



## Guide to Special Licence Companies in Seychelles

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## PREFACE

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

This Guide is divided into four parts:

1. Seychelles Companies
2. Compromises with Creditors, Arrangements, Amalgamations and Minority Buy-out Rights
3. Mergers and Takeovers
4. General Information

Under the heading of General Information, we have dealt with such matters as banking facilities in Seychelles, accountants, registers and inspection, and other topics.

This Guide is concerned primarily with 'special licence companies', being companies incorporated under the Companies Act, 1972 and licensed under the Companies (Special Licences) Act, 2003; which regulate the carrying on of business by local companies in Seychelles as well as for those offshore business companies whose business purpose excludes them from being incorporated under the International Business Companies Act, 1994; including banks, insurance companies and mutual funds. These two Acts are also relevant for companies wishing to benefit from the various double taxation treaties, to which the Seychelles are a party. For further information on international business companies, please see our Guide to International Business Companies in Seychelles.

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

It is recognised that this Guide will not completely answer detailed questions which clients and their advisers may have. It is intended to provide a sketch of Seychelles' legal and regulatory environment in relation to 'international business companies'. The Guide is, therefore, designed as a starting-point for a more detailed and comprehensive discussion of the issues.

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 of Seychelles law should be obtained.

Appleby  
Victoria, Seychelles  
June 2009

## INTRODUCTION

The Seychelles' statute law on companies is contained in the Companies Act, 1972 (the "Companies Act") which was modelled on the UK Companies Act. However, for investors looking to benefit from Seychelles as an offshore jurisdiction, companies can also be formed under the International Business Companies Act, 1994 (the "IBC Act") and the majority of companies incorporated for the purpose of offshore business are done so pursuant to the IBC Act. However, all local companies and companies wishing to benefit from the various double taxation agreements to which Seychelles is a party as well as those companies that are restricted from being incorporated under the IBC Act, must follow the incorporation procedure found in the Companies Act and may acquire further licences under relevant legislation that deals with the regulation of each sector of business; whether that be insurance, banking etc.

A 'company special licence' ("CSL") is ordinarily a domestic Seychelles company formed pursuant to the Companies (Special Licence) Act 2003 (the "CSL Act"), which follows the incorporation procedure found in the Companies Act as directed by the CSL Act, which is the act pursuant to which these companies may acquire a special licence. However, the CSL is foremost incorporated under the Companies Act. The CSL is a tax resident entity (unlike the companies incorporated under the IBC Act which are tax exempt) in Seychelles and is only allowed to carry on "permitted" business and a special licence is granted only if the Company is to hold investments or to provide permitted services to parties outside of Seychelles.

The CSL Act was enacted in Seychelles in late 2003, along with new legislation dealing with corporate services providers and protected cell companies (the Corporate Service Providers Act and the Protected Cell Companies Act). As opposed to the IBC Act, the CSL Act is a licensing piece of legislation working alongside the Companies Act and companies wishing to be licensed under the CSL Act must be incorporated pursuant to the Companies Act stipulations or alternatively can continue as a CSL from being an international business company or a company incorporated in a jurisdiction outside of Seychelles.

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

## **PART A: SEYCHELLES COMPANIES**

### **1. Classification**

The provisions of the CSL Act apply to companies to which a special licence is granted under the CSL Act, whether they be incorporated pursuant to the CSL Act or whether they continue as a company incorporated under the CSL Act, having originally been a company incorporated in a jurisdiction outside Seychelles or originally a company incorporated under the IBC Act (§3). This Guide deals primarily with companies incorporated under the Companies Act.

For such business activities, a separate licence is required/company must be incorporated under the Companies Act and then apply for separate licences.

CSLs qualify for protection under the various tax treaties to which Seychelles is a party, as the legislation was designed with this use in mind. Each tax treaty does have its own requirements and almost always includes that the company is not resident in the other country, hence why CSLs are tax resident in the Seychelles. A CSL is subject to relaxed statutory requirements however, the salient issues are as follows:

- The name may be in any language (must be accompanied by English or French translation) and must include Limited at the end;
- have at least two individual directors
- have a secretary which is a resident of Seychelles or ‘corporate service provider’ in Seychelles;
- keep and maintain its accounting records at its registered office in Mauritius;
- prepare its statutory financial statements and/or cause to have such financial statements to be audited in Seychelles;
- accounts are required to be filed along with annual return;
- minimum paid up share capital is US\$1;
- registered shares, nil par value shares, preference shares, redeemable shares and non-voting shares are all permitted;
- bearer shares are not permitted;
- information in relation to the beneficial ownership of the CSL is disclosed only to the Authority; and
- meetings of shareholder(s) and director(s) are not required to be held in Seychelles.

### **2. Incorporation**

An application for incorporation of a CSL is submitted to the Registrar of Companies (the “Registrar”) through the Authority requesting that the company be incorporated subject to the approval of the Authority (§5(1)).

The application is to contain the following:

- Certification that the memorandum and articles of association of the proposed company comply with the Companies Act and the CSL Act (certified by legal practitioner in Seychelles) (CSL Act §13(2));
- Name and address of proposed shareholder(s) and ultimate shareholder where there is a nominee relationship;
- Signed and dated memorandum and articles of association;
- Written declaration containing names and addresses of the directors and secretary and the address of registered office;
- Written description of proposed business; and

- Name reservation certificate.

Where the approval of the Authority is granted and such certificate of approval is forwarded to the Registrar and Registrar is satisfied that the application for incorporation of a company complies with the CSL Act and the Companies Act and upon payment of the prescribed fees, the Registrar will register the memorandum and articles of association. Once the memorandum and articles of association of the CSL has been registered, he shall issue a certificate of incorporation under his hand certifying that the CSL is incorporated under the Companies Act (§6 & 7).

A certificate of incorporation given by the Registrar is conclusive evidence that all the requirements of the Companies Act have been complied with, in respect of incorporation (§13(1)).

### **3. Special Licence**

Subject to any regulations that may be made under the CSL Act (which at present there are [none]), the CSL will have its special licence issued to it by the Authority once the Registrar has issued the certificate of incorporation, pursuant to the Companies Act, so that the CSL may carry on its business. It may not carry on its business until it has been issued such licence and has complied with the statutory requirements governing its business (§9).

The Authority has the power under the CSL Act to revoke the special licence. Where the Authority is satisfied that:

- a) any director, officer manager or agent of a relevant company has in Seychelles or elsewhere in connection with the management or conduct of the affairs of that company committed an offence involving dishonesty, or has obtained credit or transfer or delivery of assets or performance of services by false representations made fraudulently or by the dishonest concealment of material facts;
- b) any business or affairs of a relevant company have been conducted illegally or for an illegal purpose;
- c) any act has been done by or on behalf of on behalf of a relevant company in Seychelles or elsewhere which has harmed or is likely to harm the reputation of Seychelles; or
- d) a relevant company has failed to comply with a condition of the special licence in disregard of a reminder in writing,  
the Authority may serve a written notice on the relevant company of the Authority's intention to revoke the special licence, stating the grounds on which such revocation will be made and requiring the company within one month from service of the notice to make written representations which the Authority will take into consideration.

If the CSL does not make any representations within the time period or the Authority reviews the representations and is satisfied that the ground on which the notification of revocation is made out, then the Authority may serve notice on the CSL revoking the special licence

The CSL is allowed to make application to the Supreme Court for relief against the revocation within ninety days from receipt of the notice of revocation and the Court has the authority to annul the notice of revocation or let such notice stand. If the CSL has made an application to the Supreme Court and the Supreme Court has upheld the notice, or if the CSL did not make such application within the time period, the notice of revocation will have immediate effect (§10).

#### 4. CSL Memorandum and Articles of Association

Under the memorandum and articles of association the CSL, the board, and each director and member still have the same rights, powers, duties and obligations set out in the Companies Act, except to the extent that they are restricted, limited or modified by the memorandum. In effect, a CSL's memorandum and articles of association, shall when registered, bind the CSL and the members thereof to the same extent as if they respectively had been signed by each member and on behalf of the CSL, and contained contractual undertakings on the part of each member and the CSL to observe all the provisions of the memorandum and the articles of association (Companies Act §15(1)).

##### a. Memorandum

The memorandum of every CSL shall be subscribed to by two or more persons and must be signed by each subscriber opposite to the number of shares in the company which they agree to take (being not less in total than one-tenth of all the shares the company may issue) in the presence of at least one witness who must attest the signatures (Companies Act §5). Once the memorandum is registered it will bind the company and its members.

The memorandum, which must be in the English language, must state:

- the name of the company, with “Limited” as the last word of the name and the word “Proprietary” as the penultimate word of the name in the case of a proprietary company;
- that the registered office of the company is to be situated in Seychelles;
- the objects of the company; and
- that the liability of the members of the company is limited (Companies Act §4(1)). The objects of the CSL are the objects which it is being formed to carry on, or the purpose(s) which it is formed to achieve. It is not necessary or permissible to set out in the memorandum or the articles of association the powers or means by which the CSL is to attain its objects (Companies Act §4(2)).

The memorandum must further state:

- The number of shares which the company may issue and the nominal value of those shares, and whether each of those shares has the same nominal value or different nominal values are attributed to shares of different classes;
- The total of the nominal values of all the shares which the company may issue; and
- The total of the nominal values of all the shares of each class of shares which the company may issue (Companies Act §4(4)).

