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**CONSOLIDATED TO 9<sup>TH</sup> APRIL, 2020**

**THE INTERNATIONAL BUSINESS COMPANIES ACT, 2016**

*(Act 15 of 2016)*

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## PART I – PRELIMINARY

### Short title and commencement date

1. This Act may be cited as the International Business Companies Act 2016 and shall come into operation of such date as the Minister may, by notice in the *Gazette* appoint.

### Interpretation

2. In this Act, unless the context otherwise requires –

“acceptable translator” means person who is –

- (a) in respect of a language other than English or French, for the purposes of this Act capable of translating that language into English or French, as applicable; and
- (b) acceptable to the Registrar as a translator in accordance with such requirements as may be specified in written guidelines issued by the Registrar;

“accounting records”, in relation to a company, means documents in respect of –

- (a) the company’s assets and liabilities;
- (b) the receipts and expenditure of the company; and
- (c) the sales, purchases and other transactions to which the company is a party;

“Act commencement date” means the date on which this Act comes into force;

“Appeals Board” means the Appeals Board established under the Financial Services Authority (Appeals Board) Regulations 2014;

“approved form” means a form approved by the Registrar or the Authority in accordance with section 353;

“articles” means the original, amended or restated articles of association of a company;

“assessable income” means the assessable income as defined in section 2 of the Business Tax Act (Cap 20);

“associated company” means as defined in section 3(2);

“authorised capital”, in relation to a company, means –

- (a) in the case of a par value company, the maximum amount of share capital that the company is authorised by its memorandum to issue;
- (b) in the case of a no par value company, the maximum number, if any, of no par value shares that the company is authorised by its memorandum to issue;

“Authority” means the Financial Services Authority as established by the Financial Services Authority Act;

“Authority’s Website” means the Authority’s principal public access internet website for the time being maintained by or on behalf of the Authority;

“bearer share” means a share represented by a certificate which –

- (a) does not record the owner’s name; and
- (b) states to the effect that the bearer of the certificate is the owner of the share;

“board”, in relation to a company, means –

- (a) the board of directors, committee of management or other governing authority of the company; or
- (b) if the company has only one director, that director;

“body corporate” includes a company, a corporation registered under the Companies Act and a body corporate incorporated outside Seychelles, but does not include an unincorporated association or an unincorporated partnership;

“business day” means any day other than a Saturday, Sunday or public holiday in Seychelles;

“cell” means a cell of a protected cell company;

“class of members”, in respect of a protected cell company, includes –

- (a) the members of a cell of the company; and
- (b) any class of members of a cell of the company;

“company” means –

- (a) an international business company; or
- (b) a former Act company;

“company limited by shares” means a company –

- (a) whose memorandum limits the liability of all its members to the amount (if any) unpaid on the shares respectively held by its members; and
- (b) which is –
  - (i) incorporated with a share capital comprising par value shares; or
  - (ii) authorised to issue no par value shares;

“company limited by guarantee” means a company whose memorandum limits the liability of all its members to a fixed amount which each member thereby undertakes, by way of guarantee and not by reason of holding any share, to contribute to the assets of the company if it is wound up;

“company limited by shares and guarantee” means a company –

- (a) whose memorandum limits the liability of one or more of its members to a fixed amount which each member thereby undertakes, by way of guarantee and not by reason of holding any share, to contribute to the assets of the company if it is wound up;
- (b) whose memorandum limits the liability of one or more its members to the amount (if any) unpaid on the shares respectively held by its members; and
- (c) which is –
  - (i) incorporated with a share capital comprising par value shares; or
  - (ii) authorised to issue no par value shares;

“Court” means the Supreme Court of Seychelles;

“director”, in relation to a company, a foreign company and any other body corporate, includes a person occupying or acting in the position of director by whatever name called;

“dissolved”, in relation to a company, means dissolved under this Act or any other written law of Seychelles;

“distribution” means as defined in section 68;

“dividend” means as defined in section 69;

“document” means a document in any form and includes –

- (a) any writing on any material;
- (b) a book, graph, drawing or other pictorial representation or image;
- (c) information recorded or stored by any electronic or other technological means and capable with or without the aid of any equipment of being reproduced;

“electronic form” with reference to information means any information generated, sent, received or stored in any computer storage media such as magnetic, optical, computer memory or other similar devices;

“electronic record” means data, record or data generated, image or sound stored, received or sent in an electronic form and includes any electronic code or device necessary to decrypt or interpret the electronic record;



“executive”, in relation to a company, means a person employed in an executive or managerial capacity;

“foreign company” means a body corporate that is incorporated or registered under the laws of a jurisdiction outside Seychelles;

“former Act” means the International Business Companies Act 1994 repealed by section 381;

“former Act company” means a company which was incorporated or continued under the former Act;

“guarantee member”, in relation to a company, means a person –

(a) being a member whose liability in his capacity as such a member is limited by the company’s memorandum to the amount which he thereby undertakes, by way of guarantee and not by reason of holding any share, to contribute to the assets of the company if it is wound up; and

(b) whose name is entered in the register of members as a guarantee member;

“international business company” means as defined in section 5(1);

“incapacitated adult” means a person, other than a minor, who under the written law of Seychelles does not have legal capacity;

“limited company” means –

(a) a company limited by shares;

(b) a company limited by guarantee; or

(c) a company limited by shares and guarantee;

“limited life company” means a limited life company as defined in section 8(1);

“member”, in relation to a company, means a person whose name is entered in the company’s register of members as –

(a) a shareholder; or

(b) a guarantee member;

“memorandum” means the original, amended or restated memorandum of association of a company;

“Minister” means the Minister responsible for Finance;

“minor” means an individual under the age of eighteen;

“non-cellular company” means an international business company which is not a protected cell company;

“no par value company” means a company which is –

- (a) authorised to issue no par value shares; and
- (b) not authorised to issue par value shares,

whether or not it also has guarantee members;

“no par value share” means a registered share which is not expressed as having nominal value;

“officer”, in relation to a company, means a director, executive, secretary or liquidator;

“Official Seal” means the official seal of the Registrar as provided for in section 345;

“ordinary company” means a company registered under the Companies Act;

“ordinary resolution” means an ordinary resolution of members as defined in section 110;

“parent”, in relation to a company, foreign company or other body corporate, means as defined in section 3(1)(b);

“par value company” means a company which is –

- (a) registered with share capital comprising par value shares; and
- (b) not authorised to issue no par value shares,

whether or not it also has guarantee members;

“par value share” means a registered share which is expressed as having nominal value;

“personal representative” means the executor or administrator for the time being of a deceased person;

“protected cell company” means an international business company to which section 7 applies;

“records” means documents and other records however stored;

“registered agent” means, in relation to a company, the person who is the company’s registered agent in accordance with section 164;

“registered share” means a share in a company which is issued to a named person, whose name is entered in the company’s register of members as the holder of that share;

“Register of Registered Charges” means the Register of Registered Charges maintained by the Registrar in accordance with sections 181(3) and 346(1)(b);

“Register” means the Register of International Business Companies maintained by the Registrar in accordance with section 346(1)(a);

“Registrar” means the Chief Executive Officer of the Authority appointed under section 9 of the Financial Services Authority Act;

“resident person” means –

- (a) an individual who resides in Seychelles or who is present in Seychelles for a period of, or periods amounting in aggregate to, one hundred eighty-three days or more in any twelve-month period that commences or ends during a calendar year;
- (b) a company registered under this Act;
- (c) a body corporate registered under the Companies Act;
- (d) a foreign company managed and controlled in Seychelles;
- (e) a partnership in which one of the partners is a resident in Seychelles, including a limited partnership registered under the Limited Partnerships Act;
- (f) a foundation registered under the Foundations Act; or
- (g) a trust registered under the International Trusts Act;

“resolution of directors” means as defined in section 155;

“secured creditor” means as defined in section 327(c);

“securities” means as defined in section 2(1) of the Securities Act, including shares and debt obligations of every kind and options, warrants and other rights to acquire shares or debt obligations;

“share” means a par value share or a no par value share in a body corporate or a cell, in respect of which liability is limited to the amount (if any) unpaid on it;

“share capital”, in relation to a company, means –

- (a) in the case of a par value company, the sum of the aggregate par value of all the issued and outstanding par value shares of a company and shares with par value held by the company as treasury shares;
- (b) in the case of a no par value company, the aggregate of the amounts designated by the directors as share capital of all issued and outstanding no par value shares of the company and no par value shares held by the company as treasury shares,

and the amounts as may be from time to time transferred from surplus to share capital by a resolution of the directors;

“shareholder”, in relation to a company, means a person whose name is entered in the register of members as the holder of one or more shares, or fractional shares, in the company;

“solvency test” means a solvent test as specified in section 67;

“special resolution” means a special resolution of members as specified in section 112;

“subsidiary”, in relation to a company, foreign company or other body corporate, means as defined in section 3(1)(c);

“surplus”, in relation to a company, means the excess, if any, at the time of the determination, of total assets of the company over the sum of its total liabilities, as shown in the books of account plus its share capital;

“tax treaty” means a treaty or agreement between the Government of Seychelles and the government of one or more other countries –

- (a) for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income; or
- (b) on exchange of information on tax matters; and

“treasury share” means a share of a company that was previously issued but was repurchased, redeemed or otherwise acquired by the company and not cancelled.

### **Associated companies**

3.(1) For the purposes of this section –

- (a) “group”, in relation to a company (referred to in this paragraph as the “first company”), means the first company and any other company that is –
  - (i) a parent of the first company;
  - (ii) a subsidiary of the first company;
  - (iii) a subsidiary of a parent of the first company; or
  - (iv) a parent of a subsidiary of the first company;
- (b) “parent”, in relation to a company (referred to in this paragraph as the “first company”), means another company that, whether acting alone or under an agreement with one or more other persons, –
  - (i) holds, whether legally or beneficially, a majority of the issued shares of the first company;
  - (ii) has the power, directly or indirectly, to exercise, or control the exercise of, a majority of the voting rights in the first company;

(iii) has the right to appoint or remove the majority of the directors of the first company;

(iv) has the right to exercise a dominant influence over the management and control of the first company pursuant to a provision in the constitutional documents of the first company; or

(v) is a parent of a parent of the first company; and

(c) “subsidiary”, in relation to a company (referred to in this paragraph as the “first company”), means a company of which the first company is a parent.

(2) For the purposes of this Act, a company is associated with another company if it is in the same group as the other company and references to an “associated company” shall be construed accordingly.

(3) For the purposes of subsections (1) and (2), “company” includes a foreign company and any other body corporate.

### **Application of this Act**

4. This Act shall apply to –

(a) an international business company; and

(b) a former Act company.

## **PART II – COMPANY INCORPORATION**

### **Sub-Part I – Types of international business companies**

#### **Definition of international business companies**

5.(1) An “international business company” means a company incorporated or continued, or converted into a company, under this Act.

(2) A company shall not –

(a) carry on banking business as defined in the Financial Institutions Act (Cap 79) in or outside Seychelles;

(b) carry on insurance business as defined in the Insurance Act (Cap 98) in Seychelles or, unless it is licensed or otherwise legally able to do so under the laws of the country in which it carries on such business, outside Seychelles;

(c) carry on business providing international corporate services, international trustee services or foundation services as defined in the International Corporate Service Providers Act except -

- (i) to the extent permitted under the International Corporate Service Providers Act; and
  - (ii) in the case of carrying on such business outside Seychelles, if the company is licensed or otherwise legally able to do so under the laws of each country outside Seychelles in which it carries on such business;
- (d) carry on securities business as defined in the Securities Act (Cap 208) in Seychelles or, unless it is licensed or otherwise legally able to do so under the laws of the country in which it carries on such business, outside Seychelles;
- (e) carry on business as a mutual fund as defined in the Mutual Fund and Hedge Fund Act (Cap 285) unless it is licensed or otherwise legally able to do so under the Mutual Fund and Hedge Fund Act or under the laws of a recognised jurisdiction as defined in the Mutual Fund and Hedge Fund Act; or
- (f) carry on gambling business as defined in the Seychelles Gambling Act, 2014 (Act 29 of 2014), including interactive gambling business, in or outside Seychelles unless it is licensed or otherwise legally able to do so under the laws of the country in which it carries on such business.

