



Guide to
Insolvency
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 winding up, dissolution and striking off of different types of companies, incorporated under the Companies Ordinance, 1972, the International Business Act, 1994. It is to be noted that the provisions of the Company Ordinance in relation to Winding Up, Dissolution and Striking Off applies to those companies incorporated under the Company Special Licence Act, 2003.

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

1. Companies Ordinance, 1972
 - Preliminary
 - Winding up by Court
 - Voluntary Winding Up
 - Provision applicable to every mode of winding up
2. International Business Act, 1994
 - Winding up and Dissolution
 - Striking Off

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 insolvency, 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
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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 (Refer to Guide to Companies in Seychelles).

The Companies Ordinance, 1972 and the International Business Act 1994 contains specific requirements as to the winding up, dissolution and striking off of companies. The Company Special Licence Act, 2003 does not contain specific provisions as to the winding up, dissolution and striking off of companies. Therefore, companies incorporated under the CSL Act should follow the provisions of the Companies Ordinance, 1972 with respect to the winding up, dissolution and striking off of these companies.

The Guide briefly sets out the requirement as the winding up, dissolution and striking off of Companies.

SECTION 1: COMPANIES ORDINANCE, 1972 (“Ordinance”)

PART A: PRELIMINARY

1. Modes of winding up

The winding up of a company may be either by the court or voluntarily (§202(1)).

2. Liability of contributories

In the event of a company being wound up, every present and past member and shareholder shall be liable to contribute to the assets of the company to an amount sufficient for the payment of its debts and liabilities, and the costs, charges, and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the following qualifications (203):

- A past member or shareholder shall not be liable to contribute if he has ceased to be a member or shareholder for one year or upwards before the commencement of the winding-up;
- A past member or shareholder shall not be liable to contribute unless it appears to the court that the existing members and shareholders are unable to satisfy the contributions required to be made by them in pursuance of the Ordinance;
- No contribution shall be required from any member or shareholder exceeding the amount, if any unpaid on the shares in respect of which he is liable as a present or past member or shareholder;
- Nothing in the ordinance shall invalidate any provision contained in any contract or guarantee whereby the liability of an individual member or shareholder of the company by the terms of the contract or guarantee is restricted to less than the amount which he would be liable to contribute if the company were wound up, or is increased beyond that amount, and if any such contract is entered into or if any such guarantee is given, this section shall take effect as though it had not been entered into or given;
- A sum due to any member or shareholder of a company, in his character of a member or shareholder, by way of dividends, profits, capital, redemption premiums or otherwise, shall not be deemed to be a debt of the company payable to that member or shareholder in a case of a competition between himself and any other creditor or claimant, of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

The term “contributory” means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory (§204(1)).

PART B: WINDING UP BY THE COURT

1. Cases in which a company may be wound up by the court

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 make an order expelling a member (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 shall be deemed to be unable to pay its debts

2. Petitioners for winding up

An application to the court for the winding up of a company shall be by petition presented by:

- The company; or
- Any creditor or creditors; or
- Any shareholder; or
- Any contributory; or
- Any debenture holder; or
- Any persons belonging to two or more of the foregoing categories together; or
- The Registrar under section 190(3) of the Ordinance.

An application for the winding up of a company on the ground that “the company is a proprietary company and a ground exists on which the court may make an order expelling a member (other than the petitioner) from membership of the company” may only be made by a shareholder of the company.

3. Commencement of winding up

Where, before the presentation of a petition for the winding up of a company by the court, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the court thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken (§209(1)). In any other case, the winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up (§209(2)).

At any time after the presentation of a winding up petition and before a winding up order has been made, the company, or the petitioner or any of the petitioners, or any creditor, shareholder, contributory or debenture holder, may, if any action or proceeding is pending against the company, apply to the court to restrain further proceedings in the action or proceeding, and the court may stay or restrain the proceedings accordingly on such terms as it thinks fit (§210(1)). When a winding up order has been made, or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court may impose (§210(2)).

4. Official Receiver

The term “Official Receiver” means such person or persons as the Chief Justice shall from time to time appoint to be an Official Receiver for the purposes of the Ordinance (§214).

a. Statement of affairs

Where the court has made a winding up order or appointed a provisional liquidator, there shall unless the court thinks fit to order otherwise and so orders, be made out and submitted to the Official receiver a statement as to the affairs of the company in the prescribed form, showing the particulars of its assets, debts, and liabilities, the names, residences, and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, the privileges to which they are respectively entitled, and such further or other information as may be prescribed or as the Official Receiver may require (§215(1)). The statement shall be submitted and verified by a declaration (§215(2)). The statement shall be submitted within fourteen days from the relevant date,

or within such extended time as the Official Receiver or the court may for special reasons appoint (§215(3)). Any person making or concurring in making the statement and declaration shall be allowed, and shall be paid by the Official Receiver or provisional liquidator (as the case may be) out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and declaration as the Official Receiver may consider reasonable, subject to an appeal to the court (§215(4)).

b. Reports by Official Receiver

In a case where a winding up order is made, the Official Receiver shall, as soon as practicable after receipt of the statement of affairs, or, in a case where the court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the court (§216(1)):

- As to the amount of capital issued, subscribed, and paid up of the company, and the estimated amount of its assets and liabilities; and
- If the company has failed, as to the causes of the failure; and
- Whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

The Official Receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed, and whether in his opinion any fraud or breach of duty has been committed by any person in its promotion or formation, or by any director or other officer of the company or by any other person in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.

5. Liquidators

The court may appoint a liquidator provisionally at any time after the presentation of winding up petition (§211(1)). Either the Official Receiver or any other fit person may be appointed.

Where a liquidator is provisionally appointed, the court may restrict his powers in such a manner as it thinks fit by the order appointing him or any subsequent order. Subject to any restriction imposed, the provisional liquidator shall have the same powers and be subject to the same liabilities as a liquidator appointed after the making of a winding up order (§211).