The memorandum may not contain the following:

- a provision that the company may pursue such objects or do such things as its directors or members shall think fit, or shall think conducive or incidental to the achievement of its objects; or
- a provision that the contents of different parts of the clause or clauses of the memorandum setting out the objects of the company shall be construed independently of one another as though each such part stated the sole objects of the company; or any objects that are not stated with reasonable certainty (Companies Act §4(3)).

The objects of a CSL as stated in its memorandum must be limited to the carrying on of any one or more of the businesses as outlined in Schedule 1 of the CSL Act (Annex [ ]) (§4).

## **b. Articles of Association**

Articles of association may, in the case of any company, be registered, with the memorandum (and signed by the subscribers of the memorandum, such signature to be witnessed and attested by at least one witness) and may prescribe regulations for the CSL (Companies Act §7). However, a CSL may be incorporated without articles of association being registered. If this is the case, or if the articles of association do not deal specifically with modification or exclusion of the regulations found in Part II of the First Schedule of the Companies Act [Annex], then such regulations shall be the regulations as if they were included in the articles of association (Companies Act §8).

The articles of association are required to be in English and be printed, divided into numerically consecutive paragraphs (Companies Act §9).

## **c. Names and Change of Name**

The Registrar will not register a company (or register a change of the name of a company or reserve a name) if the name is identical with that of a statutory corporation or that under which a company in existence is already incorporated under the IBC Act or registered under the Companies Act or so nearly resembles the name of another company as to be calculated to deceive, except where the company in existence gives its consent. The name of the company must be in English, and if it is in another language, must be accompanied by an English language translation and each CSL must have 'Limited' as the last word of its name (Companies Act §4(1)(a))

A CSL may amend its memorandum to change its name, only if the Registrar has previously approved the proposed new name and it complies with the Companies Act (§8(5)). Where the name of an CSL has been changed (subject to meeting the requirements of the Companies Act) the Registrar shall enter the new name on the register in place of the former name, and shall issue a new certificate of incorporation altered to meet the circumstances of the case (§18(7)). A change of name will not affect the rights or obligations of the CSL or any legal proceedings by or against the CSL and all legal proceedings that have been continued or commenced against a CSL by its former name may be continued or commenced against it in its new name (§18(8)).

## **d. Amendment of Memorandum and Articles of Association**

Subject to any limitation found therein, a CSL may alter or add to any of the provisions of its memorandum or articles of association (subject to restrictions in the Companies Act) at any time by way of special resolution of members (§18(1)).

The holders of not less than 10% of the CSL's issued shares (or 10% of the issued shares of any class, if the CSL has such different classes of shares) or the holders of not less than 20% of the CSL's issued debentures secured by a general floating charge (or 20% of the issued debentures of any class, if the CSL has such different classes of debentures), may, within one month of the alteration being made, apply to the court to cancel the alteration of the memorandum or articles of association of the CSL (Companies Act §21(1) & (2)). The Companies Act outlines the procedures in relation to such applications.

A CSL that has altered its memorandum or articles of association, in relation to which no application has been made to the court as outlined above, must give notice of the date, form and effect of the alteration to the Registrar, within 15 days after the month period provided for the application to cancel has passed (Companies Act §22(1)(a)). However, the 'un-challenged' alteration will have taken effect as of one month after the alteration was approved by the members (Companies Act §21(7)).

## **e. Continuance and Discontinuance**

### **i. Continuance**

The CSL Act allows for the continuation of companies incorporated under the laws of jurisdictions outside Seychelles or companies incorporated under the IBC Act, as companies incorporated under the CSL Act providing: the articles of continuation are approved by a majority of the directors, or the other person who is charged with exercising the powers of the company or in such other manner as may be established by the company for exercising the powers of the company (§16(1)); and the company is entitled to continue as a company incorporated under the CSL Act notwithstanding any provision to the contrary in the laws of the jurisdiction under which it is incorporated (§16(3)).

The articles of continuation must contain (§16(1)(b)):

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

An application for the approval of the Authority must be submitted, accompanied by:

- articles of continuation;
- a copy of the company's memorandum and articles of association, or their equivalent; and
- certification that the memorandum and articles of association of the proposed company comply with the Companies Act and the CSL Act (certified by legal practitioner in Seychelles) (CSL Act §13(2));
- name and address of proposed shareholder(s) and ultimate shareholder where there is a nominee relationship;
- written declaration containing names and addresses of the directors and secretary and the address of registered office;
- written description of proposed business; and
- name reservation certificate.

Upon receiving the approval of the Authority and the certificate of such approval supported by the documents listed above (other than the document containing the names and addresses of shareholders), the Registrar may retain and register the memorandum and articles of association in the register (§16(1)(d)) and upon such registration, the Registrar will issue a certificate of continuation under his hand certifying that the company is incorporated under the Companies Act (§16(1)(e)). Once issued, the certificate of continuation issued by the Registrar shall be prima facie evidence of compliance with all requirements of the CSL Act in respect of continuation (§16(2)).

A company wishing to continue under the IBC Act, also has the capacity under the IBC Act to submit, along with the articles of continuation, a written authorization designating one or more persons who may give notice to the Registrar, by telefax, telex, telegram, cable or by registered mail, that the articles of continuation should become effective. (§83(10)(b)) This

allows the company, which has approved the articles of continuation, to be approved as continued but the Registrar is required not to permit any person to inspect the submitted documents not to divulge any information in respect thereof (§83(3)(a)). Once notice is received pursuant to the written authorization, then the Registrar shall register the documents and issue the certificate of continuation (§83(3)(b)). The company may, rescind its written authorization by delivering a written notice of rescission (§83(5)). If no notice is received pursuant to the written authorization within one year immediately following the date on which the submission was made, the articles of continuation are rescinded.

It is important to note that no new legal entity is created as a result of a continuing company becoming registered in Seychelles, and the identity of the body corporate constituted by the continuing company or its continuity as a legal entity will not be prejudiced or affected. The property, rights or obligations of the continuing company will not be affected (§17(1)(c)) and the continuing company will continue to be liable for all of its claims, debts, liabilities and obligations (§17(1)(d)) and any proceedings (whether civil or criminal) pending against the continuing company along with its members, directors, officers and agents, will not be abated or discontinued due to its continuation as a CSL (§17(2)).

## **ii. Discontinuance**

A CSL may also continue as a company incorporated under the laws of a jurisdiction outside Seychelles in the manner provided under those laws, provided such continuance has been approved by a resolution of directors or members (§18(1)).

A CSL continuing as a company incorporated under the laws of a jurisdiction outside Seychelles continues to be liable for all of debts, liabilities and obligations that existed prior to its continuation (§18(2)(b)) and no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due and no cause existing against the CSL or against any member, director or agent is released or impaired by its continuation (§18(2)(c)). Any proceedings (whether civil or criminal) pending by or against the discontinuing company along with its members, directors, officers and agents, will not be abated or discontinued due to its continuation as a CSL (§18(2)(d)).

Where a CSL continues under the laws of a jurisdiction outside Seychelles, the Registrar will strike off the name of the CSL from the Registrar and publish a notice of the striking off in the Gazette (§18(2)(a)).

## **5. Management and Administration**

### **a. Registered Office**

Every CSL, as from the day on which it begins to carry on business or as from the fourteenth day after the date of its incorporation (whichever is earlier) must have a registered office in Seychelles to which all communications and notices may be addressed (Companies Act §100(1)). Notice of the situation (or any change thereof) must be given within fourteen days after the incorporation (or the change) to the Registrar, who will record the same (Companies Act §2)

### **b. Constitution**

See Part A: 3.a. above.

**c. Secretary**

A CSL must have at all times, a secretary who is resident, or a company incorporated, in Seychelles (Companies Act §13(1)) and will be a corporate service provider in Seychelles. All applications made and all documents required to be submitted to the Registrar or the Authority under any Act by a CSL must be made or submitted through the Secretary who or which shall verify in writing the signature of any person appearing on the application document (Companies Act §13(2)) and the Secretary may accept service on behalf of the CSL, such document will have deemed to have been accepted by the CSL (Companies Act §13(3)).

**d. Directors**

The CSL Act states at section 12 that the business and affairs of a CSL shall be managed by a board of directors consisting of at least two individuals and there is no provision in the CSL Act allowing for the provision for companies to be appointed as directors. Although there is no requirement for resident directors in Seychelles under the CSL Act or the Companies Act, CSL's that wish to benefit from the various double taxation agreements may be required to evidence 'effective management' in Seychelles and thus, have resident directors.

The first directors of a CSL shall be appointed pursuant to the memorandum or articles of association, however, unless the first directors are appointed at a general meeting of the CSL, then they shall all cease to hold office at the termination of the first annual general meeting of the CSL (although will be eligible for re-election) (Companies Act §163(3)). Further, the memorandum or articles of association may prescribe the maximum and minimum number of directors of the CSL that may be appointed by a general meeting of the CSL although such maximum and minimum may be varied from time to time by an ordinary resolution at a general meeting (Companies Act §163(2)) (noting the overriding restriction in section 12 of the CSL Act above).