### **Companies which may be incorporated or continued**

6.(1) An international business company shall be incorporated or continued, or converted into a company, under this Act as –

- (a) a company limited by shares;
  - (b) a company limited by guarantee; or
  - (c) a company limited by shares and guarantee.
- (2) Subject to the provisions of this Act, an international business company may be –
- (a) a protected cell company; or
  - (b) limited life company.

### **Protected cell companies**

7. A company is a protected cell company if –

- (a) it has been incorporated or continued under this Act in accordance with Part XIII including having obtained the Authority's written consent under section 221 which has not been revoked; and
- (b) its memorandum provides that it is a protected cell company.

### **Limited life companies**

**8.** A company is a limited life company if its memorandum includes a provision that the company shall be wound up and dissolved upon –

- (a) the expiration of a fixed period of time; or
- (b) the bankruptcy, death, expulsion, insanity, resignation or retirement of any member of the company; or
- (c) the happening of some other event which is not the expiration of a fixed period of time.

## **Sub-Part II – Incorporation of companies**

### **Application to incorporate a company**

**9.(1)** Subject to subsection (2), an application may be made to the Registrar for the incorporation of a company under this Act by filing with the Registrar –

- (a) a memorandum and articles which comply with the requirements of this Act, signed by or on behalf of each subscriber in accordance with sections 13 and 20;
- (b) an incorporation application in the approved form in accordance with Part I of the First Schedule, signed by or on behalf of each subscriber to the memorandum and articles;
- (c) if the company is to be incorporated as a protected cell company, the written consent of the Authority given under section 221;
- (d) the applicable incorporation fee as specified in Part I of the Second Schedule; and
- (e) such other documents as may be prescribed.

(2) An application for the incorporation of a company shall only be filed by its proposed registered agent.

(3) For the purposes of this section, the “proposed registered agent” means the person named in the memorandum as the first registered agent of the company.

### **Incorporation of a company**

**10.(1)** If the Registrar is satisfied that the requirements of this Act in respect of incorporation of a company have been complied with, the Registrar shall upon receipt of the documents filed under section 9(1), –

- (a) register the documents;
- (b) allot a unique registration number to the company; and
- (c) issue a certificate of incorporation to the company in the approved form.

(2) The certificate of incorporation shall be signed by the Registrar and sealed with the Official Seal.

### **Effect of incorporation**

**11.**(1) A certificate of incorporation issued under this Act is conclusive evidence of the following matters –

- (a) that the company is incorporated under this Act; and
- (b) that the requirements of this Act have been complied with in respect of the incorporation of the company.

(2) Upon incorporation of a company under this Act –

- (a) the company is a legal entity in its own right separate from its members and continues in existence until it is dissolved;
- (b) the memorandum and articles are binding as between –
  - (i) the company and each member of the company; and
  - (ii) each member of the company.

(3) The company, the board, each director and each member of a company has the rights, powers, duties and obligations set out in this Act except to the extent that they are negated or modified, as permitted by this Act, by the memorandum or the articles.

(4) The memorandum and articles of a company have no effect to the extent that they contravene or are inconsistent with this Act.

### **Annual fee**

**12.**(1) Each company which is on the Register shall pay to the Registrar on or before the date of each anniversary of its incorporation, continuation or conversion under this Act, the annual fee set out in Part I of the Second Schedule.

(2) Payment under subsection (1) shall be made by the company through its registered agent.

(3) Where the annual fee referred to in subsection (1) is not paid by the date set out in that subsection, the amount of the annual fee shall increase by ten percent.

(4) Where the company fails to pay the amount due as an increased annual fee under subsection (3) within 90 days of the date when it becomes due, then the amount of the annual fee shall increase by fifty percent.

### **Memorandum of association**



**13.(1)** The memorandum of a company shall –

- (a) state the full name and address of each subscriber; and
- (b) be printed and signed by or on behalf of each subscriber in the presence of at least one witness who shall attest the signature and insert his own name and address.

(2) For the purposes of subsection (1) the sole subscriber who signs the memorandum of a company may be its proposed registered agent, who shall not be required to become a member of the company upon its incorporation.

#### **Content of the memorandum of association**

**14.** The memorandum of a company shall state –

- (a) the name of the company;
- (b) the address in Seychelles of the company's registered office as at the date of the memorandum;
- (c) whether the company is –
  - (i) a company limited by shares;
  - (ii) a guarantee company; or
  - (iii) a company limited by shares and guarantee;
- (d) the name and address of the company's registered agent as at the date of the memorandum;
- (e) *Repealed.*
- (f) otherwise as may be required by this Act.

#### **Memorandum of company with shares**

**15.** In the case of a company limited by shares or otherwise authorised to issue shares, the memorandum shall state –

- (a) if it is a par value company, the authorised capital with which the company is to be registered and the number of shares of a fixed nominal value in each class comprising the authorised capital;
- (b) if it is a no par value company, the authorised capital with which the company is to be registered and the limit (if any) on the number of shares of each class which the company is to be authorised to issue;
- (c) that the liability of a member arising from the member's holding of any share is limited to the amount (if any) unpaid on it; and

- (d) the classes of shares that the company is authorised to issue and, if the company is authorised to issue two or more classes of shares, the rights, privileges, restrictions and conditions attaching to each class of shares.

### **Memorandum of company with guarantee members**

**16.(1)** Where a company is to be registered with a memorandum which provides for guarantee members, the memorandum shall state that each guarantee member is liable to contribute to the assets of the company, if it should be wound up while he is a member or within 12 months after he ceases to be a member, such fixed amount as may be required for the purposes specified in subsection (2) but does not exceed a maximum amount to be specified in the memorandum in relation to that member.

(2) The purposes to which subsection (1) refers are –

- (a) payment of the debts and liabilities of the company contracted before he ceases to be a member;
- (b) payment of the costs, charges and expenses of winding up; and
- (c) adjustment of the rights of the contributories among themselves.

(3) In the case of a company limited by shares and guarantee, the memorandum or articles may –

- (a) require a guarantee member also to be a shareholder; or
- (b) prohibit a guarantee member from also being a shareholder.

(4) If the memorandum or articles of a company limited by shares and guarantee do not make provision under subsection (3), a guarantee member may also be a shareholder.

(5) A company limited by shares shall not amend its memorandum under Sub-Part III of this Part to change its status into a company limited by guarantee or company limited by shares and guarantee unless –

- (a) there is no unpaid liability on any of its issued shares; and
- (b) the company's proposed amended memorandum and change of status, including any proposed cancellation of shares, has been approved by unanimous resolution of members or, if permitted by its memorandum, by ordinary resolution.

### **Memorandum may specify objects**

**17.(1)** The memorandum may specify objects of the company and may provide that the activities of the company shall be restricted to the attainment or furtherance of the specified objects.

(2) If –

- (a) no objects of the company are specified in the memorandum;
- (b) objects are specified but the activities of the company are not restricted to the attainment or furtherance of those objects; or
- (c) the memorandum contains a statement, either alone or with other objects, that the object of the company is to engage in any act or activity that is not prohibited under any law for the time being in force in Seychelles,

the company's objects shall be deemed to include, and the company shall have full power and the authority to carry out or to engage in, any act or activity that is not prohibited under any law for the time being in force in Seychelles, subject to any limitations in the memorandum.

### **Memorandum or articles of limited life company**

**18.** Where a company is to be wound up and dissolved upon –

- (a) the expiration of a period of time; or
- (b) the happening of some other event,

that period or event shall be specified in the memorandum or articles of the company.

### **Language of memorandum**

**19.(1)** Subject to subsection (2), the memorandum of a company shall be in English or French or in any other official language of any country.

(2) Where the language of the memorandum of a company is a language other than English or French, the memorandum shall be accompanied by a translation of it, in the English or French language, certified as true and accurate by the company's proposed registered agent.

(3) The registered agent shall not give a certificate under subsection (2), unless the translation has been obtained from or confirmed by an acceptable translator.

### **Articles of association**

**20.(1)** A company's articles shall set out regulations for the company.

(2) The articles of a company shall be printed and signed by or on behalf of each subscriber in the presence of at least one witness who shall attest the signature and insert his own name and address.

(3) For the purposes of subsection (2) the sole subscriber who signs the articles of a company may be its proposed registered agent, who shall not be required to become a member of the company upon its incorporation.

### **Language of articles**

**21.(1)** Subject to subsection (2), the articles of a company shall be in English or French or in any other official language of any country.

(2) Where the language of the articles of a company is a language other than English or French, the articles shall be accompanied by a translation of it, in the English or French language, certified as true and accurate by the company's proposed registered agent.

(3) The registered agent shall not give a certificate under subsection (2), unless the translation has been obtained from or confirmed by an acceptable translator.

### **Sub-Part III – Amendment and restatement of memorandum or articles**

#### **Amendment of memorandum or articles**

**22.(1)** Subject to this section and section 23, the memorandum or articles of a company may be amended by –

- (a) an ordinary resolution; or
- (b) a resolution of directors.

(2) The memorandum or articles of a company may not be amended –

- (a) by a resolution of directors alone, if this Act requires that the proposed amendment be approved by resolution of members; or
- (b) by a resolution of directors or members alone, if this Act requires that the proposed amendment also be approved by the Court.

(3) Subject to subsection (4), the memorandum of a company may include one or more of the following provisions –

- (a) that specified provisions of the memorandum or articles may not be amended;
- (b) that the memorandum or articles, or specified provisions of the memorandum or articles, may be amended only if certain specified conditions are met;
- (c) that all or any provisions of the memorandum or articles may only be amended by a resolution of members;
- (d) that a resolution passed by a specified majority of members representing in excess fifty per cent of the votes of those members entitled to vote, is required to amend the memorandum or articles or specified provisions of the memorandum or articles.

(4) Subsections (3)(a) and (b) do not apply to any provision in the memorandum of a company that restricts the objects of that company.

(5) Notwithstanding any provision in a company's memorandum or articles to the contrary, the directors of the company shall not have the power to amend the memorandum or articles –

- (a) to restrict the rights or powers of the members to amend the memorandum or articles;
- (b) to change the percentage of members required to pass a resolution to amend the memorandum or articles; or
- (c) in circumstances where the memorandum or articles cannot be amended by the members,

and any resolution of the directors of a company is void and of no effect to the extent that it contravenes this subsection.

### **Registration of amendments to memorandum or articles**

**23.**(1) Where a resolution is passed to amend the memorandum or articles of a company, the company shall file for registration a certified copy or extract of the resolution approving the amendment to its memorandum or articles in accordance with subsection (2).

(2) In respect of the certified copy or extract of the resolution referred to in subsection (1), an extract of the resolution shall be certified as a true copy and signed by the registered agent of the company.

(3) An amendment to the memorandum or articles only has effect from the date that the certified copy or extract resolution referred to in subsection (1) is registered by the Registrar.

### **Restated memorandum or articles**

**24.**(1) A company may at any time file with the Registrar a restated memorandum or articles.

(2) A restated memorandum or articles filed under subsection (1) shall incorporate only such amendments that have been registered under section 23.

(3) Where a company files a restated memorandum or articles under subsection (1), the restated memorandum or articles has effect as the memorandum or articles of the company with effect from the date that it is registered by the Registrar.