In a winding up by the court, any disposition of the assets of the company and any transfer of shares, or alteration in the status of the members or shareholders of the company, made after the commencement of the winding up, shall unless the court otherwise orders, be void (§212(1)).

a. Appointment of Liquidator

For the purposes of conducting the proceedings in winding up a company and performing such duties as specified in the Ordinance and such additional duties as the court shall impose, the court may appoint a liquidator or liquidators (§217(1)).

If before making a winding up order of a company the court has appointed a provisional liquidator, he shall upon the making of the order continue to be liquidator of the company unless and until the court otherwise orders, and any restrictions on his powers imposed by the court when he was the provisional liquidator shall cease to be operative.

b. Official receiver as liquidator

On a winding order being made the Official receiver shall by virtue of his office become the provisional liquidator, and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such (§218(a)). Moreover, unless the court otherwise orders, the Official Receiver shall summon separate meetings of creditors and shareholders of the company for the purpose of determining whether or not an application is to be made to the court for appointing a liquidator in the place of the Official Receiver (§218(b)). Additionally, on the winding order being made the court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and shareholders for the purpose of determining whether or not an application is to be made to court for the appointment of a liquidator in the place of the Official Receiver, the court shall decide the difference and make such order thereon as the court may think fit (§218(c)). In a case where a liquidator is not appointed by the court, the Official Receiver shall be the liquidator of the company (§218(d)). The Official Receiver shall by virtue of his office be the liquidator during any vacancy (§218(e)). A liquidator shall be described, where a person other than the Official Receiver is liquidator, by the style of “the liquidator” and, where the “Official Receiver” is liquidator, by the style of the “the Official Receiver and Liquidator”, of the particular company in respect of which he is appointed, and not by his individual name (§218(f)).

c. Provisions as to liquidator other than the Official Receiver

In the winding up of a company by the court a person other than the Official Receiver is appointed liquidator, that person (§219(1)):

- Shall not be capable of acting as liquidator until he has notified his appointment to the Registrar of Companies and given security for the proper performance of his duties in the prescribed manner to the satisfaction of the Registrar of Company of the court;
- Shall give the Official Receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling the Official Receiver to perform his duties under the ordinance.

These provisions (subpart c – Provisions as to liquidator other than the Official Receiver) shall not apply to a provisional liquidator before a winding up order is made unless he continues to be the liquidator of the company after the order is made (§219(2)).

d. General provisions as to liquidators

A liquidator appointed by the court may resign or, on cause shown, be removed by the court (§220(1)). Moreover, where a person other than the Official Receiver is appointed liquidator, he shall receive such salary or remuneration, by way of percentage or otherwise, as the court may direct, and, if more such persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the court directs (§220(2)). A vacancy in the office of a liquidator appointed by the court shall be filled by the court (§220(3)). If more than one liquidator is appointed by the court, the court shall declare whether any act by the Ordinance required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed (§220(4)).

e. Custody and vesting of company’s assets

Where a winding up order has been made or where a provisional liquidator has been appointed, the liquidator, or the provisional liquidator, as the case may be, shall take into his custody, or under his control, all the assets to which the company is or appears to be entitled (§221(1)). Where a company is being wound up by the court, the court may on the application of the liquidator by order direct

that all or any part of the assets of whatsoever description belonging to the company or held by trustees, agents or other persons on its behalf shall vest in the liquidator by his official name, and thereupon the assets to which the order relates shall vest accordingly, and the liquidator may, after giving such indemnity, if any, as the court may direct, bring or defend in his official name any action or other legal proceeding which relates to those assets or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its assets (§221(2)).

f. Powers of liquidator

The liquidator in a winding up by court shall have the power with the sanction either of the court or of the committee of inspection:

- i. To bring or defend any action or other legal proceeding in the name and on behalf of the company;
- ii. To carry on the business of the company, so far as may be necessary for the beneficial winding up thereof;
- iii. To appoint a legal adviser or agent to assist him in the performance of his duties;
- iv. To pay any creditors in full if the assets of the company remaining in his hands will suffice to pay in full the debts and liabilities of the company which rank for payment before, or equally with, the debts or claims of the first mentioned creditors;
- v. To make any compromise or arrangement with creditors or debenture holders or persons claiming to be creditors or debenture holders, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;
- vi. To compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debts, liability or claim, and give a complete discharge in respect thereof.

The liquidator in a winding up by the court shall have power:

- i. To sell the assets of the company by public auction or private contract, with the power to transfer the whole thereof to any person or company, or to sell the same in parcels;
- ii. To do all acts and to execute, in the name and on behalf of the company, all deeds, instruments, receipts, and other documents, and for that purpose to have instruments authenticated by notarial act;
- iii. To prove, rank, and claim in the bankruptcy, insolvency, or winding up of any contributory, for any amount owing to the company, and to receive dividends in the bankruptcy, insolvency, or winding up in respect of that amount;
- iv. To draw, accept, make, and indorse any bill of exchange, cheque or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill, cheque or note had been drawn, accepted, made, or indorsed by or on behalf of the company in the course of its business;
- v. To raise on the security of the assets of the company any money required for the purposes of the winding up;
- vi. To take out in his official name letters of administration or representation to the estate of any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate or its assets which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for

- the purpose of enabling the liquidator to take out the letters of administration or representation or to recover the money, be deemed to be due to the liquidator himself.
- vii. To appoint an agent to do any business which the liquidator is unable to do himself;
 - viii. To do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

g. Books to be kept by liquidator

Every liquidator of a company which is being wound up by the court shall keep proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor, shareholder, contributory or debenture holder may, subject to the control of the court, personally or by his agent inspect any such books and make copies thereof or extract there from (§224).