Any further appointments of directors may be approved by an ordinary resolution passed at a general meeting, for a period not exceeding five years and such director may be reappointed for unlimited further terms of five years (Companies Act §163(1)).

Casual vacancies may be filled by the directors, but the person appointed to fill such vacancy shall retire at the termination of the next succeeding annual general meeting (but will be eligible for reappointment at that meeting) (Companies Act §163(4)).

The memorandum or articles of association may provide for the reappointment of a director at the expiration of his term of office without the passing of a resolution by a general meeting to that effect if no other person is or has been appointed by a general meeting in his place. However, such a director shall not be reappointed (pursuant to this process) if an ordinary resolution has been passed at a general meeting that the vacant directorship is not to be filled or in the case where the resolution in relation to the reappointment of the director is defeated (Companies Act §163(7)).

The memorandum and articles of association may have their provisions deemed invalid if such provisions provide for the appointment of directors in contrast to the manner outlined in the Companies Act. However, the memorandum or articles of association may provide for the appointment of two or more directors (not exceeding in number one-third of the maximum number of directors who may be appointed for the time being) by the holders of debentures issued by the CSL or by the trustees of the debenture trust deeds covering such debentures (Companies Act §163(5)).

## **i. Director's Duties**

Every director of a CSL has the following statutory duties (Companies Act §171(1)):

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

These duties shall be owed to the CSL, but not to the members, shareholders, debenture holders or creditors of the CSL. However, acts or transactions of directors that involve a breach of any of the duties may be challenged in the courts by any shareholder or debenture holder. An injunction may be granted by the court to restrain the directors taking such action or entering into such transaction. An action for damages for breach of the said duties may be brought in the name of the CSL by the holders of at least one-tenth of the issued and outstanding shares of the CSL which carry unrestricted voting rights, or on behalf of the holders of that fraction of those shares by any one or more of their number authorized by each of the others of them in writing (Companies Act §171(2)).

## **ii. Loans to Directors**

It is unlawful for CSLs to make loans, enter into any guarantee in relation to such loan or provide any security in connection with such loan, to its directors or such directors of companies which belong to the same group of companies as the CSL. The exceptions include (a) where such director holds a salaried employment or office under the CSL (or group company) and has a view to enable him to subscribe for or purchase shares or debentures of the CSL (or group company); or (b) where such director has expended funds to meet expenditure incurred or to be incurred by him for the purposes of the CSL, or in the course of performing his duties as an office of the CSL (Companies Act §172(1)).

The exceptions are only available if the prior written authorization of the CSL has been given at a general meeting, the purpose for which was stated in the notice and any advertisement required. If the approval is not given at or before the next following annual general meeting, the loan shall be repaid or the liability in respect of which the guarantee or security was given shall be discharged, as the case may be, within 6 months from the conclusion of that meeting (Companies Act §172(2)).

## **iii. Indemnities and Insurance**

A CSL is permitted to indemnify any officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour, or in which he is acquitted, or in connection with any application in which relief is granted to him by the court. Ordinarily, any provision of the memorandum or articles of association (or any contract) will be void if it attempts to exempt any officer or auditor from, or indemnifies him against, liability in respect of any negligence, default or breach of duty of which he may be guilty in relation to the CSL (Companies Act §181).

As mentioned above, if in any proceedings for negligence, default or breach of duty against an officer or auditor of a CSL it appears to the court hearing the case that the officer or auditor is or may be liable in respect of the negligence, default or breach of duty, but that he has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default or breach of duty, that court may relieve him, either wholly or partly, from his liability on such terms as the court may think fit (Companies Act §182(1)).

## **iv. Register of Holdings**

The Companies Act requires that a CSL maintain a register in which all particulars required by the relevant section, in respect of all interests in shares and debentures of the CSL, of companies belonging to the same group as, or affiliated with, the CSL, which are vested in any of the directors of the CSL or any company in the same group as or affiliated to, the CSL (Companies Act §111(1)).

The particulars required to be entered into the register of directors' holdings are:

- the number, classes and nominal values of the shares, and the number, classes and the amount of the principal and premiums payable to the holder of the debentures, in which a director has an interest;
- the nature of the interest of the director and its duration (if it is limited in duration);
- the date of the acquisition of the interest by the director and the consideration (if any) given by him or any other person for such acquisition; and

- the date of the disposal of the interest by the director or of the date of its cessation (whichever comes first) and the consideration (if any) received by him or any other person for such disposal or cessation.

#### **e. Managing Director**

Pursuant to the Regulations (Annex 2), but subject to any contravening section of the Companies Act, the directors may from time to time appoint one or more of their body to the office of managing director for such period and on such terms as they think fit. A managing director whose appointment is approved by a general meeting passed not later than six months after his appointment shall not, whilst holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors, but his appointment shall be automatically determined if he ceases from any cause to be a director.

The directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit.

#### **f. Board Meetings**

Pursuant to the Regulations (Annex 2), the directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit and any questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote.

A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors. It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from Seychelles.

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

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

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

The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit and any committee so formed shall in the exercise of the powers so delegated conform to any instructions that may be given to it by the directors. A committee may elect a chairman of its meetings and the procedures in relation to chairmen of meetings of committees will be the same as if for a full meeting of the directors.

All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were

disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

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

### **g. Meetings of the Members**

The convening and conduct of a meeting of the members will be dependent upon the CSL's memorandum.

The directors may, whenever they think fit, convene an extraordinary general meeting (any general meeting of the shareholders other than the annual general meeting is referred to as an extraordinary general meeting) (Regulation 23).

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

In the case of the annual general meeting or an extraordinary general meeting called for the passing of a special resolution, twenty-one days' notice in writing is required whereas in the case of any other general meeting, or any meeting of a class of shareholders or debenture holders, fourteen days' notice in writing.

Any provision in the memorandum or articles of association that purports to allow for a shorter notice period for a meeting of the company (other than an adjourned meeting) shall be void.

A meeting of a company shall, notwithstanding that it is called by shorter notice than that specified in the last foregoing subsection be deemed to have been duly called if in the case of an annual general meeting, or as a meeting of a class of share/debenture holders, by all the shareholders/debenture holders (as the case may be) entitled to attend and vote thereat. In the case of an extraordinary general meeting, a majority in number of the shareholders having a right to attend and vote at the meeting (holding not less than ninety-five per cent of the unrestricted voting rights exercisable at the meeting) can ratify the 'short-notice' (Companies Act §123).

Business shall be transacted at general meetings of a company by ordinary resolution, unless the Companies Act or the memorandum or articles of association require a special resolution.

All business which cannot be transacted at a general meeting by an ordinary resolution shall, subject to the provisions of the Companies Act, be transacted by special resolution, and no provision in the memorandum or articles of association requiring or permitting the business to be transacted in any other way shall be valid (Companies Act §121(1)).

A resolution is passed as an ordinary resolution if it is proposed as such, and of the votes which are cast in favour of and against the resolution more votes are cast in favour of the resolution than are cast against it. A resolution is passed as a special resolution if it is proposed as such, and not less than three-quarters of the votes which are cast in favour of and against the resolution are cast in favour of it (Companies Act §121(2)).

An ordinary resolution by a general meeting of a company is required (Companies Act §121(3)):

- (a) to appoint a director of the company (see outlined in Part A: 5.d. above)
- (b) to authorise or approve the remuneration to be paid to a director of the company in the circumstances where such authorisation or approval is required by Companies Act §174(1), and to authorise or approve any other payments or benefits of the kinds mentioned in Companies Act §174(2) and 175(1) in circumstances where such authorisation or approval is required by either of those sections ;
- (c) to remove a director of the company under Companies Act §168 ;
- (d) to give any authorisation to a director which is required by s Companies Act §171 or 172 ;
- (e) to appoint an auditor of the company ;
- (f) to authorise the sale or transfer of the whole or substantially the whole of the company's undertaking or assets (subject or not to its liabilities) to another person ;
- (g) to authorise the issue of any of the unissued shares or debentures of a company (other than a proprietary company), or to authorise the re-issue of shares or debentures of such a company (except to the extent that Companies Act §173 otherwise provides);
- (h) to authorise an issue or re-issue of the company's shares for a consideration other than cash, unless the terms of the issue are set out in the company's memorandum in conformity with Companies Act §6(1);
- (i) to dispose of the profits or revenue reserves of of the company, whether by payment of a dividend, by capitalisation of profits or revenue reserves and the issue of bonus shares or debentures, by transfer to capital reserve, by the acquisition of shares of the company under paragraph (c) of Companies Act §54(2), by the redemption of redeemable shares, by allocations to employee share subscription schemes to which the company is a party or otherwise;
- (j) to alter the share capital of the company under Companies Act §59 ;
- (k) to authorise the company to alter or abrogate r the rights of debenture holders ;
- (l) to wind up the company voluntarily under paragraph (b) of Companies Act §247(1); and
- (m) in connection with matters arising in the winding up of the company which by this Ordinance are required to be transacted by ordinary resolution ;
- (n) in such other cases as the Companies Act provides.

A special resolution by a general meeting of a company is required (Companies Act §121(4)):

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

#### **i. Voting**

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

Subject to any restrictions for the time being attached to any class or classes of shares by the memorandum of the company, on a show of hands every shareholder present in person or by proxy shall have one vote and on a poll, he shall have the number of votes to which he is entitled by section 118 (outlined above) of the Companies Act (Regulation 36 – Annex 2).

