be prima facie evidence of compliance with all the requirements of the CSL Act in respect of continuation.

3. Continuation outside Seychelles (§16)

Subject to any limitations in its memorandum or articles a relevant company may, by a resolution of directors or by a resolution of members, continue as a company incorporated under the laws of a jurisdiction outside Seychelles.

Where a CSL continues under the laws of a jurisdiction outside Seychelles:

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

PART C: GENERAL INFORMATION

1. Taxation

The assessable income of the business of a CSL shall be deemed to be derived from a source in Seychelles whether derived directly or indirectly and whether derived in or out of the Seychelles (§21).

The rate of the tax payable by a relevant company in respect of its taxable income is 1.5% (Schedule 2).

The rates of withholding tax under Part IV of the Business Tax Act are as follows:-

(a) in respect of dividend paid to a resident – Nil
(b) in respect of dividend paid to a non-resident – Nil

(c) in respect of interest paid to a resident – Nil
(d) in respect of interest paid to a non-resident – Nil
(e) in respect of royalty paid to a non-resident for the use of, or the right to use, any copyright, patent, design or model or plan or trademark – Nil
(f) in respect of royalty paid to a non-resident in respect of the supply of scientific, technical, industrial or commercial knowledge, information or services – Nil
(g) in respect of royalty paid to a non-resident for the use of, or the right to use, any secret formula, process or know-how whether the know-how is technical. Managerial or otherwise and any other intellectual property or right – Nil
(h) in respect of royalty paid to a non-resident for the use of, or the right to use, any industrial, commercial or scientific equipment – Nil.

2. Fees

These fees shall be paid to the authority (Schedule 3):

(a) An application for incorporation US$200
(b) Annual licence fee US$1000
(c) Annual return filing fee US$200

For more specific advice on Companies in Seychelles, please contact:

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