h. Payments by liquidator into bank

Every liquidator of a company which is being wound up by the court shall pay the money received by him into such bank as the court may direct (§225(1)) and he shall not pay any sums received by him as liquidator into his private banking account (225(3)). If any liquidator at any time retains for more than ten days a sum exceeding five thousand rupees, or such other amount as the court in any particular case authorises him to retain, then, unless he explains the retention to the satisfaction of the court, he shall pay interest on the amount so retained in excess at the rate of twenty per cent per annum, and shall be liable to disallowance of all or such part of his remuneration as the court may think just, and to be removed from his office by the court, and shall be liable to pay any expenses occasioned by reason of his default (§225(2)).

i. Audit of liquidator's accounts

Every liquidator of a company which is being wound up by the court shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, and send to the Official Receiver an account of his receipts and payments as liquidator (§226(1)).

j. Supervision of liquidators

The Official Receiver shall take cognisance of the conduct of liquidators of companies which are being wound up by the court, and if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by this Ordinance or regulations made thereunder with respect to the performance of his duties, or if any complaint is made to the Official Receiver by any creditor, shareholder, contributory or debenture holder in regard thereto, the Official Receiver shall inquire into the matter and take such action thereon as he may think expedient (§227(1)). The Official Receiver may at any time require any liquidator of a company which is being wound up by the court to answer any inquiry in relation to any winding up in which he is engaged, and may, if the Official Receiver thinks fit, apply to the court to examine him or any other person on oath concerning the winding up (§227(2)). The Official Receiver may also direct an investigation to be made of the books and vouchers of the liquidator (§227(3)).

k. Committees of inspection

When a winding up order has been made by the court, it shall be the business of the separate meetings of creditors and shareholders summoned for the purpose of determining whether or not an application should be made to the court for appointing a liquidator other than of the Official receiver, to determine further whether or not an application is to be made to the court for the appointment of

a committee of inspection to act with the liquidator and who are to be members of the committee if appointed (§229(1)).

The committee of inspection shall consist of creditors, debenture holders, shareholders and contributories (other than shareholders) of the company, or persons holding general powers of attorney from such persons, in such proportions as may be agreed on by the meetings of creditors and shareholders, or as, in the case of a difference, may be determined by the court, and members of the committee appointed as creditors, debenture holders, shareholders, or contributories (other than shareholders) shall as members of the committee represent the interests of all the persons who belong to the category by virtue of which they were respectively appointed (§230(1)).

Where in the case of a winding up there is no committee of inspection, the Registrar of Companies may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Ordinance authorised or required to be done or given by the committee (§231).

1. Meetings of shareholders and creditors

The provisions of general meetings under the Ordinance for companies that are not in the process of winding up applies to those companies that are in the process of winding up however (§232(1)):

- No restrictions or limitations imposed by the memorandum or articles on the voting rights of any shareholders shall apply, and for this purpose a provision in the terms of issue of shares of an existing company that the holders of such shares shall not be entitled to vote or shall be subject to a restriction or limitation on their right to vote, at general meetings shall be treated as though it were a restriction on their rights to vote imposed by the memorandum of the company; and
- A contributory (other than a shareholder) who has paid the whole amount or the balance of the amount payable in respect of a share in the winding up shall be deemed to be a shareholder in place of the person who is the holder of the share.

At meetings of creditors of a company which is wound up by the court (§233(1)):

- Each creditor shall be entitled to vote in proportion to the amount of his debt or claim admitted by the liquidator or by the court;
- Unless the Ordinance otherwise provides, a resolution shall be considered to have been passed and to be binding on all creditors of the company if more votes are cast in favour of the resolution than are cast in favour of the resolution than are cast against it;
- Debenture holders shall be deemed to be creditors of the company for the amount of principal, redemption premiums, interest and costs payable to each of them respectively, and the trustees for debenture holders (if any) shall be creditors only for the amount of any remuneration and of any costs and expenses due from the company to them personally;
- A quorum shall consist of creditors entitled in the aggregate to at least one-tenth of the debts and claims against the company which have been admitted by the liquidator, but no quorum shall be required at an adjourned meeting; and
- A resolution passed at an adjourned meeting of creditors shall for all purposes be created as being passed on the date when it was in fact passed, and shall not be deemed to have been passed on any earlier date.

6. General powers of the court in case of winding up by the court

a. Stay of winding up

At any time after making an order for winding up a company, the court may, on the application either of the liquidator or the official Receiver or any creditor, shareholder, contributory or debenture holder of the company, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit (§233(1)). Before making an order the court may require that the Official Receiver or the Registrar to furnish to the court a report with respect to any facts or matters which are in his opinion relevant to the application (§233(2)).

b. Settlement of list of contributories

As soon as after making a winding up order in respect of a company, the court shall settle a list of contributories from the company's register of members, with power to rectify the register of members where rectification is necessary, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities, provided that, where it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories (§234(1)). In settling the list of contributories, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of, or liable for the debts of others (§234(2)). The court may settle a list of shareholders of the company in any case where it dispenses with the settlement of a list of contributories (§234(3)).

c. Delivery of property to liquidator

The court may, at any time after making a winding up order in respect of a company, require any member, shareholder or contributory, or any director, trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the court directs, to the liquidator any assets, or books and papers in his hands to which the company is prima facie entitled (§235).

d. Examination of directors, officers etc.