(4) The Registrar is not required to verify that a restated memorandum or articles filed under this section incorporates all the amendments, or only those amendments, that have been registered under section 23.

(5) It is not obligatory that a restated memorandum or articles filed under subsection (1) be signed by the original subscriber.

## **PART III - COMPANY NAMES**

### **Requirements as to names**

**25.**(1) Subject to subsection (2), the name of a company shall end with –

- (a) the word “Limited”, “Corporation” or “Incorporated”; or

- (b) the abbreviation “Ltd”, “Corp” or “Inc”.
- (2) The name of a protected cell company shall end with the words “Protected Cell Company” or with the abbreviation “PCC”.
- (3) A company may use, and be legally designated by, either the full or the abbreviated form of any word or words required as part of its name under this section.
- (4) Where the abbreviation “Ltd”, “Corp”, “Inc” or “PCC” is used as part of a company’s name, a full-stop may be inserted at the end of the abbreviation.
- (5) A protected cell company shall assign a distinctive name to each of its cells that –
  - (a) distinguishes the cell from any other cell of the company; and
  - (b) ends with the words “Protected Cell” or with the abbreviation “PC”.
- (6) Subject to subsection (7) and notwithstanding subsection (1), a former Act company may retain any name, including any suffix denoting limited liability, which was permissible under the former Act.
- (7) If a former Act company changes its name on or after the Act commencement date, it shall comply with subsection (1).

### **Restrictions on company names**

- 26.** A company shall not be registered, whether on incorporation, continuation, conversion, merger or consolidation, under a name that –
- (a) is identical to the name under which another company is registered under this Act;
  - (b) is so similar to the name under which another company is registered under this Act that the use of the name would, in the opinion of the Registrar, be likely to confuse or mislead;
  - (c) includes a prohibited word, phrase or abbreviation referred to in Part I of the Third Schedule;
  - (d) includes a restricted word, phrase or abbreviation referred to in Part II of the Third Schedule, unless the prior written consent to the use of the word, phrase or abbreviation has been given by the Registrar and any other regulatory body whose consent thereto is required under Seychelles law; or
  - (e) in the opinion of the Registrar –
    - (i) suggests or is calculated to suggest the patronage or any connection with the Government of Seychelles or the government of any other country; or

- (ii) is in any way offensive, misleading, objectionable or contrary to public policy or to the public interest.

### **Rights and interests in names**

27.(1) Nothing in this Part requires the Registrar, when determining whether to incorporate, continue or convert a company under a name, to register a change of name or to direct a change of name, to –

- (a) make a determination of any person's interest in a name, or the rights of any person concerning a name or the use of a name, whether the interest or rights are alleged to arise under Seychelles law or any law in a jurisdiction other than Seychelles; or
  - (b) to take account of any trademark, or equivalent right, whether registered in Seychelles or in a jurisdiction other than Seychelles.
- (2) Subsection (1) does not prevent the Registrar taking into account any matter specified in that subsection when determining whether, in his opinion, the registration of a company name is, or would be, objectionable or contrary to public policy or to the public interest.
- (3) The registration of a company under this Act with a company name does not give the company any interest in, or rights over, the name that it would not have, apart from this Part.

### **Language of company names**

28. Subject to sections 25, 26 and 31 of this Act and to the requirements set out in the Fourth Schedule –

- (a) the name of a company may be expressed in any language; and
- (b) where the name of a company is in the English or French language, it may have an additional foreign character name.

### **Reservation of names**

29.(1) Subject to this section, the Registrar may upon a request made by a person licensed to provide international corporate services under the International Corporate Service Providers Act (Cap 275), reserve for 30 days a name for future adoption by a company under this Act.

- (2) The Registrar may refuse to reserve a name if he is not satisfied that the name complies with this Part in respect of the company or proposed company.
- (3) On the expiry of the 30 day period referred to in subsection (1), the Registrar may, on payment of the fee specified in Part II of the Second Schedule, for each 30 day period thereafter, continue reserving the name for future adoption by a company under this Act.

### **Change of name**

**30.**(1) Subject to its memorandum and articles, a company may apply to the Registrar to change its name or its foreign character name by way of an amendment to its memorandum and articles in accordance with sections 22 and 23.

(2) Where a company proposes to change its name or its foreign character name, section 26 shall apply to the name by which the company proposes to change its name.

(3) Where a company applies to change its name or its foreign character name, the Registrar shall, on compliance by the company with sections 22 and 23, and if it is satisfied that the proposed new name or new foreign character name of the company complies with section 26

–

(a) enter the new name in the Register in the place of the former name; and

(b) issue a certificate of change of name to the company.

(4) A change of the name of a company under this section or section 31 –

(a) takes effect from the date of the certificate of change of name issued by the Registrar; and

(b) does not affect any rights or obligations of the company or render defective any legal proceedings by or against it, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

### **Power to require change of name**

**31.**(1) If a company has been incorporated, continued or converted into a company under this Act with, or has changed its name to, a name which, in the opinion of the Registrar, does not comply with sections 25 or 26 the Registrar may –

(a) within 2 years of that time direct the company by written notice to make an application to change its name or its foreign character name on or before a date specified in the notice, which shall be not less than 30 days after the date of the notice; or

(b) apply to the Court for, and the Court may grant, an order changing the company's name or its foreign character name, or requiring the company to change such name, to a name acceptable to the Registrar on such terms as the Court thinks fit.

(2) If a company that has received a notice under subsection (1)(a) fails to file an application to change its name to a name acceptable to the Registrar on or before the date specified in the notice, the Registrar may revoke the name of the company and assign it a new name acceptable to the Registrar.

(3) Where the Registrar assigns a new name to a company under subsection (2) or pursuant to an order made by the Court under subsection (1)(b), it shall –

(a) enter the new name in the Register in the place of the former name;



- (b) issue a certificate of change of name to the company; and
  - (c) publish the change of name in the *Gazette*.
- (4) A company that fails to comply with a direction given under this section within the period of time specified by the Registrar under subsection (1)(a) commits an offence and is liable on conviction to a fine not exceeding US\$10,000.

### **Reuse of company names**

32. The Registrar may permit the reuse of company names as provided for in the Fifth Schedule.

## **PART IV – COMPANY CAPACITY AND POWERS**

### **Capacity and powers**

33.(1) Subject to this Act, any other written law and its memorandum and articles, a company has, irrespective of corporate benefit –

- (a) full capacity to carry on or undertake any business or activity, do any act or enter into any transaction; and
- (b) for the purposes of paragraph (a), full rights, powers and privileges.

(2) Without limiting the generality of subsection (1), subject to its memorandum and articles, subsection (3) and section 48 (*Bearer shares prohibited*), the powers of a company include the power to do any of the following –

- (a) issue and cancel shares and hold treasury shares;
- (b) grant options over unissued shares in the company and treasury shares;
- (c) issue securities that are convertible into shares;
- (d) give financial assistance to any person in connection with the acquisition of its own shares;
- (e) issue debt obligations of every kind and grant options, warrants and rights to acquire debt obligations;
- (f) guarantee a liability or obligation of any person and secure any obligations by mortgage, pledge or other charge, of any of its assets for that purpose; and
- (g) protect the assets of the company for the benefit of the company, its creditors and its members and, at the discretion of the directors, for any person having a direct or indirect interest in the company.

(3) Paragraphs (a), (b), (c) and (d) of subsection (2) shall not apply to company limited by guarantee.

(4) For the purposes of subsection (2)(g), the directors may cause the company to transfer any of its assets in trust to one or more trustees, each of which may be an individual, company, association, partnership, foundation or similar entity and, with respect to the transfer, the directors may provide that the company, its creditors, its members or any person having a direct or indirect interest in the company, or any of them, may be the beneficiaries of the trust.

(5) The rights or interests of any existing or subsequent creditor of the company in any assets of the company are not affected by any transfer under subsection (4), and those rights or interests may be pleaded against any transferee in any such transfer.

### **Validity of acts of company**

**34.**(1) Subject to subsection (2), no act of a company and no transfer of an asset by or to a company is invalid by reason only of the fact that the company did not have the capacity, right or power to perform the act or to transfer or receive the asset.

(2) The lack or alleged lack of capacity, right or power of a company to perform an act or to transfer or receive an asset may be asserted –

(a) in proceedings by a member or a director against the company to prohibit the performance of any act, or the disposition of property by or to the company; and

(b) in proceedings by the company, whether acting directly or through a liquidator or other legal representative or through members of the company in a representative capacity, against the incumbent or former directors or other officers of the company for loss or damage through their unauthorised act.

(3) This section applies to companies incorporated before, on or after the Act commencement date, but this section does not affect the capacity of a former Act company in relation to anything done by it before this section came into force.

### **Personal liability**

**35.**(1) Subject to subsection (2) and except in so far as he may be liable for his own conduct or acts, no director, agent or liquidator of a company is liable for any debt, obligation or default of the company, unless –

(a) it is proved that he acted fraudulently or otherwise in bad faith; or

(b) specifically provided in this Act or in any other written law of Seychelles.

(2) If at any time there is no member of a company, any person doing business in the name of or on behalf of the company is personally liable for the payment of all debts of the company contracted during such time and the person may be sued in respect thereof without joinder in the proceedings of any other person.

### **Dealings between a company and other persons**

**36.(1)** A company or a guarantor of an obligation of a company may not assert against a person dealing with the company or with a person who has acquired assets, rights or interests from the company that –

- (a) this Act or the memorandum or articles of the company has not been complied with;
- (b) a person named as a director in the company's register of directors –
  - (i) is not a director of the company;
  - (ii) has not been duly appointed as a director of the company; or
  - (iii) does not have authority to exercise a power which a director of a company carrying on business of the kind carried on by the company customarily has authority to exercise;
- (c) a person held out by the company as a director, employee or agent of the company –
  - (i) has not been duly appointed; or
  - (ii) does not have authority to exercise a power which a director, employee or agent of a company carrying on business of the kind carried on by the company customarily has authority to exercise;
- (d) a person held out by the company as a director, employee or agent of the company with authority to exercise a power which a director, employee or agent of a company carrying on business of the kind carried on by the company does not customarily have authority to exercise, does not have authority to exercise that power; or
- (e) a document issued on behalf of a company by a director, employee or agent of the company with actual or usual authority to issue the document is not valid or not genuine,

unless the person has, or ought to have, by virtue of his relationship to the company, knowledge of the matters referred to in any of paragraphs (a) to (e).

(2) Subsection (1) applies even though a person of the kind referred to in paragraphs (b) to (e) of that subsection acts fraudulently or forges a document that appears to have been signed on behalf of the company, unless the person dealing with the company or with a person who has acquired assets, rights or interests from the company has actual knowledge of the fraud or forgery.

### **Contracts generally**

**37.(1)** A contract may be entered into by a company as follows –

(a) a contract that, if made between individuals, would by law be required to be in writing and made by deed or under seal, is validly entered into by a company as a deed or an instrument under seal if it is either –

(i) sealed with the common seal of the company and witnessed by a director of the company or such other person who is authorised by the memorandum and articles to witness the application of the company's seal; or

(ii) expressed to be, or is executed on behalf of the company and expressed to be executed as, or otherwise makes clear on its face that it is intended to be, a deed and it is signed by any person acting under the express or implied authority of the company;

(b) a contract that, if made between individuals, would be required by law to be in writing and signed by the parties thereto, may be entered into by or on behalf of the company in writing and signed by any person acting under the express or implied authority of the company; and

(c) a contract that, if made between individuals, would be valid although entered into orally and not reduced to writing, may be entered into orally by or on behalf of the company by any person acting under the express or implied authority of the company.

(2) Any contract made according to this section may be varied or discharged in the same manner as it is authorised by this section to be made.

(3) A contract entered into in accordance with this section is valid and is binding on the company and its successors and all other parties to the contract, their heirs, executors or administrators.