In the case of joint holders of shares which are registered in the register of members the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders. For this purpose seniority shall be determined by the order in which the names stand in the register of members (Regulation 37 – Annex 2).

## **ii. Convening of a Meeting of the Members on Requisition**

The Companies Act provide that the directors of the CSL must convene an extraordinary general meeting on the requisition of shareholders of the CSL, holding not less than one-tenth of the issued shares carrying unrestricted voting rights (or call a meeting of a class of shareholders, by a requisition of the shareholders holding not less than one-tenth of the issued shares of that class of shares) (Companies Act §120(3)&(4)).

Such meetings are to be convened in the same manner as meetings convened by directors (Companies Act §120(7)).

## **iii. Resolutions in Writing**

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

## **iv Notice**

Notice of all general meetings are required to be given to every shareholder, whether or not they are entitled to attend and vote at the meeting, such provision applies equally to shareholders or debenture holders in relation to a meeting of the members of a class of shares (Companies Act §127(1)&2)). The Companies Act has a specific list of items that must be included in the notice for all general meetings (Companies Act §125).

## **h. Auditors**

A CSL is required to appoint an auditor, procure audited financials and file them annually, not more than 90 days after the end of each financial year end. The filed accounts are not publically accessible and filing requirements are based on the requirements in the Companies Act (§15).

## **i. Records and Financial Statements**

A CSL must keep at its registered office (pursuant to the Companies Act) various registers including a Register of Members and Register of Directors and Secretaries and Register of Debenture Holders.

## **j. Employment of Personnel**

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

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

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

#### **k. Investments**

As stated above and subject to the Companies act and the CSL Act, the objects of a CSL as stated in its memorandum shall be limited to the carrying on of any one or more of the business specified in Schedule 1 to the CSL Act (Appendix 1) (§4). However, the CSL's 'special licence' will authorize the business activity and may restrict trading activity.

#### **l. Registration of Charges**

All security interests (including mortgages and charges) created by a CSL over its assets must be registered by the Registrar of Companies. Failure to make such registration results in an offence being committed and those parties responsible for the application for registration will be fined.

#### **m. Contracts**

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

Subject to its memorandum or articles of association, a CSL may, in writing (power of attorney), authorize a person as its agent either generally or in relation to any specific matters, to act on behalf of the CSL and to execute contracts, agreements, deeds and other instruments on behalf of the CSL. Any document so executed by the authorized agent, will be binding on the CSL and has the same effect as if it were executed by the CSL.

### **6. Taxation**

A CSL is subject to business tax at 1.5% on world-wide taxable income but is exempt from withholding taxes on dividends, interest and royalties, stamp duty on property transfers, share transfers and other business transactions. A CSL is also exempt from trades tax (levied on the importation of office equipment/furniture) and a CSL and its expatriate employees in its registered office are exempt from the fee in respect of a gainful occupation permit.

Specifically, the CSL has access to the double taxation treaties to which Seychelles is a party and will benefit from the tax relief under such treaties. The business tax of 1.5% may be fully ‘avoided’ when taking into consideration the tax credits accessible through a double taxation avoidance agreement.

<b>Fee</b>	<b>US\$</b>
Seychelles Government application (formation) fee	200
Seychelles Government Annual License fee	100
Seychelles Government Annual Company Return filing fee	200

The tax exemptions outlined above (as in §20) are to remain in force for a period of 10 years from the date of the CSL’s incorporation and after that period, the exemptions will still continue to be in force unless a written law provides otherwise (§20(6)).

## **7. Share Capital and Debentures**

### **a. Exchange Control**

The Exchange Control Act does not apply to a CSL or to any transactions relating to the securities of or in the CSL between the holders of such securities. (§20(2)).

### **b. Stated Capital**

If a CSL has different classes of shares, the memorandum shall state the rights and obligations of each class (except so far as such rights and obligations are prescribed by the Companies Act or are uniform for all classes of shares), and no rights or obligations attached to shares by the articles, the terms of issue of shares, resolutions of the directors or members of the company or otherwise shall be valid if not set out in the memorandum (§5).

For the purpose of the Companies Act, shares belong to different classes if different rights or obligations attach to them in respect of dividend, repayment of capital, voting at general meetings of the CSL, or the times at which, or the amounts by which, the issue price of the shares payable in cash is to be paid to the company; but shares do not belong to different classes merely because the holders of some of them are members of the company and the holders of others of them are not, nor because some of them are issued for a consideration other than cash (§6).

There is a requirement that at least 10% of the authorized share capital of the CSL be issued and paid up. Any convertible currency is permitted and shares must be registered and therefore no bearer shares are permitted.

The authorised capital, par value of shares or the number of shares the IBC can issue, may be increased, consolidated, converted, subdivided or cancelled by an ordinary resolution to alter the memorandum of the CSL (§59).

Subject to confirmation by the court, a CSL may by special resolution reduce its share capital in any way (§63).

### **c. Issue Price of Shares**

Before a company issues any shares, the Board must determine the amount of the consideration for which the shares are to be issued but in relation to shares with a par value the Board must ensure that such consideration is not less than the par value. Consideration for such shares may take the form of cash or other valuable consideration, provided that if consideration other than cash is approved, it must be arranged prior to the incorporation of the CSL and the memorandum must state the nature

of such consideration, its value and the amount by which the shares to be issued in respect of it will be credited as paid up, not exceeding the stated value of such consideration (Companies Act §6).

**d. Redemption or Purchase of Shares by a Company**

A CSL may by an ordinary resolution alter the contents of its memorandum as follows (Companies Act §59):

- (a) increase its share capital by new shares of such nominal value as it thinks expedient;
- (b) consolidate and divide all or any of its shares into shares of larger nominal value;
- (c) convert all or any of its fully paid shares into stock, and reconvert that stock into fully paid shares;
- (d) subdivide its shares, or any of them, into shares of a smaller nominal value than is fixed by the memorandum, so, however, that in the subdivision the proportion between the part of the nominal value paid and the part unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived; or
- (e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its nominal capital by the amount of the shares so cancelled. A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Ordinance.

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

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

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

The redemption of shares under this section by a CSL shall not be deemed to be a reduction of capital within the meaning of the Companies Act, but shares which have been redeemed shall be deemed not to be issued shares for the purpose of the Companies Act ((Companies Act §60(3)).

If a CSL has redeemed or is about to redeem any shares out of the proceeds of a fresh issue of shares, it shall have power to issue shares whose total nominal values do not exceed the total nominal value of the shares redeemed or to be redeemed as though those shares had never been issued (Companies Act §60(4)).

## **e. Acquisition by a Company of its own Shares and Financial Assistance**

The Companies Act provides that it shall not be lawful for a company to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription made, or to be made, by any person of or for any shares or debentures of the company, or of a company which belongs to the same group of companies as the company. However, this prohibition shall be taken to prohibit:- (a) where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business, without any obligation or condition being imposed on the borrower that he shall expend the whole or any part of the money lent in subscribing for or purchasing shares or debentures of the company, or of such other company as aforesaid; (b) the gratuitous provision by the company, in accordance with any scheme authorized by an ordinary resolution passed at a general meeting of the company, of money for the subscription or purchase of fully paid shares of the company or of any other company or body, corporate, being a subscription or purchase by trustees of shares or debentures to be held by or for the benefit of employees (including directors holding a salaried employment or office) of the company or of a company which belongs to the same group of companies as the company; (c) the making by a company of loans to employees (including any director holding a salaried employment or office) of the company or of a company which belongs to the same group of companies as the company with a view to enabling those persons to subscribe for or purchase shares or debentures of any such company; (d) the provision of money, guarantees, or securities by a company under an employee share subscription scheme to which it is a party.

A contravention of this prohibition (pursuant to (§53(1)) by a director, or any other officer of a company, or by any person shall be an offence punishable by a fine not exceeding ten thousand rupees or by imprisonment for not more than two years, or both such fine and such imprisonment.

A company may not acquire or contract to acquire any shares issued or re-issued by itself or its holding company, or any derivative interest in such shares, whether directly or by means of an agent, nominee or trustee or otherwise (§54(1)). However, this prohibition shall not prevent the transfer or surrender of shares to a company:- (a) if the shares are fully paid and no consideration is given or paid for them by the company; or (b) if the shares are held in the company to which the transfer or surrender is made, and are replaced immediately by other shares (whether carrying the same rights or not) allotted to the persons making the transfer or surrender, being shares having unpaid upon them not less than the amount unpaid on the shares which are transferred or surrendered; or (c) if the shares are fully paid and are transferred in consideration of a payment made out of the profits or revenue reserves of the company; or (d) if the shares are fully paid and are transferred, to the company as an agent, nominee or trustee under an arrangement in which it has no beneficial interest other than its right to remuneration and to an indemnity for its expenses.

The prohibition in (§54(1)) shall not apply:- (a) to the issue to a company of shares in its holding company on a capitalisation of the profits or reserves of the holding company, or on a rights being made by the holding company; or (b) to a mortgage or charge in favour of a company on shares issued or re-issued by it or its holding company for any part of the issue price or for any debt owed to the company; or (c) to a company's right to remuneration or to indemnity against its expenses under an arrangement falling within paragraph (d) above (§54(2)(d) (2)); or (d) to the issue of shares on a rights issue being made by the company or its holding company in respect of shares held by the company under arrangement falling within paragraph (§54(2)(d) (2)).

