

*This version of the Companies (Special Licences) Act is not official and has been granted for convenience only. The Financial Services Authority does not accept any responsibility for its accuracy or entirety. For all purposes of interpreting and applying the law, the official version of the law published in the Official Gazette should be consulted.*

**CONSOLIDATED TO 6<sup>TH</sup> AUGUST, 2021**

**COMPANIES (SPECIAL LICENCES) ACT, 2003**

*(Act 6 of 2003)*

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## **Short title**

1. This Act may be cited as the Companies (Special Licences) Act.

## **Interpretation**

2. In this Act —

“assessable income” means the income as defined under the Business Tax Act;

“Authority” means the Financial Services Authority established under the Financial Services Authority Act;<sup>1</sup>

“ordinary company” means a company incorporated under the Companies Act, but does not include a relevant company;

“prescribed” means prescribed by regulations made under this Act.

“relevant company” is a company that is incorporated or continued in accordance with section 7 or section 17 of this Act;

“Registrar of Companies” means the Registrar of Companies appointed under section 329 of the Companies Act, 1972.

## **This Act to prevail over certain laws**

3. Notwithstanding anything to the contrary in the Companies Act 1972 or the International Business Companies Act, the provisions of this Act shall apply to, and in respect of, a relevant company.
4. *Repealed.*

## **Application for approval of Authority and incorporation**

- 5.(1) Before a relevant company is incorporated in accordance with this Act, an application shall be made in the prescribed form to the Registrar through the Authority requesting that the company be incorporated subject to the approval of the Authority.
- (2) An application referred to in subsection (1) shall be accompanied by —
  - (a) the application fee set out in Schedule 3;
  - (b) names and addresses of shareholders;
  - (c) the memorandum and articles of association duly signed and dated;
  - (d) a written declaration containing —

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<sup>1</sup> Definition of “Authority” repealed and substituted by s 47(3) of Act 19 of 2013 with effect from 1 March 2014.

- (i) the names and addresses of the directors;
  - (ii) the name and address of the secretary;
  - (iii) the address of the registered office of the company;
- (e) the name reservation certificate issued by the Registrar of Companies.

### **Documents forwarded to Registrar**

6. Where the approval referred to in section 5 is granted, a written notice of such approval and the documents referred to in section 5 (2)(b), (c) and (d) in triplicate together with the written consent of the directors and the secretary to act as such shall be forwarded by the Authority to the Registrar of Companies.

### **Incorporation**

- 7.(1) The Registrar of Companies may retain and register the memorandum and articles of a company forwarded under section 6 if he is satisfied that they comply with the provisions of the Companies Act 1972.
- (2) On the registration of the memorandum and articles of a company under subsection (1), the Registrar of Companies shall issue a certificate under his hand certifying that the company is incorporated under the Companies Act, 1972 and stating the date of the incorporation.

### **Effect of incorporation**

- 8.(1) Where —
- (a) a company is incorporated or continued in accordance with section 7 or section 16;
  - (b) an international business company is converted into a relevant company in accordance with the International Business Companies Act, 2016;
  - (c) an ordinary company is issued with a special licence,

the provisions of the Companies Act shall, subject to the provisions of the Act, apply to and in respect of that company.

### **Special Licence**

- 9.(1) The Authority shall, subject to such regulations as may be made in that behalf, issue a Special Licence to every relevant company to carry on its business.
- (2) A relevant company shall not carry on any business unless the company has been issued with a special licence under subsection (1) and has complied with the statutory requirements governing the business.

- (3) A special licence issued under this Act shall be valid unless revoked by, or surrendered to, the Authority.

### **Revocation of Licence etc**

**10.(1)** If 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 a relevant company in Seychelles or elsewhere which has harmed or is likely to harm the reputation of Seychelles;
- (d) a relevant company has failed to comply with a condition of the Special Licence in disregard of a reminder in writing;
- (e) a relevant company has failed to pay its increased annual licence fee payable under section 23 (3) within 6 months following the due date of its annual licence fee payable under section 23(1); or
- (f) a relevant company has failed to appoint a secretary under section 13(1) within a period of 60 days from the date of its vacancy,

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 the service of the notice to make written representations which the Authority will take into consideration.

- (2) If within one month from the service of a notice under subsection (1), the relevant company does not make written representations, or the relevant company has not shown good cause in its representation as to why its special licence should not be revoked, the Authority may by notice served on the relevant company revoke the Special Licence granted to it.
- (3) Upon revocation or surrender of a special licence —
- (a) the provisions of this Act shall not apply to the relevant company; and
  - (b) the relevant company remains a body corporate registered under the Companies Act.