The court may, at any time after the appointment of a provisional liquidator or the making of a winding up order, summon before it any director or officer or the company or person known or suspected to have in his possession any assets of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs, or assets of the company (§236(1)).

e. Order against contributory to pay amount owed to company; power of court to make calls

The court may at any time after making a winding up order, make an order on any contributory for the time being on the list of contributories to pay, in manner directed by the order, any money due to the company from him or from the estate of the person whom he represents, exclusive of any money payable by him or the estate by virtue of any call in pursuance of the Ordinance (§237(1)). The court may, at any time after making a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

f. Miscellaneous powers of court

The court may fix a time or times within which creditors of the company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved (§238(1)). The court may, in the event of the assets being insufficient to satisfy the debts and liabilities of the company, make an order as to the payment out of its assets of the costs, charges, and expenses incurred in the winding up in such order of priority as the court thinks just (§238(2)). The court shall adjust the rights of the contributories among themselves, and distribute any surplus among the shareholders of the company or the persons claiming under them in accordance with their respective rights (§238(3)). The court may, at any time after making a winding up order, make such order for inspection of the books and papers of the company by creditors, shareholders, contributories or debenture holders as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors, shareholders, contributories and debenture holders accordingly, but not further or otherwise (§238(3)).

g. Order for payment into a bank

The court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into a bank appointed by the court to the account of the liquidator instead of the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator (§239(1)).

h. Special Manager

Where in any winding up proceedings the Official Receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the assets or business of the company, or the interests of the creditors, shareholders, contributories or debenture holders, require the appointment of special manager of the assets or business of the company other than himself, apply to the court, and the court may on such application, appoint a special manager of the said assets or business to act during such time as the court may direct, with such powers, including any of the powers of a receiver, as may be entrusted to him by the court (§240(1)). The special manager shall give such security and account in such manner or as the court directs (§240(2)). The special manager shall receive such remuneration as may be fixed by the court (§240(3)).

i. Public examination of directors

The court may direct that any director, officer, creditor, shareholder, contributory or debenture holder shall attend before the court on a day appointed by the court for that purpose and be publicly examined as to the promotion or formation, and for that purpose may employ a barrister or an attorney (§241(1)).

j. Arrest of absconders

The court, at any time either before or after making a winding up order, on proof of probable cause for believing that a contributory, director or officer is about to quit Seychelles, or otherwise to abscond, or to remove or conceal any of his assets for the purpose of evading payment of calls or discharging his liabilities to the company, or of avoiding examination respecting the affairs of the company, may cause the contributory, director or officer to be arrested, and his books and papers and moveable property to be seized, and him and them to be safely kept until such time as the court may order (§242).

k. Powers of court cumulative

Any powers by the Ordinance conferred on the court shall be in addition to, and not in restriction of, any existing powers of instituting proceedings against any contributory or debtor, for the recovery of any call or other sums (§243).

l. Delegation of court's powers to liquidator (§244)

Provision may be made by regulations for enabling or requiring all or any of the powers and duties conferred and imposed on the court by the Ordinance in respect of the following matters relating to a company which is being wound up by the court, namely:

- The holding and conducting of meetings to ascertain the wishes of creditors and shareholders of the company;
- The settling of lists of contributories and the rectifying of the register of members where required, and the collecting and applying of the assets of the company;
- The paying, delivery, surrender or transfer of money, assets, books or papers to the liquidator;
- The making of calls;
- The fixing of a time within which debts and claims must be proved;

to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court: Provided that the liquidator shall not, without the special leave of the court, rectify the register of members, and shall not make any call without either the special leave of the court or the authorisation of the committee of inspection.

m. Dissolution of company

When the affairs of a company have been completely wound up, the court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly (§245(1)). A copy of the order shall within fourteen days from the date thereof be delivered to the Registrar by the liquidator, and the Registrar shall enter in his records a minute of the dissolution of the company (§245(2)). If the liquidator makes default in complying with the requirements of this section, he shall be liable to a fine of one hundred rupees for every day during which he is in default (§245(3)).

PART C: VOLUNTARY WINDING UP

1. Resolutions for and commencement of voluntary winding up

a. Winding up resolutions

A company shall be wound up voluntarily if (§247(1)):

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

b. Advertisement of winding up resolution

When a company has passed a winding up resolution, it shall, within seven days after the passing of the resolution, give notice of the resolution by advertisement in the Gazette (§248(1)).

c. Notification to Registrar of winding up resolution

Within seven days after a winding up resolution is passed, the company shall notify the Registrar of the passing of the resolution and of the time and date on which it was passed (§249(1)).

d. Commencement of voluntary winding up

A voluntary winding up shall be deemed to commence at the time of the passing of the winding up resolution (§250).

2. Consequences of Voluntary winding up

In case of a voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof: Provided that the company shall, notwithstanding anything to the contrary in its memorandum or articles, continue to be a body corporate until it is dissolved under the provisions of this Ordinance (§251). Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding up, shall be void (§252).

3. Declaration of solvency

Where it is proposed to wind up a company voluntarily, the directors of the company or , in the case of a company having more than two directors, the majority of the directors make a declaration signed by them to the effect that they have made full inquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within such period, not exceeding twelve months from the commencement of the winding up, as may be specified in the declaration (§253(1)). The declaration must be made within five weeks immediately preceding the date of the passing of the winding up resolution and is delivered to the Registrar for registration before that date; and it must embody a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration, not being a date earlier than three months before the date of the declaration; and the winding up resolution must be passed as a special resolution (§253(2)).

4. Provisions applicable to a members' voluntary winding up

a. Appointment and powers of liquidator

The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them (§255(1)). On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof (§255(2)). If more than one liquidator is appointed, the resolution appointing them shall state whether they shall exercise their powers jointly or separately and individually (§255(3)).

b. Vacancy in office of liquidator

If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy (§256(1)). For that purpose a general meeting may be convened by any shareholder or contributory or, if there were more liquidators than one, by any of the continuing liquidators (§256(2)).

c. Conversion of a member's voluntary winding up into a creditor's voluntary winding up

If, in the case of a member's voluntary winding up, the liquidator has reasonable cause to believe that the company will not be able to pay its debts in full within the period stated in the declaration made under section 3 above (Part C), he shall forthwith summon a meeting of the creditors of the company, and shall lay before the meeting a statement of the assets and liabilities of the company (§257(1)). Unless the meeting of creditors resolves that the winding up shall continue as a members' voluntary winding up, the winding up shall, as from the date when the liquidator calls the meeting of creditors, become a creditors' voluntary winding up (§257(2)).

d. Annual Meeting of members

In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year (§258(1)).

e. Final meeting of members and dissolution of company

As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing the winding up has been conducted and the assets of the company have been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account and giving any necessary explanation thereof (§259(1)). The meeting shall be called a general meeting of the company for the purpose of laying before it the account and giving any necessary explanation thereof (§259(2)). Within one week after the meeting, the liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator shall be liable to a default fine: Provided that, if a quorum is not present at the meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was represent thereat, and upon such a return being made the provisions of this subsection as to the making of the return shall be deemed to have been complied with (§259(1)). The Registrar on receiving the account and either of the returns hereinbefore mentioned shall forthwith register them, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved: Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit (§259(4)).