All shares of a company transferred or surrendered to the company itself under paragraphs (a), (b) or (c) above shall be cancelled and shall become void as from the time of the transfer or surrender, and shall thenceforth be deemed not to be issued shares.

**f. Bearer Shares**

Bearer shares of CSLs are not permitted pursuant to (§11(a)).

**g. Register of Members**

Every CSL shall keep a register of its members at its registered office, which must contain (Companies Act §102(1) & (2)):

- (a) the names and addresses of the members and a statement of the shares held by each member, distinguishing each share by its number so long as the share has a number, and of the amount paid or agreed to be considered as paid on the shares of each member;
- (b) the date at which each person was entered in the register as a member; and
- (c) the date at which any person ceased to be a member.

Every CSL shall send notice to the Registrar of the place where its register of members is kept and of any change in that place (Companies Act §102(3)).

On the issue of a bearer share certificate the CSL shall strike out of its register of members the name of the member then entered therein as holding the shares specified in the bearer share certificate as if he had ceased to be a member, and shall enter in the register the following (Companies Act §104(1)):

- (a) the fact of the issue of the bearer share certificate;
- (b) a statement of the shares included in the bearer share certificate, distinguishing each share by its number so long as the share has a number; and
- (c) the date of the issue of the bearer share certificate.

The bearer of a bearer share certificate shall, subject to the articles of the CSL, be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members (Companies Act §104(2)).

**h. Register of Debenture Holders**

Every CSL shall keep a register of its debenture holders, and shall enter therein the following (Companies Act §109(1)):

- (a) the names and addresses of the debenture holders, the principal of the debentures held by them respectively, the amount or the highest amount of any premium payable on redemption of the debentures, the issue price of the debentures and the amount of the issue price paid up thereo ;
- (b) the date at which each person was entered in the register as a debenture holder; and
- (c) the date on which each person ceased to be a debenture holder.

**i. Dividends and Distributions**

Dividends in respect of any class of shares of a CSL (other than interim dividends in respect of ordinary shares) may be declared only by an ordinary resolution passed at an annual general meeting. If a CSL avails itself of section 141 of the Companies Act and does not hold an annual general meeting, the dividends recommended by the directors in the directors' annual report shall be deemed to have been declared by an ordinary resolution passed at an annual general meeting held on the day on which the CSL sends copies of its annual accounts and reports to its members and debenture

holders in compliance with section 141(1), or if all the issued and outstanding shares of the company are represented by bearer share certificates, on the day on which it publishes an advertisement in compliance with section 141(3) (Companies Act §160(1)).

No provision in the memorandum or articles of association shall be valid by which a dividend is expressed to be payable at a specified time, or on the occurrence of a specified event, or on the ascertainment of the profits earned by the CSL for a specified period, without the declaration of a dividend by an annual general meeting (Companies Act §160(2)).

**j. Inspection and Member Protection**

The CSL Act states that every person shall preserve and aid in preserving the secrecy with regard to all matters relating to the shareholding of a CSL or a shareholder thereof which may come to that person's knowledge in the performance of duties under the CSL Act and except in the performance of their duties under the CSL Act, shall not disclose any such matter to any other person or suffer any unauthorized person to have access to any documents which come into his possession (§22(1)). Every person who is required to preserve and aid in preserving secrecy as outlined above shall take and subscribe an oath of secrecy before assuming his duties and is subject to a fine or imprisonment upon the contravention of these duties, which amounts to an offence (§22(2)).

The use of nominees is permitted and whereas shareholder and beneficial ownership names and contact information must be submitted to the Registry, all information is subject to the secrecy provisions outlined above and is not accessible pursuant to any public search.

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

### **1. Compromises with Creditors**

Where a compromise or arrangement is proposed between a CSL and its shareholders, debenture holders or creditors, or any class of them, the court may on the application of the CSL or of any person affected by the compromise or arrangement, or, in the case of a CSL being wound up, of the liquidator, order a meeting of the shareholders, debenture holders or creditors, or of the class or classes of shareholders, debenture holders or creditors affected by the compromise or arrangement, to be called and held in such manner as the court directs.

If two or more classes of shareholders, debenture holders or creditors are affected by the compromise or arrangement, the court shall direct a separate meetings to be held for each such class, and for the purpose of this section creditors shall be deemed to belong to different classes if there is any difference between them as to:

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

If the shareholders, debenture holders or creditors, or the members of the class or each of the classes of such persons, at the meetings directed by the court resolve, by the votes of the holders of three quarters in value of the interest represented at each such meeting in respect of which votes are cast by the holders of such interests or their proxies, to agree to the compromise or arrangement, the compromise or arrangement shall, if approved by the court and subject to subsection (9), be binding on all the shareholders, debenture holders or creditors, or on all the members of the class or classes of such persons, who are affected by the compromise or arrangement, and also on the CSL and, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

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

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

A copy of each notice calling a meeting directed by the court, of every statement accompanying the notices calling such meetings, of the document embodying the compromise or arrangement and of the application to the court to approve it, shall be delivered to the Registrar by the company or other person who makes the application immediately after the application has been made, and the Registrar, without being made a party to the proceedings, may make representations to the court on the hearing of the application.

Whether the Registrar makes representations on the hearing of the application to the court to approve the compromise or arrangement or not, the court may at any stage of the proceedings refer the compromise or arrangement to him for his report and opinion, and the court may take any such report and opinion into account in deciding whether to approve the compromise or arrangement, or to refuse its approval, or to give its approval subject to conditions or subject to the modification of the compromise or arrangement.

The Court may approve a compromise or arrangement under this section notwithstanding that:

- (a) it is not within the objects or powers of the CSL contained in its memorandum; or
- (b) it could be effected, wholly or partially, under some other provision of this Ordinance.

On the hearing of an application to the court to approve a compromise or arrangement, the court may give its approval subject to such conditions or modifications of the compromise or arrangement as it thinks fit and the compromise or arrangement as so approved by the court shall be binding on the shareholders, debenture holders or creditors, or on all the members of the class or classes of such persons, who are affected by the compromise or arrangement.

An order of the court approving a compromise or arrangement shall have no effect until a copy of the order has been delivered to the Registrar for registration, and if the compromise or arrangement affects shareholders or any class of shareholders of the company, a copy of every such order shall be annexed to every copy of the memorandum or articles of the company issued after the order has been made as though it were an alteration or addition made thereto under this Ordinance, and section 17 shall apply accordingly.

An "arrangement" includes:

- (a) a reorganisation of the share capital of a CSL by the consolidation of shares of different classes, or by the division of shares into shares of different classes, with or without an alteration of the nominal or paid up values of any of the shares or the alteration of the rights attached to them ;
- (b) a reconstruction of a CSL or an amalgamation of a CSL with one or more other companies, whether already incorporated or to be incorporated under the arrangement; and
- (c) an arrangement for the acquisition of the whole of the shares or debentures, or the whole of a class of shares or debentures, of a CSL by another company in consideration of cash or the allotment or transfer of shares or debentures of that other company or of any other body corporate (Companies Act §196).

## **2. Mergers and Consolidations**

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

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

- (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company ;
- (d) in the case of a reconstruction or amalgamation, the dissolution, without winding up, of any transferor company ;
- (e) the provision to be made for any persons, who within such time and in such manner as the court directs, dissent from the compromise or arrangement ;
- (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation or acquisition of shares or debentures shall be fully and effectively carried out (Companies Act §198).

### **3. Minority Buy-Out Rights**

shareholder of a CSL who complains that the affairs of the CSL are being conducted in a manner which is oppressive or unfairly prejudicial to some part of the share holders (including himself), the Registrar, may make an application by way of petition to the court for an order under this section.

If on the hearing of the application the court is satisfied either:

- (a) that the applicant, either alone or together with other shareholders, has been treated oppressively in one or more respects over a period of time, or that action has been taken by the persons who are or were in control of the affairs of the CSL, being action which was known by them to be likely to prejudice unfairly the interests of the applicant, either alone or together with other shareholders; or
- (b) the persons who are or were in control of the affairs of the CSL have been guilty of serious misconduct or breaches of duty which has or have prejudicially affected the interests of the applicant, either alone or together with other shareholders;

the court may, with a view to bringing to an end or remedying the matters complained of, make such order as it thinks fit, whether for regulating the CSL of the CSL's affairs in future, or for the purchase of the shares of any shareholders of the CSL by other shareholders of the CSL or for the acquisition of any such shares by the CSL and, in the case of such an acquisition by the CSL, for the reduction accordingly of the CSL's capital, or otherwise (Companies Act §201).

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

### **1. Introduction**

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

### **2. Friendly Acquisition of a Seychelles company**

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

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

### **3. Hostile Acquisition of a Seychelles Company**

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

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

In the context of acquisitions, section 94 of the Securities Act empowers the Minister to make regulations to provide for the making of takeovers and the rights and obligations of persons when a takeover is made. However, to date, no such regulations have been made.