### **Surrender of special licence**

**10A.** A relevant company which has paid all fees and penalty fees due under this Act may, at any time, surrender its special licence to the Authority in accordance with section 30 of the Financial Services Authority Act, 2013.

### **Shares**

**11.** A relevant company —

- (a) shall not issue bearer shares;
- (b) may issue shares to persons who are the nominees of other persons provided that the names and addresses of those other persons are recorded in the register of shares.

### **Management**

**12.** The business and affairs of a relevant company shall be managed by a board of directors consisting of at least one individual.

### **Requirement of minimum number of members of a relevant company**

**12A.** A relevant company shall at all times have one or more members as required under the Companies Act.

### **Secretary**

**13.(1)** A relevant company shall at all times have a secretary of the company and such secretary shall be a person licensed under the International Corporate Service Providers Act to provide international corporate services.

(2) All applications made and all documents required to be submitted to the Registrar or the Authority under any Act by a relevant company shall be made or submitted through the secretary who or which shall verify in writing the signature of any person appearing on the application or document.

(3) The secretary may accept service on behalf of the relevant company and any service accepted by the secretary shall be deemed to have been accepted by the company.

### **Meetings and resolutions**

**14.(1)** Subject to any limitation in the memorandum or articles, a person shall be deemed to be present at a meeting of shareholders or directors if —

- (a) he participates by telephone or other electronic means, and
- (b) all the persons participating in the meeting are able to hear each other and recognise each other's voice and, for this purpose, participation constitutes *prima facie* proof of recognition.

- (2) Subject to any limitation in the memorandum or articles, an action that may be taken at a meeting of shareholders or directors may also be taken at a meeting of shareholders or directors as the case may be, consented to by all such shareholders or directors in writing, or by telex, cable or other written electronic communication without need for any notice.

### **Annual return and accounts**

- 15.**(1) A relevant company shall submit to the Authority, within 6 months of the end of its financial year —
- (a) its annual return;
  - (b) its annual audited accounts; and
  - (c) the fee set out in Schedule 3.
- (2) The annual return referred to in subsection (1)(a) may be signed by the secretary and one or more directors on behalf of all the directors if so authorised by a resolution of directors.
- (3) The audited accounts referred to in subsection (1)(b) may be signed by one or more directors on behalf of all the directors if so authorised by a resolution of directors.
- (4) If a relevant company contravenes subsection (1) it shall be liable to a penalty fee not exceeding US\$10,000.
- (5) Section 117 of the Companies Act (relating to offences in connection with annual return) shall apply to a relevant company as if the words “the Registrar” in that section were repealed and the words “the Authority” were substituted therefor.
- (6) Any person may inspect during office hours the any annual return and audited accounts of a relevant company which has derived any assessable income in Seychelles.
- (7) The Authority may for good cause waive all or any part of any penalty fee imposed under this section.

### **Continuation of a foreign currency**

- 16.**(1) A company incorporated under the laws of a jurisdiction outside Seychelles may continue as a company incorporated in accordance with this Act as follows —
- (a) articles of continuation, written in the English or French language or, if written in a language other than the English or French language, accompanied by a translation in the English or French language certified by the secretary of the company of the articles of continuation, shall be approved —

- (i) by a majority of the directors or the other person who is charged with exercising the powers of the company, or
    - (ii) in such other manner as may be established by the company for exercising the powers of the company;
  - (b) the articles of continuation shall contain —
    - (i) the name of the company and the name under which it is being continued,
    - (ii) the jurisdiction under which it is incorporated,
    - (iii) the date on which it was incorporated,
    - (iv) the information required to be included in a memorandum, and
    - (v) the amendments to its memorandum and articles, or their equivalent, that are to be effective upon the registration of the articles of continuation;
  - (c) an application for the approval of the Authority for the continuation of the company, together with the articles of continuation, accompanied by a copy of the memorandum and articles of the company, or their equivalent, written in the English or French language or, if written in a language other than the English or French language, accompanied by a translation in the English or French language certified by the secretary of the company of the memorandum and articles or their equivalent and the documents referred to in section 5(2) (a), (b), (d) and (e) shall be submitted to the Authority;
  - (d) where the Authority grants its approval, a notice of such approval and the documents referred to in paragraph (c) other than the document containing the names and addresses of shareholders shall be forwarded to the Registrar who may retain and register the memorandum and articles in the register if he is satisfied that they comply with the provisions of this Act; and
  - (e) upon the registration of the articles of continuation, the Registrar shall issue a certificate of continuation under his hand certifying that the company is incorporated under the Companies Act and stating the date of the incorporation.
- (2) A certificate of continuation issued by the Registrar under subsection (1) (e) shall be prima facie evidence of compliance with all the requirements of this Act in respect of continuation.
- (3) A company incorporated under the laws of a jurisdiction outside Seychelles shall be entitled to continue as a company incorporated in accordance with this Act notwithstanding any provision to the contrary in the laws of the jurisdiction under which it is incorporated.