5. Provisions applicable to a creditor's voluntary winding up

a. First meeting of creditors

The company shall cause a meeting of the creditors to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the winding up resolution is to be proposed, and shall cause notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company (§261(1)).

b. Appointment of liquidator and committee of inspection

The creditors and the shareholders of the company at their respective meetings may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and of the creditors and the shareholders of the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person (if any) nominated by the shareholder shall be liquidator (§262(1)).

c. Remuneration of liquidator and cessation of directors' powers

The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators (§263(1)). On the appointment of a liquidator, all the powers of the director shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof (§263(2)).

d. Vacancy in office of liquidator

If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by, or by the direction of, the court, the creditors may fill the vacancy (§264).

e. Annual meetings of members and creditors

In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of creditors at the end of the first year from the commencement of the winding up and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year (§265(1)).

f. Final Meeting and dissolution

As soon as the affairs of the company are fully wound up, the liquidator shall make up an account, showing how the winding up has been conducted and the assets of the company have been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors, for the purpose of laying the account before those meetings and giving any necessary explanation thereof (§266(1)).

6. Provisions applicable to every voluntary winding up

a. Application of company's assets

All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims (§269(1)).

b. Powers of the liquidator

The liquidator may (§270(1)):

- In the case of a members' voluntary winding up, with the sanction of a special resolution of the company, and, in the case of a creditors' voluntary winding up, with the sanction of either the court or the committee of inspection, exercise any of the powers stated in Part B Paragraph 5 (f) (iv), (v) and (vi) – provisions applicable to a liquidator in a winding up by the court;
- Exercise any of the other powers exercisable by a liquidator in a winding up by the court;

- Exercise the power of the court in a winding up by the court of settling a list of contributories, and the list of contributories shall be prima facie evidence of the liability of the persons named therein to be contributories;
- Exercise the power of the court in a winding up by the court of making calls;
- Summon general meetings of the company for any person he may think fit.

The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves (§270(2)).

c. Power of court to appoint a liquidator

If from any cause whatever there is no liquidator acting, the court may appoint a liquidator (§271(1)). Moreover, the court may, on cause shown, remove a liquidator and appoint another liquidator (§271(2)).

d. Notification of liquidator's appointment

The liquidator shall, within seven days after his appointment, deliver to the registrar for registration a notice of his appointment in the prescribed form (§272(1)).

e. Order that company in voluntary liquidation shall be wound up by the court

The voluntary winding up of a company shall not affect the power of the court to order that the company shall be wound up by the court on the application of any person who may present a petition under section 207 of the ordinance (§274).

f. Provisions as to general meetings of a company in voluntary liquidation

In connection with general meetings of a company which is being wound up voluntarily (§275):

- No restriction or limitations imposed by the memorandum or articles on the voting rights of any shareholders shall apply at such meetings, and for this purpose a provision in the terms of issue of shares of an existing company that the holders of such shares of an existing company that the holders of such shares shall not be entitled to vote, or shall be subject to a restriction or limitation on their right to vote, at general meetings shall be treated as though it were a restriction on their right to vote imposed by the memorandum of the company; and
- A contributory (other than a shareholder) who has paid the whole amount or the balance of the amount payable in respect of a share in the winding up shall be deemed to be a shareholder in place of the person who is the holder of the share.

PART D: PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP

1. Proof and ranking of claims

In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of the Ordinance of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims which are subject to any contingency or sound only in damages, or which for some other reason do not bear a certain value (§276).

In the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors (§277(1)). In the winding up of a company it shall be assumed that the company is insolvent until it appears, by the reduction of assets of the company to the possession or control of the liquidator, and the recovery by the liquidator of debts and liabilities recoverable by the company, that there will be sufficient to satisfy all debts and claims against the company in full (§277(2)).

In a winding up there shall be paid in priority to all other debts or claims against the company (§278):

- Income tax and other taxes
- Wages and salaries

Any transfer, mortgage, charge, hypothecation or pledge over any assets, or any delivery of goods, or payment, or proceedings or execution or other act relating to assets of a company created, made or done within six months before the commencement of the winding up of a company at a time when it cannot pay its debts as they fall due, with a view to giving any creditor of or surety for the company a preference over its other creditors, shall in the event of the company being wound up be deemed a fraudulent preference of its creditors and be invalid accordingly (§279(1)). Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents (§279(2)).

Where any part of the assets of a company which is being wound up consists of interests in land burdened with onerous servitudes or obligations, of shares or stock in companies, of unprofitable contracts, or of any other assets which are unsaleable, or not readily saleable, by reason of the person entitled thereto being liable to perform any onerous act, or to pay any sum of money, the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the assets, or exercised any act of ownership in relation thereto, may with the leave of the court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the court, disclaim the assets: provided that where any such assets have not come to the knowledge of the liquidator within one month after the commencement of the winding up (§281(1)). The power of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof, or such extended period as may be allowed by the court.

Where a creditor has issued execution against any assets of a company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution against the liquidator in the winding up of the company, unless he has completed the execution before the commencement of the winding up: provided that (§282(1)) –

- Where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall for the purposes of the foregoing provision be substituted for the date of the commencement of the winding up; and

- A person who purchases in good faith any assets of a company sold to him under a warrant, writ or order of the court for the execution of any judgement or decree shall in all cases acquire a good title to them against the liquidator.