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

### **4. Defence Mechanisms to a Hostile Bid**

#### **a. Shareholders Rights Issue Agreement**

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

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

The right of the directors to issue such “bonus” shares is subject always to their statutory duty to act in the best interests of the company. Acting in the best interests of the company does not necessarily mean that directors must obtain the very best price available for each individual share. Further, directors are entitled to have regard to any number of "proper" issues including "bonuses" to existing shareholders. Moreover, pre-existing contractual obligations to provide such bonuses will, more than likely, determine the issue in advance so that it must be "proper" for the directors to comply with their pre-existing contractual or constitution obligations.

#### **b. Poison Debt**

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

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

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

#### **c. Voting Poison Pill Plan**

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

#### **d. Shareholders' Meetings**

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

#### **e. Concert Parties**

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

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

#### **f. The Constitution**

Bearing in mind that the constitution of a target Seychelles company will always be susceptible to amendment provided the requisite majority for amendment is achieved, it may nevertheless be useful as a defensive mechanism to build into the constitution a list of matters requiring the approval of special majorities. However, restrictions which affect liquidity of the shares may be undesirable or

contrary to stock exchange regulations if the company is listed. Also, restrictive provisions in the constitution may unduly hamper the company during ordinary operations. Thus a balance would have to be struck. Typical restrictions would relate to the exercise of votes in certain circumstances, such as unwanted bids, or the disclosure of underlying beneficial interests, with votes in excess of a certain threshold, or in relation to ineligible beneficiaries, being transferred to other shareholders pro rata.

## **PART D: GENERAL INFORMATION**

### **1. Banking Facilities**

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

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

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

### **2. Accountants**

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

### **3. Registers and Inspection**

CSL must, keep various registers at its registered office, including a register of members and register of directors and secretaries.

### **4. Termination of Seychelles companies**

#### **a. Methods of Termination**

There are several ways of terminating the registration and existence of a Seychelles company, each of which involves the Registrar removing the company from the register. This includes where:

- the company is an amalgamating company, and has not become the amalgamated company;
- the Registrar is satisfied that the company has ceased to carry on business and there is no other reason for the company to continue in existence;
- the company has been put into liquidation, and, for example, no liquidator is acting in respect of the company;
- the Registrar receives a request in the approved form from a shareholder authorised to make the request by a special resolution, or the Board (where the company's constitution so permits) that the company be removed from the register on specified grounds; or
- the liquidator delivers to the Registrar a notice that a final meeting of dissolution has taken place.

A request that a company be removed from the Registrar by either a shareholder or the Board may only be made if the company has ceased to carry on business, has discharged (in full) all its liabilities and has distributed any of its surplus assets in accordance with its constitution and the Companies Act

or, the company has no surplus assets after paying its debts in full or in part and no creditor has applied to the Court for an order putting the company into liquidation.

## **5. Winding Up and Liquidation**

For more information on liquidations and winding up, we invite you to contact person named below.

## ANNEX 1

### PERMITTED OBJECTS

#### SCHEDULE 1 CSL ACT

Investment management and advice

Offshore banking

Offshore insurance

Reinsurance

Business of

(a) an investment company

(b) a holding company

(c) a marketing company

(d) a company holding intellectual property

(e) a headquarters company

(f) a human resources company

(g) a franchise company

Business under an ITZ licence

Any other business approved by the Authority

## ANNEX 2

# REGULATIONS FOR THE MANAGEMENT OF A COMPANY (OTHER THAN A PROPRIETARY COMPANY)

## PART II – FIRST SCHEDULE COMPANIES ACT

(Section 8)

### Interpretation

1. In these regulations :

"the Ordinance" means the Companies Ordinance, 1972.

"secretary" means any person appointed to perform the duties of the secretary of the company. Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form. Unless the context otherwise requires, words or expressions contained in these regulations shall bear the same meaning as in the Ordinance or any modification thereof in force at the date at which these regulations become binding on the company.

### Share and Loan Capital

2. Except as required by law, no person shall be recognised by the company as holding any share or debenture as a nominee for, or otherwise on behalf of, any other person, and the company shall not be bound by or be compelled in any way to recognise (even when having notice thereof) any usufruct, contingent, future or partial interest in any share or debenture, or any interest in any fractional part of a share or debenture, or (except only as by these regulations or by law otherwise provided) any other rights in respect of any share or debenture except an absolute right to the entirety thereof in the registered holder. Provided that nothing in this paragraph shall prevent the company from issuing bearer certificates in respect of shares or debentures or shall affect the rights of the holders of such documents.

3. Every person whose name is entered as a member in the register of members or as a debenture holder in the register of debenture holders shall be entitled without payment to receive within one month after allotment or lodgement of a transfer one certificate for all his shares or debentures, or several certificates each for one or more of his shares or debentures upon payment of five rupees for every certificate after the first, or such less sum as the directors shall from time to time determine. Every certificate shall be signed by at least two directors and the secretary of the company and shall specify the shares or debentures to which it relates and the amount paid up thereon : Provided that in respect of shares or debentures held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for shares or debentures to one of several joint holders shall be sufficient delivery to all such holders.

4. If a share certificate, debenture, debenture stock certificate or loan stock certificate in respect of shares or debentures be defaced, lost or destroyed, it may be renewed on payment of a fee of five rupees or such less sum and on such terms (if any) as to evidence and indemnity and the payment of out-of-pocket expenses of the company of investee-ting evidence as the directors think fit :

Provided that nothing in this paragraph shall authorise or require the directors to renew a bearer share certificate or a bearer debenture unless the court so orders.

5. The company shall not give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with a purchase or subscription made or to be made by any person of or for any shares or debentures of the company or of any company which belongs to the same group of companies as the company, nor shall the company make a loan for any purpose whatsoever on the security of its shares or debentures or those of any company which belongs to the same group of companies as the company, but nothing in this regulation shall prohibit any of the transactions mentioned in the proviso to section 53(1) of the Ordinance.

### Payment of issue price

6. The directors may, if they think fit, receive from any person willing to advance the same, all or any part of the moneys not yet due upon any shares or debentures held by him, and upon all or any of the moneys so advanced may (until the same would, but for such advance, become payable) pay interest at such rate not exceeding (unless the company in general meeting shall otherwise direct) ten per cent per annum, as may be agreed upon between the directors and the person paying such sum in advance.

### Transfer of shares and debentures

7. An instrument of transfer of shares or debentures shall name the transferee, shall state the number or nominal value of the shares transferred or the principal amount of the debentures transferred, and shall be signed by the transferor. As regards the company the transferor shall be deemed to remain the holder of the shares or debentures until the name of the transferee is entered in the register of members or debenture holders, except so far as the Ordinance otherwise provides or the court otherwise orders.

8. The directors may decline to register the transfer of a share (not being a fully paid share) to a person of whom they shall not approve, and they may also decline to register the transfer of a share on which calls or instalments of the issue price are due and unpaid.

9. The directors may also decline to recognise any instrument of transfer of shares or debentures unless : â€”

(a) a fee of five rupees or such less sum as the directors may from time to time require is paid to the company in respect thereof;

(b) the instrument of transfer has been certificated by or on behalf of the company, or is accompanied by the certificate of the shares or debentures to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer ; and

(c) the instrument of transfer is in respect of only one class of shares or debentures.

10. If the directors refuse to register a transfer they shall within one month after the date on which the transfer was lodged with the company send notice of the refusal to the transferor and the transferee.

11. The registration of transfers may be suspended at such times and for such periods as the directors may from time to time determine, provided always that such registration shall not be suspended for more than thirty days in any year.

12. The company shall be entitled to charge a fee not exceeding five rupees on registering the heir or other person entitled to shares or debentures on the death of a holder, and on the registration of every certificate of appointment of a trustee in bankruptcy, power of attorney, notice of interest, charging order, or other instrument.

#### Transmission of shares and debentures

13. In case of the death of a shareholder or debenture holder the survivor or survivors where the deceased was a joint holder, and the heir or other person entitled on the death of the deceased where he was a sole holder, shall be the only persons recognised by the company as having any title to the deceased's shares or debentures ; but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share which has been jointly held by him with other persons.

14. Any person becoming entitled to shares or debentures in consequence of the death or bankruptcy of a shareholder or debenture holder may, upon such evidence being produced as may from time to time properly be required by the directors and subject as hereinafter provided, elect either to be registered himself as holder of the shares or debentures or to have some person nominated by him registered as the transferee thereof, but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the shares or debentures by that shareholder or debenture holder before his death or bankruptcy, as the case may be.,

15. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company:

Provided always that the directors may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share, and, if the notice is not complied with within ninety days the directors may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with.

16. Regulations 14 and 15 shall not apply to shares which are represented by bearer share certificate.

#### Forfeiture and re-issue of shares

17. A declaration in writing (signed by at least two directors and the secretary of the company) that a share in the company has been duly forfeited under section 56 of the Ordinance on a date stated in the declaration, shall be conclusive evidence of the facts therein stated in favour of the person to whom the share is re-issued and persons claiming under him as against all other persons claiming to be entitled to the share. The company may receive the consideration (if any) given for the share or debenture on the re-issue thereof and may issue a share certificate to the person to whom the share is re-issued, and unless the share is in bearer form, he shall thereupon be registered as a member of the company in respect of the share, and he shall not be bound to see to the application of the consideration (if any) nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

#### Conversion of shares into stock

18. The company may by ordinary resolution convert any paid-up shares with a nominal value into stock, and reconvert any stock into paid-up shares with a nominal value of not less than ten rupees.

19. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as and subject to which the shares from which the stock arose might, previously to conversion, have been transferred, or as near thereto as circumstances admit; and the directors may from time to time fix the minimum amount of stock transferable, but so that such minimum shall not exceed the nominal amount of the shares from which the stock arose.

20. The holders of stock shall, according to the amount of stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company and in the assets on winding up) shall be conferred by an amount of stock which would not, if existing in shares, have conferred that privilege or advantage.

21. Such of the regulations of the company as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder".

#### General Meetings

22. The company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of the company and that of the next :

Provided that so long as the company holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year. The annual general meeting shall be held at such time and place as the directors shall appoint.

23. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section 120(2) of the Ordinance. If at any time there are not within Seychelles sufficient directors capable of acting to form a quorum, any director or any two shareholders of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

#### Notice of general meetings

24. An annual general meeting and an extraordinary general meeting called for the passing of a special resolution shall be called by twenty-one days' notice in writing at the least, and a meeting of the company (other than an annual general meeting or a meeting for the passing of a special resolution) and a meeting of a class of shareholders shall be called by fourteen days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of meeting and the exact wording of every resolution to be proposed at the

meeting (except a procedural resolution and a resolution in respect of ordinary business at an annual general meeting). Notice of a meeting shall be given to such persons as are by section 127 of the Ordinance entitled to receive such notices from the company, in the manner prescribed by that section :  
Provided that a meeting of the company shall, notwithstanding that it is called by shorter notice than that specified in this regulation, be deemed to have been duly called if it is so agreedâ€”

(a) in the case of a meeting called as the annual general meeting, by all the shareholders entitled to attend and vote thereat; and

(b) in the case of any other meeting, by a majority in number of the shareholders having a right to attend and vote at the meeting, being a majority together holding not less than 95 per cent in nominal value of the shares giving that right.

25. Ordinary business at an annual general meeting shall consist of the declaration of dividend and the approval or rejection of the annual accounts and the directors' and auditors' reports.

26. Subject to section 127(6) of the Ordinance, the accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting,

27. No business shall be transacted at any general meeting unless a quorum of shareholders is present at the time when the meeting proceeds to business ; save as herein otherwise provided, three shareholders present in person or by proxy shall be a quorum.

28. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of shareholders, shall be dissolved ; in any other case it shall stand adjourned to the same day in the next week, at the same place and time, or to such other day and at such other time and place as the directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the shareholders present or their proxy or proxies shall be a quorum.

29. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he shall not be present within fifteen minutes after the time appointed for the holding of the meeting, or is unwilling to act, the directors present shall elect one of their number to be chairman of the meeting.

30. If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the shareholders present shall choose one of their number to be chairman of the meeting.

31. The chairman may, with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for eight days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

32. At any general meeting a resolution put to the vote of the meeting shall, subject to the provisions of the Ordinance, be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demandedâ€”

(a) by the chairman ; or

(b) by at least three shareholders present in person or by proxy : or

(c) by any shareholder or shareholders present in person or by proxy and representing not less than one-tenth of the total voting rights of all the shareholders having the right to vote at the meeting.

Unless a poll be so demanded, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company shall, subject to the provisions of the Ordinance, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

A demand for a poll may be withdrawn.

33. Except as provided in paragraph 34, if a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

34. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

35. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

#### Votes of Members

36. Subject to any restrictions for the time being attached to any class or classes of shares by the memorandum of the company, on a show of hands every shareholder present in person or by proxy shall have one vote and on a poll, he shall have the number of votes to which he is entitled by section 118 of the Ordinance

37. In the case of joint holders of shares which are registered in the register of members the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders ; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

38. A shareholder who is a minor or who has been interdicted may vote, whether on a show of hands or on a poll, by his tutor, or if he has no tutor, by some other person appointed for the purpose by the court, and any such tutor or other person may vote by proxy.

39. No votes shall be cast in respect of shares acquired by or transferred to the company unless they have been re-issued, and no votes shall be cast in respect of shares held by nominees for the company.

40. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive, subject to any proceedings brought under section 136 of the Ordinance.

41. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his agent duly authorised in writing, or, if the appointer is a corporation, either under seal, or under the hand of an officer or agent of the corporation who has been duly authorised.

42. The instrument appointing a proxy and the instrument containing the authority under which it is signed (if any), or a notarially certified copy of either or both of those instruments, shall be deposited at the registered office of the company, or at such other place within Seychelles as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid;

43. An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit-

Limited

I/We \_\_\_\_\_, of \_\_\_\_\_

, being a shareholder/shareholders of the above-named company, hereby appoint of \_\_\_\_\_

, or failing him, of \_\_\_\_\_, as my/our proxy to vote for

me/us on my/our behalf at the annual or extraordinary, (as the case may be) general meeting of the company to be held on the

day of \_\_\_\_\_ 20\_\_\_\_

and at any adjournment thereof.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

44. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or interdiction of the shareholder, or the revocation of the proxy or of the authority under which the proxy was given, or the transfer of the share in respect of which the proxy is given, provided that no intimation in writing of such death, interdiction, revocation or transfer as aforesaid has been received by the company at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.  
Directors

45. The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum of association or a majority of them.

46. The remuneration of the directors shall from time to time be determined by the company in general meeting. Such remuneration shall be deemed to accrue from day to day. The directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company, or in connection with the business of the company,

47. The shareholding qualification for directors may be fixed by the company in general meeting, and unless and until so fixed no such qualification shall be required.

48. Subject to the provisions of the Ordinance, a director of the company may be or become a director or other officer of, or otherwise interested in, any company promoted by the company or in which the company be interested as shareholder or otherwise, and no such director shall be accountable to the company for any remuneration or other benefits received by him as a director or officer of, or from his interest in, such other company unless the company otherwise directs.  
Borrowing Powers

49. Subject to the provisions of the Ordinance, the directors may exercise all the powers of the company to borrow money, and to hypothecate, mortgage or charge its undertaking, assets and uncalled capital, or any part thereof, and to issue debentures, debenture stock, and other securities as security for any loan to, or debt, liability or obligation of the company or of any third party:  
Provided that the amount for the time being remaining undischarged of moneys borrowed or secured by the directors as aforesaid (apart from temporary loans obtained from the company's bankers in the ordinary course of business) shall not at any time, without the previous sanction of the company in general meeting, exceed the amount paid up on the company's issued and outstanding shares plus the amount of the company's capital reserve for the time being, but nevertheless no lender or other person dealing with the company shall be concerned to see or inquire whether this limit is observed. No debt incurred or security given in excess of such limit shall be invalid or ineffectual, except in the case of express notice to the lender or the recipient of the security at the time when the debt was incurred or security given that the limit hereby imposed had been or was thereby exceeded.  
Powers and Duties of Directors

50. The business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company as are not, by the Ordinance or by these regulations, required to be exercised by the company in general meeting, subject, nevertheless, to any of these regulations, to the provisions of the Ordinance and to such directions, being not inconsistent with the aforesaid regulations or provisions, as may be given by the company in general meeting; but no direction given by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that direction had not been given.

51. The directors may from time to time and at any time, by an instrument in writing signed by at least two of their number on behalf of them all, appoint any company, firm or person or body of persons, whether nominated directly or indirectly by the directors, to be the general agent or agents of the company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under these regulations) and for such period and subject to such conditions as they may think fit, and any such instrument may contain such provisions for the protection and convenience of persons dealing with any such general agent as the directors may think fit and may also authorise any such general agent to delegate all or any of the powers, authorities and discretions vested in him.

52.(1) A director who is in any way, whether directly or indirectly, interested, in a contract or proposed contract with the company shall declare the nature of his interest in accordance with paragraph (g) section 171(1) of the Ordinance as extended by section 171(4).

(2) At a meeting of the directors a director shall not vote in respect of any contract or arrangement in which he is interested, and if he shall do so his vote shall not be counted, nor shall he be counted in the quorum present at the meeting, but subject to the provisions of the Ordinance neither of these prohibitions shall apply to.

(a) any arrangement for giving any director any security or indemnity in respect of money lent by him to, or obligations undertaken by him for the benefit of, the company; or

(b) any arrangement for the giving by the company of any security to a third party in respect of a debt or obligation of the company for which the director himself has assumed responsibility in whole or in part under a guarantee or indemnity or by the deposit of a security ; or

(c) any contract by a director to subscribe for or underwrite shares or debentures of the company ; or

(d) any contract or arrangement with any other company in which he is interested only as an officer of the company or as the holder of shares or other securities of it; and these prohibitions may, subject to the provisions of the Ordinance, at any time be suspended or relaxed to any extent, and either generally or in respect of any particular contract, arrangement or transaction, by the company in general meeting.

(3) Subject to the provisions of the Ordinance, a director may hold any other office or place of profit under the company (other than the office of auditor) in conjunction with his office of director for such period and on such terms (as to remuneration and otherwise) as the directors may determine, and no director or intending director shall be disqualified by his office from contracting with the company either with regard to his tenure of any such other office or place of profit or as vendor, purchaser or otherwise, and subject to the provisions of the Ordinance, no such contract, or any contract or arrangement entered into by or on behalf of the company in which a director is in any way interested, shall be liable to be avoided, nor shall any director so contracting or being so interested be liable to account to the company for any profit realised by any such contract or arrangement, by reason of such director holding that office or of the fiduciary relation thereby established.