### **Pre-incorporation contracts**

**38.(1)** A person who enters into a contract in the name of or on behalf of a company before the company is incorporated, is personally bound by, liable under and entitled to the benefits of the contract, except where –

(a) the contract specifically provides otherwise; or

(b) subject to any provisions of the contract to the contrary, the company ratifies the contract under subsection (2).

(2) A company may, by any action or conduct signifying its intention to be bound by a contract entered into in its name or on its behalf before it was incorporated, ratify the contract after the company's incorporation.

(3) When a company ratifies a contract under subsection (2) –

(a) the company is bound by, liable under and entitled to the benefits of the contract as if the company had been incorporated at the date of the contract and had been a party to it; and

(b) subject to any provisions of the contract to the contrary, the person who acted in the name of or on behalf of the company ceases to be personally bound by, liable under or entitled to the benefits of the contract.

### **Power of attorney**

**39.**(1) Subject to its memorandum and articles, a company may by an instrument in writing appoint a person as its attorney either generally or in relation to a specific matter.

(2) An act of an attorney appointed under subsection (1) in accordance with the instrument under which he was appointed binds the company.

(3) An instrument appointing an attorney under subsection (1) may either be –

(a) executed as a deed; or

(b) signed by a person acting under the express or implied authority of the company.

### **Company seal**

**40.**(1) A company may have a common seal.

(2) A company which has a common seal shall have its name in legible characters on that seal.

(3) A company which has a common seal may have duplicate common seals.

### **Authentication or attestation**

**41.** A document requiring authentication or attestation by a company may be signed by a director, a secretary or by an authorised agent of the company, and need not be under its common seal.

## **PART V - SHARES**

### **Sub-Part I - General**

#### **Nature of shares**

**42.** A share in a company is movable property.

#### **Share rights**

**43.**(1) Subject to subsections (2) and (3), a share in a company confers on the holder –

(a) the right to one vote at a meeting of the members of the company or on any resolution of the members of the company;

(b) the right to an equal share in any dividend paid in accordance with this Act; and

- (c) the right to an equal share in the distribution of the surplus assets of the company.
- (2) Where expressly authorised by its memorandum in accordance with section 15 but subject to section 48 (*Bearer shares prohibited*), a company –
- (a) may issue more than one class of shares; and
  - (b) may issue shares subject to terms that negate, modify or add to the rights specified in subsection (1).
- (3) Without limiting the generality of subsection (2)(b) but subject to section 48 (*Bearer shares prohibited*), shares in a company may –
- (a) subject to the provisions of this Act, be redeemable;
  - (b) confer no rights, or preferential rights, to distributions;
  - (c) confer special, limited or conditional rights, including voting rights;
  - (d) confer no voting rights;
  - (e) participate only in certain assets of the company;
  - (f) where issued in, or converted to, one class or series, be convertible to another class or series, in the manner specified in the memorandum or articles.

### **Distinguishing numbers**

**44.** The shares in a company having a share capital divided into shares shall each be distinguished by an appropriate number except that if at any time all the issued shares in the company or all the issued shares in the company of a particular class are fully paid up and carry the same rights in all respects, none of those shares need to have a distinguishing number.

### **Series of shares**

**45.** Subject to its memorandum and articles, a company may issue a class of shares in one or more series.

### **Par value and no par value shares**

**46.(1)** Subject to the memorandum and articles of a company and subsection (2), a share may be issued as a par value share or a no par value share.

(2) A company shall not have a share capital consisting of shares which include par value shares and no par value shares.

(3) Subject to the memorandum and articles of a company, a par value share may be issued in any currency.

## **Fractional shares**

47.(1) Subject to its memorandum and articles, a company may issue fractional shares.

(2) Unless and to the extent otherwise provided in a company's articles, a fractional share shall be subject to and carry the corresponding fraction of liabilities (whether with respect to par value, premium, contribution, calls or otherwise howsoever), limitations, preferences, privileges, qualifications, restrictions, rights and other attributes of a whole share of the same class of shares; and in this Act the expression "share" includes a fraction of a share and no issue or purported issue of a fraction of a share shall be invalid by reason only of the fact that it was issued or purportedly issued prior to the Act commencement date.

(3) The par value of a par value share may be expressed in an amount which is a fraction or a percentage of the smallest denomination of the currency in which it is issued.

## **Bearer shares prohibited**

48. A company shall not, and has no power to, –

- (a) issue a bearer share;
- (b) convert a registered share into a bearer share;
- (c) exchange a registered share for a bearer share; or
- (d) convert any other securities into, or exchange any other securities for, bearer shares.

## **Sub-Part II - Issue of shares**

### **Issue of shares**

49. Subject to this Act and to its memorandum and articles, shares in a company may be issued, and options to acquire shares in a company granted, at such times, to such persons, for such consideration and on such terms as the directors may determine.

### **Consideration for shares**

50.(1) Subject to subsections (2) and (3), a share may be issued for consideration in any form, including money, a promissory note, or other written obligation to contribute money or property, immovable property, movable property (including goodwill and knowhow), services rendered or a contract for future services.

(2) Subject to section 55, the consideration for a par value share shall not be less than the par value of the share.

(3) Subject to any provision to the contrary in its memorandum or articles, a company may –

- (a) issue bonus shares, partly paid shares and nil paid shares; and

- (b) accept payment of consideration for a share in such installment amounts and at such times after issue of the share as the company may approve.
- (4) If a share is issued in contravention of subsection (2), the person to whom the share is issued is liable to pay to the company an amount equal to the difference between the issue price and the par value.
- (5) Where a par value company issues a par value share, the consideration in respect of the share constitutes share capital to the extent of the par value and the excess constitutes surplus.
- (6) Subject to any limitations in its memorandum or articles, where a no par value company issues a no par value share, the consideration in respect of the share constitutes share capital to the extent designated by the directors and the excess constitutes surplus, except that the directors shall designate as share capital an amount of the consideration that shall be at least equal to the amount that the share is entitled to as a preference, if any, in the assets of the company upon its liquidation.

#### **Provision for different amounts to be paid on shares**

**51.** A company, if so authorised by its articles, may –

- (a) make arrangements on the issuance of shares for a difference between the shareholders in the amounts and times of payments of calls or installments payable on their shares;
- (b) accept from a shareholder the whole or a part of the amount remaining unpaid on shares held by him, although no part of that amount has been called up or become payable; and
- (c) pay distributions in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

#### **Shares issued for consideration other than money**

**52.(1)** Before issuing shares for a consideration other than money (whether in whole or in part), the directors shall pass a resolution stating –

- (a) the amount to be credited for the issue of the shares;
  - (b) their determination of the reasonable present cash value of the non-money consideration for the issue; and
  - (c) that, in their opinion, the present cash value of the non-money consideration and money consideration (if any) for the issue is not less than the amount to be credited for the issue of the shares.
- (2) Subsection (1) shall not apply to the issue of any bonus shares.

#### **Time of issue**



**53.** A share is deemed to be issued when the name of the shareholder is entered in the issuing company's register of members.

#### **Consent to issue certain shares**

**54.** The issue by a company of a share that –

- (a) increases a liability of a person to the company; or
- (b) imposes a new liability on a person to the company,

is void if that person, or an authorised agent of that person, does not agree in writing to becoming the holder of the share.

#### **Power to issue shares at a discount**

**55.(1)** For the purposes of this section, “issue at a discount”, in relation to a par value share, means issue for a consideration less than the par value of the share.

(2) Subject as provided in this section, it shall be lawful for a par value company to issue at a discount shares in the company of a class already issued.

(3) No shares shall be issued at a discount pursuant to subsection (2) unless –

- (a) the proposed issue of the shares at a discount has been –
  - (i) authorised by resolution of the members of the company; and
  - (ii) sanctioned by the Court;
- (b) they are par value shares;
- (c) the resolution specifies the maximum rate of discount at which the shares are to be issued;
- (d) not less than one year, at the date of the issue, has elapsed since the date on which the company was entitled to commence business; and
- (e) the shares to be issued at a discount are issued within three months after the date on which the issue is sanctioned by the Court or within such extended time as the Court may allow.

(4) Where a company has passed a resolution authorising the issue of shares at a discount, it may apply to the Court for an order approving the issue.

(5) On any application to the Court under subsection (4), if, having regard to all the circumstances of the case, it thinks proper so to do, the Court may make an order approving the issue on such terms and conditions as it thinks fit.

(6) A company that contravenes subsection (3) commits an offence and is liable on conviction to a fine not exceeding US\$25,000.

### **Power of company to pay commissions**

**56.(1)** A company has the power, and shall be deemed always to have had the power, to pay a commission to any person in consideration of his subscribing or agreeing to subscribe (whether absolutely or conditionally) for any shares in the company, or procuring or agreeing to procure subscriptions (whether absolute or conditional) for any shares in the company, if the payment of the commission is authorised by the company's articles.

(2) A vendor to, or promoter of, or other person who receives payment in money or shares from a company has, and is deemed always to have had, power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been lawful under subsection (1).

### **Pre-emptive rights**

**57.(1)** Subsections (2) to (4) apply to a company where the memorandum or articles of the company expressly provide that this section shall apply to the company, but not otherwise.

(2) Before issuing shares that rank or would rank as to voting or distribution rights, or both, equally with or prior to shares already issued by the company, the directors shall offer the shares to existing shareholders in such a manner that, if the offer was accepted by those shareholders, the existing voting or distribution rights, or both, of those shareholders would be maintained.

(3) Shares offered to existing shareholders under subsection (2) shall be offered at such price and on such terms as the shares are to be offered to other persons.

(4) An offer made under subsection (2) must remain open for acceptance for a period of not less than 21 days.

(5) Nothing in this section prevents the memorandum or articles of a company from modifying the provisions of this section or from making different provisions with respect to pre-emptive rights.

### **Share certificates**

**58.(1)** A company shall state in its articles the circumstances, if any, in which share certificates shall be issued.

(2) If a company issues share certificates, the certificates –

(a) shall, subject to the company's memorandum and articles, be signed by –

(i) at least one director of the company; or

(ii) such other person who maybe authorised by resolution of directors to sign share certificates; or

(b) shall be under the common seal of the company, with or without the signature of any director of the company,

and the articles may provide for the signatures or common seal to be facsimiles.

### **Sub-Part III - Transfer of shares**

#### **Transferability of shares**

**59.** Subject to any limitations or restrictions on the transfer of shares in the memorandum or articles, a share in a company is transferable.

#### **Transfer of deceased member's share by personal representative**

**60.** A transfer of the share of a deceased member of a company made by the deceased member's personal representative, although the personal representative is not a member of the company, is as valid as if the personal representative had been a member at the time of the execution of the instrument of transfer.

#### **Transfer by operation of law**

**61.** Shares in a company may pass by operation of law, notwithstanding anything to the contrary in the memorandum or articles of the company.

#### **Transfer of registered shares**

**62.(1)** Subject to subsections (2) and (3) and to section 66, registered shares in a company shall be transferred by a written instrument of transfer –

- (a) signed by the transferor;
- (b) signed by the transferee; and
- (c) containing the name and address of the transferee.

(2) If expressly permitted by a company's memorandum or articles but subject to subsection (3), registered shares in the company shall be transferred by a written instrument of transfer signed by the transferor and containing the name and address of the transferee, provided that a written instrument of transfer to which this subsection applies shall not be invalidated if it is signed by both the transferee and the transferor.

(3) The instrument of transfer shall be signed by the transferee (as well as the transferor) if –

- (a) the share is not fully paid up; or
- (b) registration as a holder of the share otherwise imposes a liability to the company on the transferee.

(4) The instrument of transfer of a registered share shall be sent to the company for registration.