Where any goods of a company are taken in execution, and, before the completion of the execution, notice is served on the registrar that a provisional liquidator has been appointed or that a winding up order has been made or that a resolution for voluntary winding up has been passed, the registrar shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge (§283).

2. Offences antecedent to or in course of winding up

If any person, being a past or present director or officer of a company which at the time of the commission of the alleged offence is being wound up, whether by the court or voluntarily, or is being subsequently ordered to be wound up by the court, or subsequently passes a resolution for voluntarily winding up (§286(1)):-

- Does not to the best of his knowledge and belief fully and truly disclose to the liquidator all the assets of the company, and how and to whom, and for what consideration, and when, the company disposed of any such assets, otherwise than in the course of carrying on the business of the company in the ordinary way; or
- Does not deliver up to the liquidator, or as he directs, such of the assets of the company as are in his custody or under his control, and which he is required by law to deliver up; or
- Does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control, and which belongs to the company and which he is required by law to deliver up;
- Within twelve months next before the commencement of the winding up or at any time thereafter conceals any of the assets of the company to the value of one thousand rupees or upwards or conceals any debt due to or from the company
- Within twelve months next before the commencement of the winding up or at any time thereafter removes any part of the assets of the company to the value of one thousand rupees or upwards; or
- Makes any material omission in any statement relating to the affairs of the company; or
- Knowing and believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the liquidator thereof;
- After the commencement of the winding up prevents the production of any book or paper affecting or relating to the property of affairs of the company; or
- Within twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification, of any book or paper affecting or relating to the property or affairs of the company; or
- within twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of, any book or paper affecting or relating to the property or affairs of the company; or
- within twelve months next before the commencement of the winding up or at anytime thereafter, fraudulently parts with, alters, or makes any omission in, or concurs in the fraudulent parting with, altering, or making any omission in, any document affecting or relating to the assets or affairs of the company; or
- after the commencement of the winding up or at any meeting of the creditors of the company within twelve months next before the commencement of the winding up, attempts to count for any assets of the company by fictitious losses or expenses; or;

- (m) has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any assets for or on behalf of the company on credit which the company does not subsequently pay for; or
- (n) within twelve months next before the commencement of the winding up or at any time thereafter, sells, transfers, hypothecates, mortgages, charges, pledges, or otherwise disposes of any assets of the company which have been obtained on credit and have not been paid for, unless such sale, transfer, hypothecation, mortgage, charge, pawning, pledge, or disposition is made in the course of carrying on the business of the company in the ordinary way; or
- (o) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up;

He shall be guilty of an offence and shall, in the case of the offences mentioned respectively in paragraphs (m), (n) and (o) of this subsection, be liable to imprisonment for not more than two years. Provided that it shall be a good defence to a charge under any of paragraphs (a), (b), (c), (d), (f), (m), (n) and (o), if the accused proves that he had no intent to defraud, and to a charge under any of paragraphs (h), (i) and (j), if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

Where any person sells, transfers, hypothecates, mortgages, charges, pawns, pledges or otherwise disposes of any assets in circumstances which amount to an offence under paragraph (n) above, and another person purchases, accepts or takes a hypothecation, mortgage, charge or pledge or other disposition of the assets knowing that thereby an offence is committed by the first mentioned person, that other person be guilty of an offence punishable by imprisonment for not more than five years (§286(2)).

If any director or officer, shareholder or contributory of any company being wound up destroys, mutilates, alters, or falsifies any books, papers, or securities, or makes or concurs in the making of any false or fraudulent entry in any register, book of account, or document belonging to the company with intent to defraud or deceive any person, he shall be guilty of an offence punishable by imprisonment for not more than two years (§287).

If any person, being at the time of the commission of the alleged offence a director or officer of a company which is subsequently ordered to be wound up by the court, or subsequently passes a resolution for voluntary winding up (§288(1)) –

- Has by false pretences or by means of any other fraud induced any person to give credit to the company;
- With intent to defraud creditors of the company, has made or caused to be made any gift, transfer, hypothecation, mortgage or pledge of, charge on, or has caused or connived at the levying of any execution against, any of the assets of the company;
- With intent to defraud creditors of the company, has concealed or removed any part of the assets of the company since, or within two months before, the date of any unsatisfied judgment or order for payment or order for payment of money obtained against the company; he shall be guilty of an offence punishable by imprisonment for not more than five years.

If, where the a company is wound up, it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, every director or officer of the company who was knowingly a party to or connived at the default of the company shall, unless he shows that he acted honestly or that in the circumstances in which the business of the company was carried on the default was excusable, be guilty of an offence punishable by imprisonment for not more than two years (§289(1)).

If in the course of the winding up of a company it appears that any business of the company has been carried on:

- With intent to defraud creditors of the company or the creditors of any other person or for any fraudulent purpose; or
- With reckless disregard of the company's obligation to pay its debts and liabilities; or
- With reckless disregard of the insufficiency of the company's assets to satisfy its debts and liabilities;

the court, on the application of the Official Receiver or the liquidator or any creditor, shareholder, contributory or debenture holder of the company, may, if it thinks proper so to do, declare that any of the directors or officers, whether past or present, of the company, or any other persons who were knowingly parties to carrying on of the business in manner aforesaid, shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court may direct, and may order the amount of such debts or other liabilities to be paid to the persons to whom they are respectively owed or to the liquidator for the benefit of the creditors of the company generally (§290(1)).

If it appears to the court in the course of winding up a company that any past or present director or officer, or any member, shareholder, creditor or debenture holder of the company has been guilty of any offence in relation to the company for which he is criminally liable, the court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator to refer the matter to the Attorney-General (§291(1)).

If it appears to the liquidator in the course of any winding up that any past or present director or officer, or any member, shareholder, creditor or debenture holder of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the Attorney-General and shall furnish him with such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as the Attorney-General may require (§291(2)).