(4) A director, notwithstanding his interest, may be counted in the quorum present at any meeting of the directors whereat he or any other director is appointed to hold any such office or place of profit under the company, or whereat the terms of any such appointment are arranged, and he may vote on any such appointment or arrangement other than his own appointment or the arrangement of the terms thereof.

(5) Any director may act by himself or his firm in a professional capacity for the company, and he or his firm shall be entitled to remuneration for professional services as if he were not a director :

Provided that nothing herein contained shall authorise a director or his firm to act as auditor to the company.

53. All cheques, promissory notes, bills of exchange and other negotiable instruments, and all receipts for moneys paid to the company, shall be signed, drawn, accepted, endorsed, or otherwise executed (as the case may be) in such manner as the directors shall from time to time by resolution determine.

54. The directors shall cause minutes to be made in books provided for the purpose“

(a) of all appointments of officers made by the directors ;

(b) of the names of the directors present at each meeting of the directors and of any committee of the directors ;

(c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors ;

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

55. Subject to the provisions of the Ordinance, the directors on behalf of the company may pay a gratuity or pension or allowance on retirement to any director who has held any other salaried office or place of profit with the company, or to his widow or dependants, and may make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance.

#### Rotation of Directors

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

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

58. A retiring director shall be eligible for re-election.

59. The company at the meeting at which a director retires in manner aforesaid may fill the vacated office by electing a person thereto, and in default the retiring director shall if offering himself for re-election be deemed to have been re-elected, unless at such meeting it is expressly resolved not to fill such vacated office, or unless a resolution for the reelection of such director shall have been put to the meeting and lost

60. No person other than a director retiring at the meeting shall, unless recommended by the directors, be eligible for election to the office of director at any annual general meeting unless not less than one week before the date appointed for the meeting there shall have been left at the registered office of the company a notice in writing, signed by a shareholder duly qualified to attend and vote at the meeting for which such notice is given, of his intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected :

Provided that if an annual general meeting is called after such a notice is left as aforesaid, the notice shall be deemed to have been validly given notwithstanding that there is less than one week between the giving of the notice and the holding of the annual general meeting.

61. The company may from time to time by ordinary resolution increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

62. The directors shall have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these regulations. Any director so appointed shall hold office only until the next following annual general meeting, and shall then be eligible for re-election, but shall not be taken into account in determining the directors who are to retire by rotation at such meeting.

63. The company may by ordinary resolution, in accordance with section 168 of the Ordinance, remove any director before the expiration of his period of office notwithstanding anything in these articles or in any agreement between the company and such director. Such removal shall, subject to the provisions of that section, be without prejudice to any claim such director may have for damages for breach of any contract of service between him and the company.

64. The company may by ordinary resolution appoint another person in place of a director removed from office under regulation 63, and without prejudice to the powers of the directors under paragraph 62, the company in general meeting may appoint any person to be a director either to fill a casual vacancy or as an additional director. A person appointed in place of a director so removed or to fill such a vacancy shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected or re-elected a director.

#### Proceedings of Directors

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

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

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

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

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

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

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

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

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

#### Managing Director

74. Subject to the provisions of the Ordinance, the directors may from time to time appoint one or more of their body to the office of managing director for such period and on such terms as they think fit, and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment. A managing director whose appointment is approved by a general meeting passed not later than six months after his appointment shall not, whilst holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors, but his appointment shall be automatically determined if he ceases from any cause to be a director.

75. The directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and may from time to time revoke, withdraw, alter or vary all or any of such powers.

#### Secretary

76. The secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.

#### Dividends and Reserves

77. A general meeting may by ordinary resolution dispose of the profits of the company by declaring dividends, carrying profits forward, transferring profits to capital or revenue reserves, or by using profits or revenue reserves to pay the issue price of bonus shares or debentures to be issued as fully paid shares or debentures to shareholders in the same proportions as a dividend would be paid to them.

78. The directors may from time to time pay to the shareholders such interim dividends as appear to the directors to be justified by the profits of the company.

79. Subject to the rights of persons (if any) entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but no amount paid or credited as paid on a share in advance of an instalment of the issue price becoming due shall be treated for the purposes of this regulation as paid on the share. All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid ; but if any share is issued on terms providing that it shall rank for dividend as from a particular date such share shall rank for dividend accordingly.

80. The directors may deduct from any dividend payable to any shareholder all sums of money (if any) presently payable by him to the company on account of instalments of the issue price of shares held by him, or otherwise in relation to shares of the company.

81. If a general meeting resolves that fully paid bonus shares shall be issued credited as paid up out of profits or capital or revenue reserves, the directors shall make all requisite allotments and issues of fully-paid shares, and generally shall do all acts and things required to give effect thereto, and shall have full power to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think fit in the case of shares becoming distributable in fractions.

82. Any general meeting declaring a dividend or bonus may direct payment of such dividend or bonus wholly or partly by the distribution of specific assets of the company, and in particular of paid up shares, debentures or debenture stock of any other company, or in any one or more of such ways, and the directors shall give effect to such resolution, and where any difficulty arises in regard to such distribution, the directors may settle the same as they think expedient, and in particular may issue fractional certificates and fix the value for distribution of such specific assets or any part thereof, and may determine that cash payments shall be made to any shareholders upon the footing of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees or agents as may seem expedient to the directors,

83. Any dividend, interest or other moneys payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members, or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one or more joint holders may give effectual receipts for any dividends, bonuses or other moneys payable in respect of the shares held by them as joint holders.

84. No dividend shall bear interest against the company.

#### Books and documents

85. The books of account shall be kept at the registered office of the company, or, subject to the provisions of the Ordinance, at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

86. The directors shall from time to time determine whether and to what extent, and at what times and places and under what conditions or regulations, the accounts and books of the company or any of them shall be open to the inspection of shareholders not being directors, and no shareholder (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by the Ordinance or authorised by the directors or by the company in general meeting or directed by the court.

#### Notices

87. A notice may be given by the company to any member, shareholder or debenture holder either personally, or by sending it by post to him or to his registered address, or, if he has no registered address in Seychelles, to the address (if any) in Seychelles supplied by him to the company for the purpose of giving notices to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of 24 hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

88. A notice may be given by the company to the joint holders of a share or debenture by giving the notice to the joint holder first named in the register of members or debenture holders in respect of the share or debenture.

89. A notice may be given by the company to the persons entitled to a share or debenture in consequence of the death or bankruptcy of a shareholder or debenture holder by sending it through the post in a prepaid letter addressed to them by name, or by the title of heirs of the deceased, or trustee of the bankrupt, or by any like description, at the address (if any) in Seychelles supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

90. Notice may be given to the holders of shares or debentures represented by bearer certificates by the publication of the notice once in a daily newspaper circulating in Seychelles.

91. Notice of every general meeting shall be given in any manner hereinbefore authorised to—â€”

(a) every member of the company except those members who, having no registered address in Seychelles, have not supplied to the company an address in Seychelles for the giving of notices to them ;

(b) every person upon whom the ownership of a share devolves by reason of his being an heir or a person entitled to the estate of a member, or a trustee in bankruptcy of a member, where the member but for his death or bankruptcy would be entitled to receive notice of the meeting ; and

(c) the auditor for the time being of the company.

No other person shall be entitled to receive individual notices of general meetings. Notices of general meetings shall be given to the holders of shares represented by bearer shares certificates in the manner prescribed by section 127(4) of the Ordinance.

#### Winding up

92. If the company shall be wound up the liquidator may, with the sanction of a special resolution of the company and any other sanction required by the Ordinance, divide amongst the shareholders in specie or kind the whole or any part of the assets of the company (whether they shall consist of assets of the same kind or not) and may, for such purpose set such value as he deems fair upon any assets to be divided as aforesaid, and may determine how such division shall be carried out between the shareholders or different classes of shareholders. The liquidator may, with the like sanction, vest the whole or any part of such assets in nominees or agents on behalf, or for the benefit, of shareholders as the liquidator, with the like sanction, shall think fit, but so that no shareholder shall be compelled to accept any shares or other securities whereon there is any liability or amount unpaid.

#### Indemnity

93. Every director, managing director, agent, auditor, secretary and other officer for the time being of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour, or in which he is acquitted, or in connection with any application under section 182 of the Ordinance in which relief is granted to him by the court.

1. Henry Pereira of Victoria, Seychelles, Engineer

2. John Pereira of Sans Souci, Mahe, Seychelles, Engineer
3. Peter Pereira of La Misere, Mahe, Seychelles Accountant
4. Joshua Smith of Anse Boileau, Mahe, Seychelles, Landowner
5. Henry da Silva of Glacis, Mahe, Landowner
6. James Fourneaux of Bel Ombre, Mahe, Seychelles, Retired
7. Albert Henry Wilson of Victoria, Seychelles, Bank Manager.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19

Witness to the above signatures :

Isabelles Laforgue, Victoria, Seychelles, Secretary.

For more specific advice on Special Licence Companies in Seychelles, we invite you to contact the following:

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