(5) Subject to its memorandum or articles and section 63, the company shall, on receipt of an instrument of transfer, enter the name of the transferee of the share in the register of members unless the directors resolve to refuse or delay the registration of the transfer for reasons that shall be specified in the resolution.

### **Refusal to register transfer**

**63.**(1) The directors shall not pass a resolution refusing or delaying the registration of a transfer unless this Act or the memorandum or articles permit them to do so.

(2) Where the directors pass a resolution under subsection (1), the company shall, as soon as practicable, send the transferor and the transferee written notice of the refusal or delay.

(3) Subject to the memorandum or articles of a company, the directors may refuse or delay the registration of a transfer of shares if the transferor has failed to pay an amount due in respect of those shares.

(4) Notwithstanding anything in its memorandum or articles but subject to section 66, a company shall not register a transfer of shares in the company unless a written instrument of transfer as referred to in section 62(1) has been delivered to it.

### **Loss of instrument of transfer**

**64.** If the directors of a company are satisfied that an instrument of transfer of registered shares has been signed but that the instrument has been lost or destroyed, they may resolve –

(a) to accept such evidence of the transfer of the shares as they consider appropriate; and

(b) that the transferee's name should be entered in the register of members, notwithstanding the absence of the instrument of transfer.

### **Time of transfer of share**

**65.** Subject to the provisions of this Sub-Part, the transfer of a share is effective when the name of the transferee is entered in the register of members.

### **Transfer of securities through clearing agencies and securities facilities**

**66.**(1) In this section –

(a) “approved rules” mean the rules and procedures of a clearing agency, recognised overseas clearing agency, securities facility or a recognised overseas securities facility, as the case may be, relating to the transfer of ownership of securities, which rules and procedures have been approved in writing by the Authority under the Securities Act or by a recognized overseas regulatory authority;

- (b) “clearing agency” means a licensed clearing agency under the Securities Act;
  - (c) “recognised overseas clearing agency” means a company licensed by a recognized overseas regulatory authority whose licensed business includes the provision of services for the clearing or settlement or both in respect of transactions in securities;
  - (d) “recognised overseas regulatory authority” means as defined in the Securities Act;
  - (e) “recognised overseas securities facility” means a company licensed by a recognized overseas regulatory authority whose licensed business includes the provision of securities registry services or securities depository services including a central securities depository for the settlement of securities transactions;
  - (f) “recognized overseas securities exchange” means as defined in the Securities Act;
  - (g) “securities facility” means a licensed Securities Facility under the Securities Act; and
  - (h) “Seychelles Securities Exchange” means a licensed securities exchange under the Securities Act.
- (2) Subject to subsection (3), securities issued by a company listed on a Seychelles Securities Exchange or on a recognized overseas securities exchange may be –
- (a) issued in electronic form;
  - (b) converted from physical form to electronic form or vice versa;
  - (c) transferred by electronic means.

(3) Notwithstanding any other provision of this Act or other written law, the method of transferring the ownership of securities deposited in or cleared through a clearing agency, recognised overseas clearing agency, securities facility or recognised overseas securities facility shall be a transfer made in accordance with the approved rules.

(4) Subsection (3) is without prejudice of the right of any person to apply to the Court for a declaration or other order in respect of the ownership or transfer of securities.

#### **Sub-Part IV - Distributions**

##### **Meaning of “solvency test”**

**67.**(1) For the purposes of this Act, a company satisfies the solvency test if –

- (a) the company is able to pay its debts as they become due; and
- (b) the value of the company’s assets is greater than the value of its liabilities.

(2) In determining whether the value of a company's assets is greater than the value of its liabilities, the directors –

(a) shall have regard to –

(i) the most recent accounts of the company; and

(ii) all other circumstances that the directors know or ought to know affect, or may affect, the value of the company's assets and the value of the company's liabilities; and

(b) may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.

(3) This section applies to cells and cores of protected cell companies as if references to companies were references to cells or cores, as the case may be, of protected cell companies.

### **Meaning of “distribution”**

**68.**(1) In this Act but subject to the provisions of this Part, “distribution”, in relation to a distribution by a company to a member, means –

(a) the direct or indirect transfer of an asset, other than the company's own shares, to or for the benefit of the member; or

(b) the incurring of a debt to or for the benefit of a member,

in relation to shares held by a shareholder, or to the entitlements to distributions of a member who is not a shareholder, and whether by means of the purchase of an asset, the purchase, redemption or other acquisition of shares, a transfer of indebtedness or otherwise, and includes a dividend.

(2) “Distribution” does not include –

(a) a distribution by way of a distribution of assets to members of the company on its winding up;

(b) a distribution of assets to members of a cell of a protected cell company during and for the purposes of a receivership order; or

(c) a distribution of assets to members of a cell of a protected cell company during and for the purposes of the termination of the cell.

### **Meaning of “dividend”**

**69.**(1) In this Act, “dividend” means every distribution of a company's assets to its members, except distributions by way of –

(a) an issue of shares as fully or partly paid bonus shares;

(b) a redemption or purchase of any of the company's own shares or financial assistance for a purchase of the company's own shares;

(c) a reduction of share capital.

(2) For the avoidance of doubt, a dividend may be in the form of money or any other property.

### **Distributions**

**70.**(1) Subject to this Sub-Part and to any other requirement imposed by the memorandum or articles of the company, the directors of a company (other than a protected cell company) may, by resolution, authorise a distribution by the company to members at such time and of such an amount as they think fit if they are satisfied, on reasonable grounds, that the company will, immediately after the distribution, satisfy the solvency test.

(2) A resolution of directors passed under subsection (1) shall contain a statement that, in the opinion of the directors, the company will, immediately after the distribution, satisfy the solvency test.

### **Cellular and non-cellular distributions by protected cell company**

**71.**(1) Subject to section 72 and to any other requirement imposed by the memorandum or articles of the company, the directors of a protected cell company may authorise a distribution in respect of a cell ("cellular distribution") at any time if they are satisfied, on reasonable grounds, that the protected cell company will, immediately after the distribution, satisfy the solvency test as it applies by virtue of subsection (2).

(2) In determining whether a protected cell company satisfies the solvency test under subsection (1) for the purpose of making a cellular distribution in respect of a cell, no account is to be taken of –

(a) the assets and liabilities, attributable to any other cell of the company; or

(b) non-cellular assets and liabilities of the company.

(3) Subject to section 72 and to any other requirement imposed by the memorandum or articles of the company, the directors of a protected cell company may authorise a distribution in respect of its non-cellular assets and liabilities (a "non-cellular distribution") at any time if they are satisfied, on reasonable grounds, that the protected cell company will, immediately after the distribution, satisfy the solvency test as it applies by virtue of subsection (4).

(4) In determining whether a protected cell company satisfies the solvency test under subsection (3) for the purposes of making a non-cellular distribution, no account need be taken of the assets and liabilities of any cell of the protected cell company, except in the respect of any liability arising pursuant to Sub-Part IV of Part XIII by which the protected cell company's non-cellular assets may be utilised to meet any liability attributable to any cell of a protected cell company.

## **Recovery of distributions made when company did not satisfy solvency test**

**72.**(1) Where a distribution has been made to a member by a company and the company did not, immediately after the distribution, satisfy the solvency test, then the distribution (or the value thereof) may be recovered by the company from the member but only if –

- (a) the member received the distribution or the benefit of the distribution (as the case maybe) other than in good faith and without knowledge of the company's failure to satisfy the solvency test;
- (b) the member's position has not been altered by the member relying on the validity of the distribution; and
- (c) it would not be unfair to require repayment in full or at all.

(2) Where a distribution has been made to a member or members by a company and the company did not, immediately after the distribution, satisfy the solvency test, then, a director who failed to take reasonable steps to ensure that the distribution was made in accordance with section 70, or, in the case of a protected cell company, section 71, shall be personally liable to the company to repay to the company so much of the distribution as is not able to be recovered from members.

(3) If, in an action brought against a director or member under this section, the Court is satisfied that the company could, by making a distribution of a lesser amount, have satisfied the solvency test, the Court may –

- (a) permit the member to retain; or
- (b) relieve the director from liability in respect of,

an amount equal to the value of any distribution that could properly have been made.

## **Sub-Part V – Redemption and purchase of own shares**

### **Company may redeem or purchase its own shares**

**73.**(1) Subject to sections 70 and 71, a company may redeem, purchase or otherwise acquire its own shares in accordance with –

- (a) sections 74, 75 and 76; or
- (b) such other provisions for the redemption, purchase or other acquisition of its own shares as may be specified in its memorandum or articles or in a written agreement between the company and the or each affected shareholder.

(2) Where a company may redeem, purchase or otherwise acquire its own shares otherwise than in accordance with sections 74, 75 and 76, it may not redeem, purchase or otherwise acquire the shares without the consent of the member whose shares are to be redeemed,



purchased or otherwise acquired, unless the company is permitted by the memorandum or articles to purchase, redeem or otherwise acquire the shares without that consent.

(3) Unless the shares are held as treasury shares in accordance with section 78, any shares acquired by a company are deemed to be cancelled immediately on redemption, purchase or other acquisition.

(4) A company shall not redeem its shares if, as a result of the redemption, the company would have no members.

(5) A company shall not redeem a share unless it is fully paid.

(6) Where sections 74, 75 and 76 are negated or modified by provisions for the redemption, purchase or other acquisition of a company's own shares specified in a written agreement between the company and a shareholder (in this subsection referred to as a "Redemption Agreement") and there is any inconsistency between the Redemption Agreement and the company's memorandum and articles in relation to the redemption, purchase or other acquisition of a company's own shares, such inconsistency shall be resolved as follows –

(a) if the Redemption Agreement includes a term to the effect that the Redemption Agreement shall prevail to the extent of any inconsistency with the company's memorandum and articles, the Redemption Agreement shall prevail; and

(b) if the Redemption Agreement does not include a term to the effect that the Redemption Agreement shall prevail to the extent of any inconsistency with the company's memorandum and articles, the company's memorandum and articles shall prevail.

### **Process for redemption or purchase of own shares**

**74.(1)** The directors of a company may make an offer to redeem, purchase or otherwise acquire shares issued by the company, if the offer is –

(a) an offer to all shareholders to redeem, purchase or otherwise acquire shares issued by the company that –

(i) would, if accepted, leave the relative voting and distribution rights of the shareholders unaffected; and

(ii) affords each shareholder a reasonable opportunity to accept the offer; or

(b) an offer to one or more shareholders to redeem, purchase or otherwise acquire shares –

(i) to which all shareholders have consented in writing; or

(ii) that is permitted by the memorandum or articles and is made in accordance with section 75.

(2) Where an offer is made in accordance with subsection (1)(a) –

- (a) the offer may also permit the company to redeem, purchase or otherwise acquire additional shares from a shareholder to the extent that another shareholder does not accept the offer or accepts the offer only in part; and
  - (b) if the number of additional shares exceeds the number of shares that the company is entitled to redeem, purchase or otherwise acquire, the number of additional shares shall be reduced rateably.
- (3) This section does not apply to a company to the extent that it is negated, modified or inconsistent with provisions for the redemption, purchase or other acquisition of its own shares specified in –
- (a) the company's memorandum or articles; or
  - (b) a written agreement between the company and the shareholder.