3. Supplementary provisions as to winding up

A body corporate shall not be qualified for appointment as liquidator of a company, whether in a winding up by the court or in a voluntary winding up, and (§293) –

- Any appointment made in contravention of this provision shall be void; and
- Any body corporate which acts as liquidator of a company shall be liable to a fine not exceeding ten thousand rupees.

If any liquidator who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the court may, on an application made to the court by any shareholder, contributory, creditor or debenture holder of the company or by the Registrar of Companies, make an order directing the liquidator to make the default within such time as may be specified in the order (§294(1)). Any such order may provide that all costs of and incidental to the application shall be borne by the liquidator (§294(2)). Any such order may provide that all costs of and incidental to the application shall be borne by the liquidator (§294(2)). Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a liquidator in respect of any such default as aforesaid (§294(3)).

Where company is being wound up, whether by the court or voluntarily, every invoice, order for goods and business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up (§295(1)).

In the case of a winding up by the court of a company, or of a creditors' voluntary winding up of a company (§298)–

- Every instrument of transfer or disposition and every hypothecation, mortgage or charge of any assets of the company which, after the execution thereof, is or remains part of the assets of the company; and
- Every power of attorney, proxy, appointment, writ, order, certificate, affidavit, bond, obligation or other instrument or writing relating solely to the assets of any company which is being so wound up, or to any proceeding under any such winding up;

shall be exempt from duties chargeable under any agreement relating to stamp duties and from all amounts which would otherwise be payable in respect thereof under the Mortgage and Registration Ordinance, and they shall be registered thereunder (where necessary) without any charge being made.

Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between the shareholders and contributories of the company, be prima facie evidence of the truth of all matters purporting to be therein recorded.

When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows, that is to say (§298(1)):

- In the case of a winding up by the court in such way as the court directs;
- In the case of a members' voluntary winding up, in such way as a general meeting of the company by ordinary resolution directs, and, in the case of a creditors' voluntary winding up, in such a way as the committee of inspection or, if there is no such committee, as a meeting of the creditors of the company by resolution, may direct.

After five years from the dissolution of the company no responsibility shall rest on the company, the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein (§298(2)).

If, where a company is being wound up, the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the Registrar a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation (§299(1)). Any person stating himself in writing to be a shareholder, contributory, creditor or debenture holder of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom (§299(2)).

If it appears either from any statement sent to the Registrar that a liquidator has in his possession or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipts, the liquidator shall forthwith pay the said money into court, and shall be entitled to the prescribed certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof (§300(1)). Any person claiming to be entitled to any money paid into court in pursuance of this section may apply to the court for payment

thereof, and the court may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due (§300(2)).

4. Supplementary powers of the court

The court may, as to all matters relating to the winding up of a company, have regard to the wishes of the shareholders, contributories, creditors and debenture holders of the company, as proved to it by any sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of shareholders, contributories, creditors, and debenture holders to be called, held, and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court (§301).

Any affidavit required to be sworn under the provisions or for the purposes of the winding up of the company must be sworn in Seychelles or elsewhere before any court, judge or person lawfully authorised to take and receive affidavits or sworn declarations (§302(1)).

5. Disposal of assets of companies in accordance with the memorandum

If by the memorandum of association of a company it is provided that upon the winding up of the company any assets remaining after the debts and liabilities of the company and the costs and expenses of the winding up have been discharged shall be applied otherwise than by being distributed among the shareholders and contributories of the company, such assets shall be applied accordingly, and the Attorney-General may take proceedings for the application of such assets in the manner directed by the memorandum of the company, or for a purpose similar to the application directed by the memorandum if that application cannot be carried out (§303).

6. Provisions as to dissolution

a. Avoidance of dissolution

Where a company has been dissolved, after being wound up by the court or voluntarily, the court may at any time within twelve years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, rescinding the dissolution, and upon a copy of the order being delivered to the Registrar the company shall, subject to any directions by the court, be deemed to have continued in existence as if it had not been dissolved (§304(1)). It shall be the duty of the person on whose application the order was made, within fourteen days after the making of the order, or such further time as the court may allow, to deliver to the Registrar for registration a copy of the order, and if that person fails so to do, he shall be liable to a fine of one hundred rupees for every day during which the default continues (§304(2)).

b. Power of Registrar to strike name of defunct company off the register

Where the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he may send to the company by post a letter inquiring whether the company is carrying on business or is in operation (§305(1)).

If the Registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Gazette with a view to striking the name of the company off the register (§305(2)).

If the Registrar either receives an answer to the effect that the company is not carrying on business or is not in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Gazette, and send to the company by post, notice that at the examination of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved (§305(3)).

If, in any case where a company is being wound up, the registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months, the Registrar shall publish in the Gazette and send to the company or the liquidator (if any) a like notice as provided above.

c. Property of dissolved company to be bona vacantia

Where a company is dissolved, all assets whatsoever vested in or held on behalf of or for the benefit of the company immediately before its dissolution (including leasehold interests, but not including assets held by the company on behalf of or for the benefit of any other person) shall, subject and without prejudice to any order which may at any time be made by the court under the above two paragraphs be deemed to be bona vacantia, and shall accordingly belong to the Crown in right of Seychelles, and shall vest and may be dealt with in the same manner as other bona vacantia accruing to the Crown as aforesaid (§306).

d. Disclaimer by Crown

Where any assets vest in the Crown under the last preceding section, the Crown's title thereto under that section may be disclaimed by a notice by the Governor (§307(1)).

SECTION 2: INTERNATIONAL BUSINESS ACT (“IBC Act”)

PART A: WINDING UP AND DISSOLUTION

1. Winding up by resolution of directors

A company incorporated under the IBC Act shall commence winding up and dissolution by a resolution of directors upon the expiration of such time as may be prescribed in its Memorandum or Articles for its existence (§87).