## **Effect of continuation**

**17.(1)** From the time of the issue by the Registrar of a certificate of continuation under section 16(1) (e) —

- (a) the company to which the certificate relates —
  - (i) continues to be a body corporate incorporated in accordance with this Act, under the name designated in the articles of continuation,
  - (ii) is capable of exercising all powers of a company incorporated in accordance with this Act, and
  - (iii) is no longer to be treated as a company incorporated under the laws of a jurisdiction outside Seychelles;
- (b) the memorandum and articles of the company, or their equivalent, as amended by the articles of continuation, are the memorandum and articles of the company;
- (c) property of every description, including choses in action and business of the company, continues to be vested in the company; and
- (d) the company continues to be liable for all of its claims, debts, liabilities and obligations.

(2) Where a company is continued under this Act —

- (a) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due and no cause existing against the company or against any member, director, officer or agent thereof, is released or impaired by its continuation as a company under this Act; and
- (b) no proceedings whether civil or criminal, pending at the time of the issue by the Registrar of a certificate of continuation under section 16(1) (e) by or against the company, or against any member, director, officer or agent thereof are abated or discontinued by its continuation as a company under this Act, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent thereof as the case may be.

(3) All issued shares in the company that were outstanding prior to the issue by the Registrar of a certificate of continuation under section 16(1) (e) in respect of the company shall be deemed to have been issued in conformity with this Act, but a share that at the time of the issue of the certificate of continuation was not fully paid remains such, and until the share is fully paid up, the member holding the share remains liable for the amount unpaid on the share.



- (4) If at the time of the issue by the Registrar of a certificate of continuation under section 16(1) (e) in respect of the company any provisions of the memorandum and articles of the company do not in any respect accord with this Act —
- (a) the provisions of the memorandum and articles continue to govern the company until the provisions are amended to accord with this Act or for a period of 2 years immediately following the date of the issue of the certificate of continuation, whichever is the sooner;
  - (b) any provisions of the memorandum and articles of the company that are in any respect in conflict with this Act cease to govern the company when the provisions are amended to accord with this Act or after the expiration of a period of 2 years after the date of issue of the certificate of continuation whichever is the sooner; and
  - (c) the company shall make such amendments to its memorandum and articles as may be necessary to accord with this Act within a period that is not later than 2 years immediately following the date of the issue of the certificate of continuation.

#### **Continuation outside Seychelles**

- 18.**(1) Subject to subsection (3) and to any limitations in its memorandum or articles, a relevant company may, by a resolution of directors or by a resolution of members, continue as a company incorporated under the laws of a jurisdiction outside Seychelles in the manner provided under those laws.
- (2) Where a relevant company continues under the laws of a jurisdiction outside Seychelles —
- (a) the Registrar shall strike off the name of the company from the Register and publish a notice of the striking off in the Gazette;
  - (b) the company continues to be liable for all of its debts, liabilities and obligations that existed prior to its continuation as a company under the laws of the jurisdiction outside Seychelles;
  - (c) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing against the company or against any member, director, officer or agent thereof, is released or impaired by its continuation as a company under the laws of the jurisdiction outside Seychelles; and
  - (d) no proceedings, whether civil or criminal, pending by or against the company, or against any member, director, officer or agent thereof, are abated or discontinued by its continuation as a company under the laws of the jurisdiction outside Seychelles, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent thereof, as the case may be.

- (3) A relevant company that continues as a company incorporated under the laws of a jurisdiction outside Seychelles does not cease to be a company incorporated in accordance with this Act, unless —
- (a) it has paid all its fees and any penalty fee or fine required to be paid under this Act or the Companies Act;
  - (b) it has submitted its annual return under this Act; and
  - (c) the laws of the jurisdiction outside Seychelles permit such continuation and the company has complied with those laws.