**Offer to one or more shareholders under section 74(1)(b)(ii)**

75.(1) The directors of a company shall not make an offer to one or more shareholders under section 74(1)(b)(ii) unless they have passed a resolution stating that, in their opinion –

- (a) the redemption, purchase or other acquisition is to the benefit of the remaining shareholders; and
  - (b) the terms of the offer and the consideration offered for the shares are fair and reasonable to the company and to the remaining shareholders.
- (2) A resolution passed under subsection (1) shall set out the reasons for the directors' opinion.
- (3) The directors shall not make an offer to one or more shareholders under section 74(1)(b)(ii) if, after the passing of a resolution under subsection (1) and before the making of the offer, they cease to hold the opinions specified in subsection (1).
- (4) A shareholder may apply to the Court for an order restraining the proposed purchase, redemption or other acquisition of shares under section 74(1)(b)(ii) on the grounds that –
- (a) the redemption, purchase or other acquisition is not in the best interests of the remaining shareholders; or
  - (b) the terms of the offer and the consideration offered for the shares are not fair and reasonable to the company or the remaining shareholders.
- (5) This section does not apply to a company to the extent that it is negated, modified or inconsistent with provisions for the redemption, purchase or other acquisition of its own shares specified in –
- (a) the company's memorandum or articles; or

- (b) a written agreement between the company and the shareholder.

### **Shares redeemed at the option of a shareholder**

**76.**(1) If a share is redeemable at the option of the shareholder and the shareholder gives the company proper notice of his intention to redeem the share –

- (a) the company shall redeem the share on the date specified in the notice, or if no date is specified, on the date of the receipt of the notice;
- (b) unless the share is held as a treasury share under section 78, on redemption the share is deemed to be cancelled; and
- (c) from the date of redemption, the former shareholder ranks as an unsecured creditor of the company for the sum payable on redemption.

(2) If a share is redeemable on a specified date –

- (a) the company shall redeem the share on that date;
- (b) unless the share is held as a treasury share under section 78, on redemption the share is deemed to be cancelled; and
- (c) from the date of redemption, the former shareholder ranks as an unsecured creditor of the company for the sum payable on redemption.

(3) Where a company redeems a share under subsections (1) or (2), sections 74 and 75 do not apply.

(4) This section does not apply to a company to the extent that it is negated, modified or inconsistent with provisions for the redemption of its shares specified in –

- (a) the company's memorandum or articles; or
- (b) a written agreement between the company and the shareholder.

### **Redemptions or purchases deemed not to be a distribution**

**77.** The redemption, purchase or other acquisition by a company of one or more of its own shares is deemed not to be a distribution where –

- (a) the company redeems the share or shares under and in accordance with section 76;
- (b) the company otherwise redeems the share or shares pursuant to a right of a shareholder to have his shares redeemed or to have his shares exchanged for money or other property of the company; or

- (c) the company redeems, purchases or otherwise acquires the share or shares by virtue of the provisions of section 207 (*Redemption of minority shares*) or section 210 (*Rights of dissenters*).

### **Treasury shares**

**78.**(1) A company may hold shares that have been redeemed, purchased or otherwise acquired under section 73 as treasury shares if –

- (a) the memorandum or articles of the company do not prohibit it from holding treasury shares;
  - (b) the directors resolve that shares to be redeemed, purchased or otherwise acquired shall be held as treasury shares; and
  - (c) the number of shares purchased, redeemed or otherwise acquired, when aggregated with shares of the same class already held by the company as treasury shares, does not exceed fifty per cent of the shares of that class previously issued by the company, excluding shares that have been cancelled.
- (2) All the rights and obligations attaching to a treasury share are suspended and shall not be exercised by or against the company while it holds the share as a treasury share.

### **Transfer of treasury shares**

**79.** Treasury shares may be transferred by the company and the provisions of this Act and the memorandum and articles that apply to the issue of shares apply to the transfer of treasury shares.

## **Sub-Part VI – Alteration of capital**

### **Alteration of capital of par value companies**

**80.**(1) Subject to subsections (2), (3) and (4), section 83 and to its memorandum and articles, a par value company may –

- (a) amend its memorandum in accordance with Sub-Part III of Part II to alter its authorised capital;
- (b) increase its share capital by creating new shares of such amount as it thinks fit;
- (c) combine all or any of its shares (whether issued or not) into a smaller number of shares with a larger par value amount than its existing shares;
- (d) divide all or any of its shares into a larger number of shares with a smaller par value amount than its existing shares; and
- (e) change the currency denomination of its share capital or any class of its share capital.

(2) A division or combination of par value shares, including issued shares, of a class or series shall be for a larger or smaller number, as the case may be, of shares in the same class or series.

(3) Where par value shares are divided or combined under this section, the aggregate par value of the new shares must be equal to the aggregate par value of the original shares.

(4) If any alteration to the company's authorised capital or to the composition thereof is involved, paragraphs (b) to (e) of subsection (1) shall be subject to paragraph (a) of subsection (1).

### **Alteration of capital of no par value companies**

**81.**(1) Subject to subsections (2) and (3), section 83 and to its memorandum and articles, a no par value company may –

(a) amend its memorandum in accordance with Sub-Part III of Part II to alter its authorised capital, including to increase or reduce the number of shares that it is authorised to issue;

(b) combine all or any of its shares (whether issued or not) into a smaller number of shares; and

(c) divide all or any of its shares (whether issued or not) into a larger number of shares.

(2) A division or combination of no par value shares, including issued shares, of a class or series shall be for a larger or smaller number, as the case may be, of shares in the same class or series.

(3) If any alteration to the company's authorised capital or to the composition thereof is involved, paragraphs (b) and (c) of subsection (1) shall be subject to paragraph (a) of subsection (1).

### **Forfeiture of shares**

**82.**(1) Subject to contrary provision in its memorandum or articles, a company may –

(a) in accordance with this section cause any of its shares which have been issued otherwise than as fully paid to be forfeited for failure to pay any sum due and payable on them; or

(b) accept the surrender of such shares instead of causing them to be so forfeited.

(2) Notwithstanding any provision to the contrary in the memorandum or articles of a company or the terms of issue of any shares in such company, a share may only be forfeited if a written notice of forfeiture has been served on the member who defaults in making payment in respect of the share.

(3) The written notice of forfeiture referred to in subsection (2) shall specify a date not earlier than the expiration of 14 days from the date of service of the notice on or before which the payment required by the notice is to be made and shall contain a statement that, in the event of non-payment at or before the time specified in the notice the shares, or any of them, in respect of which payment is not made will be liable to be forfeited.

(4) Where a written notice of forfeiture has been issued under this section and the requirements of the notice have not been complied with, the directors may, at any time before tender of payment, forfeit and cancel the shares to which the notice relates.

(5) The company is under no obligation to refund any moneys to the member whose shares have been cancelled pursuant to subsection (4) and that member shall be discharged from any further obligation to the company.

### **Reduction of share capital**

**83.(1)** Subject to this Sub-Part and to any contrary provisions in its memorandum or articles, a company having a share capital may by special resolution reduce its share capital in any way.

(2) In particular, and without prejudice to the generality of subsection (1), the company may –

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up;

(b) with or without extinguishing or reducing liability on any of its shares –

(i) cancel any paid-up share capital which is lost or unrepresented by available assets; or

(ii) pay off any paid-up share capital which is in excess of the needs of the company; and

(c) if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(3) Subject to a company's memorandum and articles, a reduction of share capital of a company shall not be subject to confirmation by the Court if the directors of the company pass a resolution approving the reduction if they are satisfied, on reasonable grounds, that the company will, immediately after the reduction, satisfy the solvency test.

(4) A resolution of directors passed under subsection (3) shall contain a statement that, in the opinion of the directors, the company will, immediately after the reduction in issued capital, satisfy the solvency test.

(5) Any director who makes a statement under subsection (4) that the company satisfies the solvency without having reasonable grounds for that statement commits an offence and is liable on conviction to a fine not exceeding US\$25,000.

(6) The provisions of this section shall not apply in relation to a mutual fund (as defined in the Mutual Fund and Hedge Fund Act) or to any other company which redeems any of its shares under and in accordance with section 76 (*Shares redeemed at the option of a shareholder*).

### **Application to Court for order of confirmation**

**84.**(1) Subject to subsection (2), where a company has passed a special resolution for reducing its issued share capital, it may apply to the Court for an order confirming the reduction.

(2) Where a company has passed a special resolution for reducing its issued share capital, it shall apply to the Court for an order confirming the reduction if –

- (a) a resolution of directors has not been passed under section 83(3); or
- (b) the company's memorandum or articles specifies that a reduction of share capital of the company shall be subject to confirmation by the Court.

(3) If the proposed reduction of share capital involves either –

- (a) a diminution of liability in respect of any amount unpaid on a share; or
- (b) the payment to a shareholder of any paid up capital,

and in any other case if the Court so directs, subsections (4), (5), and (6) have effect, but subject throughout to subsection (7).

(4) Every creditor of the company who at the date fixed by the Court is entitled to a debt or claim which if that date were the commencement of the winding up of the company, would be admissible in proof against the company is entitled to object to the reduction of share capital.

(5) The Court shall settle a list of creditors entitled to object, and for that purpose –

- (a) shall ascertain, as far as possible, without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims; and
- (b) may direct the publication of notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction of capital.

(6) If a creditor entered on the list referred to in subsection (5) whose debt or claim is not discharged or has not determined does not consent to the reduction, the Court may dispense with the consent of that creditor, on the company securing payment of the creditor's debt or claim by appropriating (as the Court may direct) the following amount –

- (a) if the company admits the full amount of the debt or claim or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;

(b) if the company does not admit, and is not willing to provide for, the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Court after an enquiry and adjudication.

(7) If a proposed reduction of share capital involves either the diminution of a liability in respect of unpaid capital or the payment to a shareholder of paid up capital, the Court may, if having regard to any special circumstances of the case it thinks proper to do so, direct that subsections (4) to (6) shall not apply as regards any class or any classes of creditors.

### **Court order confirming reduction**

**85.(1)** The Court, if satisfied with respect to every creditor of the company who under section 84 is entitled to object to the reduction of share capital that either –

- (a) the creditor's consent to the reduction has been obtained; or
- (b) the creditor's debt or claim has been discharged or has determined, or has been secured,

may make an order confirming the reduction of share capital on such terms and conditions as it thinks fit.

(2) Where the Court so orders, it may also make an order requiring the company to publish, as the Court directs, the reasons for reduction of capital or such other information in regard to it as the Court thinks fit with a view to giving proper information to the public and, if the Court thinks fit, the causes which led to the reduction.

### **Registration of order and minute of reduction**

**86.(1)** Where the Court confirms the reduction of a company's share capital, the company shall deliver to the Registrar –

- (a) the order of the Court confirming the reduction; and
- (b) a minute, approved by the Court, showing in respect of the company the information specified in subsection (2).

(2) The information to which subsection (1) refers is –

- (a) the aggregate amount of the reduced share capital, as confirmed by the Court;
- (b) the number of shares into which the share capital is to be divided, and, in the case of a par value company, the amount of each share;
- (c) in the case of a par value company the amount (if any), at the date of the registration of the order and minute under subsection (3), which will remain paid up on each share which has been issued; and
- (d) in the case of a no par value company, the amount (if any) remaining unpaid on issued shares.



- (3) The Registrar shall register the order and minute, and thereupon the resolution for reducing the share capital as confirmed by the order shall take effect.
- (4) The Registrar shall certify the registration of the order and minute and such certificate –
  - (a) shall be signed by the Registrar and sealed with the Registrar’s seal;
  - (b) is conclusive evidence that all the requirements of this Act with respect to the reduction of share capital have been complied with, and the company’s share capital is as stated in the minute.
- (5) The minute when registered is deemed to be substituted for the corresponding part of the company’s memorandum.

#### **Liability of members on reduced shares**

**87.**(1) In the case of a reduction of share capital, a member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount of the share as fixed by the minute and the amount paid or the reduced amount, if any, which is to be deemed to have been paid on the shares.