2. Voluntary winding up and dissolution

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

Subject to any limitations in its Memorandum or Articles, a company incorporated under the IBC Act that has previously issued shares may voluntarily commence to wind up and dissolve by a resolution of members (§88(2)).

3. Powers of directors in winding up and dissolution

Upon the commencement of a winding-up and the directors may (§89) -

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

4. Duties of liquidators

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

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

5. Powers of liquidators

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

- (a) to take custody of the assets of the company and, in connection therewith, to register any property of the company in the name of the liquidator or that of his nominee;

- (b) to sell any assets of the company at public auction or by private sale without any notice;
- (c) to collect the debts and assets due or belonging to the company;
- (d) to borrow money from any person for any purpose that will facilitate the winding-up and dissolution of the company and to pledge or mortgage any property of the company as security for any such borrowing;
- (e) to negotiate, compromise and settle any claim, debt, liability or obligation of the company;
- (f) to prosecute and defend, in the name of the company or in the name of the liquidator or otherwise, any action or other legal proceedings;
- (g) to retain counsel and attorneys, accountants and other advisers and appoint agents;
- (h) to carry on the business of the company, if the liquidator has received authorization to do so in the plan of liquidation or by a resolution of directors permitted under section 89, as the liquidator may determine to be necessary or to be in the best interest of the creditors or members of the company;
- (i) to execute any contract, agreement or other instrument in the name of the company or in the name of the liquidator; and
- (j) to make any distribution in money or in other property or partly in each, and if in other property, to allot the property, or an undivided interest therein, in equal or unequal proportions.

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

6. Plans of dissolution and articles of dissolution

The directors of a company required under point 1 or proposing under point 2 to wind up and dissolve the company shall approve a plan of dissolution containing (§92)-

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

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

- (a) the plan of dissolution shall be authorised by a resolution of members, and the holders of the outstanding shares of a class or series of shares are entitled to vote on the plan of dissolution as a class or series only if the Memorandum or Articles so provide;
- (b) if a meeting of members is to be held, notice of the meeting, accompanied by a copy of the plan of dissolution shall be given to each member, whether or not entitled to vote on the plan of dissolution; and
- (c) if it is proposed to obtain the written consent of members, a copy of the plan of dissolution shall be given to each member, whether or not entitled to consent to the plan of dissolution.

After approval of the plan of dissolution by the directors, and if required, by the members, articles of dissolution shall be executed by the company and shall contain-

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

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

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

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

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

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

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

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

Immediately following the issue by the Registrar of a certificate of dissolution, the liquidator shall cause to be published a notice that the company has been dissolved and has been struck off the Register.

7. Rescinding articles of association

In the case of a winding-up and dissolution permitted under point 2 (that is section 88 of the IBC Act), a company may, prior to submitting to the Registrar a notice, rescind the articles of dissolution by (§93)-

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

A company shall submit a copy of the resolution to the Registrar who shall retain and register it in the Register.

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

8. Winding-up and dissolution of company unable to pay its claims etc.

Where (§94) -

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

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

9. Winding-up and dissolution by the court

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

10. Receivers and managers

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

PART B: STRIKING OFF

1. Striking-off

- (a) Where the Registrar has reasonable cause to believe that a company incorporated under this Act (§97) no longer satisfies the requirements prescribed for an International Business Company by section 5 of the IBC Act; or conducts business affairs which are, or are likely to be, contrary to the laws of Seychelles or detrimental to the reputation of Seychelles, the Registrar shall serve on the company a notice that the name of the company may be struck off the Register.
 1. If the Registrar does not receive a reply within 30 days immediately following the date of service of the notice, he shall serve on the company another notice that the name of the company be struck off the Register if a reply to the notice is not received within 30 days immediately following the date thereof and that a notice of the contemplated striking-off will be published in the Gazette.
 2. If the Registrar-
 - (b) receives from the company a notice stating that the company no longer satisfies the requirements prescribed for an International Business Company by section 5 of the

IBC Act , or that the company conducts such business affairs as are likely to be, contrary to the laws of Seychelles or detrimental to the reputation of Seychelles;

(c) does not receive a reply to a notice served on the company,

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

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

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

5. If a company fails to pay the increased licence fee stated in the notice referred to in in the above paragraph by the 31st December referred to in that paragraph, the Registrar shall strike the name of the company off the Register from the 1st January next ensuing.

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

2. Restoration to Register

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

If upon an application the above paragraph the court is satisfied that-

- (a) at the time the name of the company was struck off the Register, the company did satisfy the requirements prescribed for an International Business Company by section 5 of the IBC Act; and
- (b) it would be fair and reasonable for the name of the company to be restored to the Register, the court may order the name of the company to be restored to the Register upon payment to the Registrar of all fees payable by virtue of section 102 of the IBC Act and all licence fees payable by virtue of section 103 of the IBC Act without any increase for late payment, and upon restoration of the name of the company to the Register, the name of the company is deemed never to have been struck off the Register.

If the name of a company has been struck off the Register under point 6 of the above section the company, or a creditor, member or liquidator thereof, may within 3 years immediately following the date of the

striking-off, apply to the Registrar to have the name of the company restored to the Register, and upon payment to the Registrar of-

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

the Registrar shall restore the name of the company to the Register and upon restoration of the name of the company to the Register, the name of the company shall be deemed never to have been struck off the Register.

For purposes of this Part, the appointment of an official liquidator under section 100 of the IBC Act operates as an order to restore the name of the company to the Register.

3. Effect of striking-off

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

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

Additionally, where the name of the company has been struck off the Register, the company, or a director, member, liquidator or receiver thereof, may-

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

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

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

4. Appointment of official liquidator

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

5. Dissolution of company struck off

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

The duties of an official liquidator in respect of a company in liquidation pursuant to the above paragraph are limited to –

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

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

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

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

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

No liability attaches to an official liquidator-

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

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

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