#### **Application for special licence by an ordinary company**

**18A.**(1) An application by an ordinary company for a special licence shall be made to the Authority in the prescribed form accompanied with —

- (a) a certified copy of the company's certificate of incorporation and memorandum and articles of association under the Companies Act;
  - (b) a certificate of good standing issued under the Companies Act;
  - (c) a certified copy of the particulars of directors of the company;
  - (d) a certified copy of the particulars of the secretary of the company;
  - (e) a certified copy of the notice of the situation of the registered office of the company; and
  - (f) the application fee set out in Schedule 3.
- (2) If the Authority approves an application under subsection (1), it shall notify the applicant and issue a special licence to the company on payment of the annual licence fee.
- (3) Where a company is issued a special licence under this section, the provisions of the Companies Act shall, subject to the provisions of this Act, continue to apply to and in respect of that company.

#### **Certificate of good standing**

**18B.** The Registrar of Companies shall not issue a certificate of good standing under the Companies Act unless he has received written confirmation from the Authority that —

- (a) the relevant company has paid all fees and penalties due and payable under this Act; and
- (b) the relevant company is in compliance with this Act.

**Conversion of a relevant company into an international business company and *vice-versa***

**18C.** The conversion of —

- (a) a relevant company into an international business company; or
- (b) an international business company into relevant company,

shall be made in accordance with Part X of the International Business Companies Act, 2016.

**A relevant company to notify change in its shareholder, director or secretary to Authority**

**18D.** A relevant company shall notify the Authority of any change in its shareholders, directors or secretary within fourteen days of such change.

**19.** *Repealed.*

**Exemption**

**20.(1)** Subject to subsection (2) and notwithstanding any provision of the Stamp Duty Act —

- (a) all transfers of property to or by a relevant company;
- (b) all transactions in respect of the shares, debt obligations or other securities of a relevant company; and
- (c) all transactions relating to the business of a relevant company,

shall be exempt from payment of stamp duty.

(2) Subsection (1) shall not apply to an instrument relating to —

- (a) the transfer to or by a company of an interest in immovable property situated in Seychelles; or
- (b) a transaction in respect of the shares, debt obligations or other securities of a company if it, or any of its subsidiaries, has an interest in any immovable property situated in Seychelles.

**21.** *Repealed.*

**Non-disclosure obligations**

**22.(1)** Subject to subsection (2), the Authority, the Registrar of Companies and an officer, employee or agent of the Authority or the Registrar of Companies shall not disclose to

a third party any information or documents acquired in the performance of their functions under this Act.

- (2) Subsection (1) shall not apply to any disclosure —
- (a) permitted or required under any provisions of this Act or any other written law of Seychelles;
  - (b) made pursuant to an order of the court;
  - (c) of an information or documents in relation to a relevant company made with the prior written consent of the relevant company; or
  - (d) of any information in statistical form or otherwise in such a manner that does not enable the identity of the company or other person, to which the information relates, to be ascertained.

### **Annual licence fee**

- 23.**(1) A relevant company shall pay an annual licence fee specified in Schedule 3 to the Authority on or before the date of each anniversary of grant of its special licence.
- (2) Where the annual licence fee is not paid by the date specified in subsection (1), the amount of the annual licence fee shall increase by ten percent.
- (3) Where a relevant company fails to pay the amount due as an increased annual licence fee under subsection (2) within 3 months from the date when it becomes due, then the amount of the annual licence fee shall increase by twenty-five percent.

### **Regulations**

- 24.**(1) The Minister may make regulations for the purpose of carrying out or giving effect to the provisions of this Act and, without prejudice to the generality of the foregoing, may by regulations —
- (a) amend any Schedule;
  - (b) prescribe fees payable in respect of a licence under section 9;
  - (c) specify the conditions of a licence under section 9; or
  - (d) exempt relevant companies from the operation of any specified provision of the Companies Act 1972.

### **Transitional provisions**

- 25.**(1) A relevant company existing at the date of the commencement of the Companies (Special Licences) (Amendment) Act, 2021, regardless of whether or not the validity of its special licence has expired, shall comply with section 15 and 23, as amended by that Act, within 3 months of such commencement.

- (2) The Registrar under the International Business Companies Act, 2016 shall strike off the name of an international business company continued under this Act from the register and publish a notice of the striking off in the *Gazette*.
- (3) The date of the striking off of the name of the company from the register under subsection (2) shall be the date the company was continued under this Act.

## **SCHEDULE 1**

*Repealed.*

## **SCHEDULE 2**

*Repealed.*

## **SCHEDULE 3**

### **FEES**

Sections 5(2)(a), 15(1)(c), 18(1)(f) and 23(1)

(a)	An application for incorporation	US\$200
(b)	Annual licence fee	US\$1000
(c)	Annual return filing fee	US\$200
(d)	Inspection of annual return and audited accounts	SCR200