- (2) If any creditor entitled in respect of any debt or claim to object to the reduction of issued share capital is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his debt or claim, not entered on the list of creditors, and after the reduction the company is unable to pay the amount of his debt or claim, then –
  - (a) every person who was a member of the company at the date of the registration of the order for reduction and minute shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before the said date; and
  - (b) if the company is wound up, the Court, on the application of any such creditor and proof of his ignorance as aforesaid, may if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories in a winding up.
- (3) Nothing in this section shall affect the rights of the contributories among themselves.

#### **Penalty for concealing name of creditor, etc**

**88.** If an officer of the company in respect of an application to the Court under this Sub-Part –

- (a) wilfully conceals the name of a creditor entitled to object to the reduction of share capital;
  - (b) wilfully misrepresents the nature or amount of the debt or claim of a creditor;
- or

(c) aids, abets or is privy to any such concealment or misrepresentation,  
the officer is guilty of an offence and is liable on conviction to a fine not exceeding US\$25,000.

## **Sub-Part VII – Security over shares**

### **Interpretation**

**89.** In this Sub-Part, “pledge” means any form of security interest, including, without limitation –

- (a) a pledge;
- (b) a charge; or
- (c) a hypothecation,

over one or more shares in a company, other than an interest arising by operation of law, and “pledged”, “pledgee” and “pledgor” shall be construed accordingly.

### **Right to pledge shares**

**90.** Subject to –

- (a) the provisions of a company’s memorandum or articles; and
- (b) any other prior written agreement made by the shareholder,

a shareholder may pledge a share held by him in a company.

### **Form of pledge of shares**

**91.(1)** A pledge of shares of a company shall be in writing signed by, or with the authority of, the shareholder whose name is entered in the company’s register of members as the holder of the share to which the pledge relates.

(2) A pledge of shares of a company need not be in any specific form but it shall clearly indicate –

- (a) the intention to create a pledge; and
- (b) the amount secured by the pledge or how that amount is to be calculated.

### **Pledge of shares governed by Seychelles law**

**92.(1)** Subject to this section, where the governing law of a pledge of shares in a company is the law of Seychelles, in the case of a default by the pledgor under the terms of the pledge, the pledge is entitled to the following remedies –

(a) subject to any limitations or provisions to the contrary in the instrument creating the pledge, the right to sell the shares;

(b) subject to any limitations or provisions to the contrary in the instrument creating the pledge, the right to –

(i) vote on the shares;

(ii) receive distributions in respect of the shares; and

(iii) exercise other rights and powers of the pledgor in respect of the shares,

until such time as the pledge is discharged; and

(c) the right to appoint a receiver who, subject to any limitations or provisions to the contrary in the instrument creating the pledge, may –

(i) vote on the shares;

(ii) receive distributions in respect of the shares; and

(iii) exercise other rights and powers of the pledgor in respect of the shares,

until such time as the pledge is discharged.

(2) Subject to subsection (3), the remedies referred to in subsection (1) are not exercisable until –

(a) a default has occurred and has continued for a period of not less than thirty days, or such shorter period as may be specified in the instrument creating the pledge; and

(b) the default has not been rectified within fourteen days or such shorter period as may be specified in the instrument creating the pledge from service of the notice specifying the default and requiring rectification thereof.

(3) Where the governing law of a pledge of shares in a company is the law of Seychelles, if the instrument creating the pledge so provides, the remedies referred to in subsection (1) are exercisable immediately on a default occurring.

(4) Subject to any limitations or provisions to the contrary in the instrument creating the pledge, the remedies referred to in subsection (1) are exercisable without an order of the Court.

### **Exercising power of sale under a Seychelles law pledge of shares**

**93.**(1) Notwithstanding any provision to the contrary in the instrument creating a pledge of shares governed by Seychelles law, in the event that a pledgee is exercising his right of sale pursuant to section 92(1)(a), the sale shall be at –

(a) open market value at the time of sale; or

(b) the best price reasonably obtainable if there is no open market value at the time of sale.

(2) Subject to any provision to the contrary in the instrument creating a pledge of shares governed by Seychelles law, a sale pursuant to subsection (1) may be conducted in any manner, including by private sale or public auction.

#### **Pledge of shares governed by foreign law**

**94.** Where the governing law of a pledge of shares in a company is not the law of Seychelles

–

(a) the pledge shall be in compliance with the requirements of its governing law in order for the pledge to be valid and binding on the company; and

(b) the remedies available to a pledgee shall be governed by the governing law and the instrument creating the pledge, except that the rights between the pledgor or pledgee as a member of the company and the company shall continue to be governed by the memorandum and articles of the company and this Act.

#### **Application of enforcement monies**

**95.** Subject to any provision to the contrary in the instrument creating a pledge of shares of a company, all amounts that accrue from the enforcement of the pledge shall be applied in the following manner –

(a) firstly, in meeting the costs incurred in enforcing the pledge;

(b) secondly, in discharging the sums secured by the pledge; and

(c) thirdly, in paying any balance due to the pledgor.

#### **Annotating and filing of register of members**

**96.(1)** At the written request of a shareholder who has created a pledge over shares in a company, the company shall enter or cause to be entered in its register of members–

(a) a statement that the shares are pledged;

(b) the name and address of the pledgee; and

(c) the date on which the statement and name are entered in the register of members.

(2) A copy of the register of members of a company, annotated in accordance with subsection (1), may be filed by the company with the Registrar in accordance with section 349.

### **Sub-Part VIII – Conversion of par value shares into no par value shares and vice versa**

#### **Conversion of shares in par value companies**

**97.(1)** A par value company may convert its shares into no par value shares by altering its memorandum in accordance with this section.

- (2) The power conferred by subsection (1) –
  - (a) may only be exercised by converting all of the company's shares into no par value shares;
  - (b) may only be exercised by a special resolution of the company and, if there is more than one class of issued shares, with the approval of a special resolution passed at a separate meeting of the holders of each class of shares; and
  - (c) may be exercised whether or not the issued shares of the company are fully paid.
- (3) The special resolution of the company –
  - (a) shall specify the number of no par value shares into which each class of issued shares is to be divided;
  - (b) may specify any number of additional no par value shares which the company may issue; and
  - (c) shall make such other alterations to the memorandum and articles as may be requisite in the circumstances.
- (4) Upon converting its shares under this section, the company –
  - (a) shall transfer, from the share capital account for each class of shares to the stated capital account for that class, the total amount that has been paid up on the shares of that class; and
  - (b) shall transfer any amount standing to the credit of a share premium account or capital redemption reserve to the stated capital account for the class of share which would have fallen to be issued if that amount had been applied in paying up unissued shares issued to members as fully paid bonus shares.
- (5) On the conversion of a company's shares under this section, any amount which is unpaid on any share immediately before the conversion remains payable when called or due.

### **Conversion of shares in no par value companies**

**98.(1)** A no par value company may convert its shares into par value shares by altering its memorandum in accordance with this section.

- (2) The power conferred by subsection (1) –
  - (a) may only be exercised by converting all of the company's shares into par value shares;

- (b) may only be exercised by a special resolution of the company and, if there is more than one class of issued shares, with the approval of a special resolution passed at a separate meeting of the holders of each class of shares; and
  - (c) may be exercised whether or not the issued shares of the company are fully paid.
- (3) For the purpose of a conversion of shares under this section, each share of a class shall be converted into a share which –
  - (a) confers upon the holder, as nearly as possible, the same rights as were conferred by it before the conversion; and
  - (b) has a nominal value specified in the special resolution of the company, being a value not exceeding the amount standing to the credit of the stated capital account for that class divided by the number of shares of that class in issue.
- (4) The special resolution of the company shall make such alterations to the memorandum and articles as may be requisite in the circumstances.
- (5) Upon converting its shares under this section, the company –
  - (a) shall, to the extent that the amount standing to the credit of the stated capital account for each class of shares equals the total nominal amount of the shares of the class into which those shares are converted, transfer the amount to the share capital account; and
  - (b) shall, to the extent (if any) that the amount exceeds that total nominal amount, transfer it to the share premium account for that class.
- (6) On the conversion of a company's shares under this section, any amount which is unpaid on any share immediately before the conversion remains payable when called or due.

## **PART VI – MEMBERSHIP**

### **Sub-Part I – Members**

#### **Minimum number of members**

**99.**(1) Subject to subsection (2), a company shall at all times have one or more members.

(2) Subsection (1) does not apply during the period from the incorporation of the company to the appointment of its first directors.

#### **Requirement for company limited by shares and guarantee**

**100.** In the case of a company limited by shares and guarantee, at least one of the members of the company shall be a guarantee member.

#### **Minors and incapacitated adults**

**101.**(1) Subject to subsection (2) and unless prohibited under a company's memorandum or articles, a minor or an incapacitated adult may be a member of a company.

(2) Where a company's memorandum or articles does not prohibit a minor or incapacitated adult from being a member of a company, no shares shall be issued to a minor or incapacitated adult unless one or more persons (for the purposes of this section called a "representative") are legally entitled to, and are willing to, represent the interests of the minor or incapacitated adult in respect of exercising any voting or other rights attached to the shares for and on behalf of the minor or incapacitated adult.

(3) Nothing in this section shall prevent shares in a company from being held by a person in a trustee or guardian capacity as a member for and on behalf of a minor or incapacitated adult.

(4) A representative, and a trustee or guardian under subsection (3), shall –

- (a) not be a minor or an incapacitated adult; and
- (b) act in the best interests of the minor or incapacitated adult.

### **Liability of members**

**102.**(1) A member of a limited company has no liability, as a member, for the liabilities of the company.

(2) The liability of a shareholder to the company, as shareholder, is limited to –

- (a) any amount unpaid on a share held by the shareholder;
- (b) any liability expressly provided for in the memorandum or articles of the company; and
- (c) any liability to repay a distribution under section 72(1).

(3) The liability of a guarantee member to the company, as guarantee member, is limited to –

- (a) the amount that the guarantee member is liable to contribute as specified in the memorandum in accordance with section 16(1); and
- (b) any other liability expressly provided for in the memorandum or articles of the company; and
- (c) any liability to repay a distribution under section 72(1).

### **Service on members**

**103.** Any notice, information or written statement required under this Act to be given by a company to members shall be served –

- (a) in the manner specified in the memorandum or articles, as the case may be; or
- (b) in the absence of a provision in the memorandum or articles, by personal service or by mail addressed to each member at the address shown in the register of members or, where the member consents, by and in accordance with such electronic means as may be permitted by sections 364 and 365.

## **Sub-Part II - Register of members**

### **Register of members**

**104.**(1) Subject to section 106, every company shall keep at its registered office in Seychelles a register to be known as a register of members, and enter in it the following information as appropriate for the company –

- (a) the name and address of each person who holds any shares in the company;
  - (b) the number of each class and series of shares held by each shareholder;
  - (c) the name and address of each person who is a guarantee member of the company;
  - (d) the date on which the name of each member was entered in the register of members; and
  - (e) the date on which any person ceased to be a member.
- (2) A company shall ensure that the information required by subsection (1) to be kept in its register of members is accurate and up-to-date.
- (3) The register of members may be in such form as the directors may approve but if it is in magnetic, electronic or other data storage form, the company must be able to produce legible evidence of its contents.
- (4) An entry relating to a former member of the company may be removed from the register after seven years from the date on which the member ceased to be a member.
- (5) A company that contravenes subsection (1) or (2) shall be liable to a penalty fee of US\$500 and an additional penalty fee of US\$50 for each day or part thereof during which the contravention continues.
- (6) A director who knowingly permits a contravention under subsection (1) or (2) shall be liable to a penalty fee of US\$500 and an additional penalty fee of US\$50 for each day or part thereof during which the contravention continues.

### **Nature of register**

**105.**(1) The register of members is *prima facie* evidence of any matters which are by this Act directed or permitted to be inserted in it.



(2) Without prejudice to the generality of subsection (1), the entry of the name of a person in the register of members as a holder of a share in a company is *prima facie* evidence that legal title in the share vests in that person.

(3) Subject to its memorandum or articles, a company shall treat the holder of a share, as appearing in the company's register of members, as the only person entitled to –

- (a) exercise any voting rights attaching to the share;
- (b) receive notices;
- (c) receive a distribution in respect of the share; and
- (d) exercise other rights and powers attaching to the share.

### **Register of members of listed companies**

**106.**(1) A listed company (as defined in the Securities Act) may apply in writing to the Registrar for approval to keep its register of members at a location in Seychelles at a place other than its registered office.

(2) The Registrar may in its absolute discretion approve or decline an application by a listed company under subsection (1) or impose such conditions as it may think fit in relation to approving any such application.

(3) Where a listed company keeps its register of members at an approved location pursuant to subsection (1), it shall –

- (a) not, without the Registrar's prior written approval, change the location of where it keeps its register of members;
- (b) within 14 days of an approval given by the Registrar under subsection (1), notify in writing its registered agent of the address of the location at which its register of members is kept;
- (c) within 14 days of any change in the location at which its register of members is kept, notify in writing its registered agent of the changed location; and
- (d) subject to subsection (4), keep a copy of its register of members at its registered office and, where there is any change in the register, provide the registered agent with an updated copy of the register within 14 days.

(4) In lieu of complying with the requirement under subsection (3)(d), a company may, with the prior written approval of the Registrar on such conditions as the Registrar may think fit, give its registered agent electronic or other instant access to its register of members.

(5) In the event that a listed company issues or may issue both certificated and uncertificated shares, it may, with the prior written approval of the Registrar on such conditions as the Registrar may think fit, keep two sub-registers of members which shall together constitute the company's register of members.

(6) A company that contravenes any requirement of this section shall be liable to a penalty fee of US\$500 and an additional penalty fee of US\$25 for each day or part thereof during which the contravention continues.

(7) A director who knowingly permits a contravention under this section shall be liable to a penalty fee of US\$500 and an additional penalty fee of US\$25 for each day or part thereof during which the contravention continues.

### **Inspection of register of members**

**107.**(1) A director or member of a company is entitled without charge to inspect the company's register of members.

(2) A person's right to inspection under subsection (1) is subject to such reasonable notice or other restrictions as the company may by its articles or by resolution of directors impose, but so that not less than 2 hours in each business day be allowed for inspection.

(3) A person with the right to inspection under subsection (1) is entitled to request a copy of the company's register of members or an extract of it, in which event the company may charge a reasonable copying fee.

(4) If an inspection under subsection (1) is refused, or if a copy document requested under subsection (3) is not made available within 21 business days of the request –

(a) the company commits an offence and is liable on conviction to a fine not exceeding US\$5,000; and

(b) the aggrieved person may apply to the Court for an order that he should be permitted to inspect the register or that a copy of the register or an extract of it be provided to him.

(5) On an application under subsection (4), the Court may make such orders as it considers just.

### **Rectification of register of members**

**108.**(1) If -

(a) information that is required to be entered in the register of members under section 104 is omitted from the register or inaccurately entered in the register; or

(b) there is unreasonable delay in entering the information in the register,

a member of the company, or any person who is aggrieved by the omission, inaccuracy or delay, may apply to the Court for an order that the register be rectified.

(2) On an application under subsection (1), the Court may –

- (a) either refuse the application, with or without costs to be paid by the applicant, or order the rectification of the register, and may direct the company to pay all costs of the application and any damages the applicant may have sustained;
- (b) determine any question relating to the right of a person who is a party to the proceedings to have his name entered in or omitted from the register of members, whether the question arises between –
  - (i) two or more members or alleged members; or
  - (ii) between one or more members or alleged members and the company; and
- (c) otherwise determine any question that may be necessary or expedient to be determined for the rectification of the register of members.

### **Sub-Part III – Members Meetings and Resolutions**

#### **Resolutions**

**109.**(1) Unless otherwise specified in this Act or in the memorandum or articles of a company, the exercise by the members of a company of a power which is given to them under this Act or the memorandum or articles shall be by a resolution –

- (a) passed at a meeting of members held in accordance with this Sub-Part; or
- (b) passed as a written resolution in accordance with section 122.

#### **Ordinary resolutions**

**110.**(1) Subject to section 111, an ordinary resolution of the members, or of a class of members, of a company means a resolution passed by a simple majority.

(2) A resolution passed at a meeting on a show of hands is passed by a simple majority if it is passed by in excess of half of the members who, being entitled to do so, vote in person or by proxy on the resolution.

(3) A resolution passed on a poll taken at a meeting is passed by a simple majority if it is passed by members representing in excess of half of the total votes of members who, being entitled to do so, vote in person or by proxy on the resolution.

(4) A written resolution is passed by a simple majority if it is passed in accordance with this Sub-Part by members representing in excess of half of the total votes of members entitled to vote on the resolution.

(5) For the purposes of subsections (2), (3) and (4) –

- (a) votes of shareholders shall be counted according to the votes attached to the shares held by the shareholder voting; and

(b) unless the memorandum or articles otherwise provide, a guarantee member is entitled to one vote on any resolution on which he is entitled to vote.

(6) Anything that may be done by ordinary resolution may also be done by special resolution.

(7) Unless the context otherwise requires, a reference in this Act to a resolution of members shall mean an ordinary resolution.

### **Ordinary resolutions may be required to have a higher proportion of votes**

**111.** Section 110 does not preclude a company's memorandum or articles from providing that all or certain ordinary resolutions are to be passed by a higher majority of votes than a simple majority.

### **Special resolutions**

**112.**(1) Subject to section 113, a special resolution of the members, or of a class of members, of a company means a resolution passed by not less than a two-thirds majority.

(2) A resolution passed at a meeting on a show of hands is passed by a two-thirds majority if it is passed by not less than two-thirds of the members who, being entitled to do so, vote in person or by proxy on the resolution.

(3) A resolution passed on a poll taken at a meeting is passed by a two-thirds majority if it is passed by members representing not less than two-thirds of the total votes of members who, being entitled to do so, vote in person or by proxy on the resolution.

(4) A written resolution is passed by a two-thirds majority if it is passed in accordance with this Sub-Part by members representing not less than two-thirds of the total votes of members entitled to vote on the resolution.

### **Special resolutions may be required to have a higher proportion of votes**

**113.** Section 112 does not preclude a company's memorandum or articles from providing that all or certain special resolutions are to be passed by a higher majority of votes than a two-thirds majority.

### **Convening of members meetings**

**114.**(1) Subject to a company's memorandum and articles, a meeting of the members of the company may be held at such time and in such place, within or outside Seychelles, as the convener of the meeting considers appropriate.

(2) Subject to any limitations in a company's memorandum and articles, any of the following persons may convene a meeting of the members of the company at any time –

(a) the directors of the company; or

(b) such person or persons as may be authorised by the memorandum or articles to call the meeting.

(3) Subject to a provision in the memorandum or articles for a lesser percentage, the directors of a company shall call a meeting of the members of the company if requested in writing to do so by members entitled to exercise at least twenty per cent of the voting rights in respect of the matter for which the meeting is requested.

(4) A written request under subsection (3) shall state the objects of the meeting, and shall be signed by or on behalf of the requesting members and given to the directors at the company's registered office or principal place of business, and may consist of several documents in similar form each signed by or on behalf of one or more requesting members.

(5) Subject to a provision in the memorandum or articles changing any time period referred to in this subsection, if the directors do not, within 21 days from the date of the service of the written request under subsections (3) and (4), call a meeting to be held within 2 months of that date, the requesting members, or any of them representing more than one half of the total voting rights of all of them, may themselves call a meeting, but a meeting so called shall not be held after 3 months from that date.

(6) A meeting called under this section by requesting members shall be called in the same manner, as nearly as possible, as that in which meetings are to be called by directors.

(7) Reasonable expenses incurred by the requesting members by reason of the failure of the directors to call a meeting shall be repaid to the requesting members by the company, and sums so repaid shall be retained by the company out of sums due or to become due from the company by way of fees or other remunerations in respect of their services to the directors who were in default.

### **Notice of meetings of members**

**115.**(1) Subject to a requirement in the memorandum or articles to give longer notice, a person or persons convening a meeting of the members of a company shall give to those persons whose names, on the date the notice is given, appear as members in the register of members and are entitled to vote at the meeting –

(a) in the case of a meeting for the passing of a special resolution, not less than 21 days' notice in writing; and

(b) in the case of a meeting other than as referred to in paragraph (a), not less than 7 days' notice in writing.

(2) Notwithstanding subsection (1), and subject to the memorandum or articles, a meeting of members held in contravention of the requirement to give notice is valid if members holding a ninety per cent majority, or such other majority as may be specified in the memorandum or articles, of the total voting rights on all the matters to be considered at the meeting have waived notice of the meeting and, for this purpose, the presence of a member at the meeting shall be deemed to constitute a waiver on his part.

(3) The inadvertent failure of the convener or conveners of a meeting of members to give notice of the meeting to a member, or the fact that a member has not received the notice, does not invalidate the meeting.

### **Quorum**

**116.** The quorum for a meeting of the members of a company for the purposes of a resolution of members is that fixed by the memorandum or articles but, where no quorum is so fixed, a meeting of members is properly constituted for all purposes if at the commencement of the meeting there are present, in person or by proxy, members entitled to exercise at least fifty percent of the votes.

### **Attending meeting by telephone or other electronic means**

**117.** Subject to the memorandum or articles of a company, a member of the company shall be deemed to be present at a meeting of members if –

- (a) the member participates by telephone or other electronic means; and
- (b) all members participating in the meeting are able to hear each other.

### **Representation of body corporate at meetings**

**118.(1)** A body corporate, whether or not a company within the meaning of this Act, may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of a company, or of any class of members of a company, or of creditors of a company which it is entitled to attend.

(2) A person so authorised in accordance with subsection (1) is entitled to exercise the same powers on behalf of the body corporate which the person represents as that body corporate could exercise if it were an individual member or creditor of the company.

### **Jointly owned shares**

**119.** Subject to a company's memorandum and articles, the following apply where shares are jointly owned –

- (a) if two or more persons hold shares jointly each of them may be present in person or by proxy at a meeting of members and may speak as a member;
- (b) if only one of them is present in person or by proxy, he may vote on behalf of all of them; and
- (c) if two or more are present in person or by proxy, they must vote as one.

### **Proxies**

**120.(1)** A member of a company is entitled by written instrument to appoint another person as his proxy to represent the member at any meeting of the company at which the member is entitled to attend and vote.

(2) Where a proxy attends a meeting as referred to in subsection (1), the proxy may speak and vote on behalf of the member who appointed the proxy.

(3) This section applies to meetings of any class of members as it applies to general meetings.

### **Demand for poll**

**121.**(1) A provision contained in a company's memorandum or articles is void in so far as it would have the effect either –

(a) of excluding the right to demand a poll at a meeting of members, or at a meeting of any class of members, on a question other than the election of the chairman of the meeting or the adjournment of the meeting; or

(b) of making ineffective a demand for a poll on any such question which is made either –

(i) by not less than 5 members having the right to vote on the question; or

(ii) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote on the question.

(2) A written instrument appointing a proxy to vote at such a meeting is deemed also to confer authority to demand or join in demanding a poll; and for the purposes of subsection (1) a demand by a person as proxy for a member is the same as a demand by the member.

(3) On a poll taken at such a meeting, a member entitled to more than one vote need not, if the member votes, in person or by proxy, use all his votes or cast all the votes he uses in the same way.

### **Written consent resolutions of members**

**122.**(1) Subject to the memorandum and articles of the company, an action that may be taken by members of a company at a meeting of members or any class of members may also be taken by a resolution of members consented to in writing or by telex, telegram, cable or other written electronic communication, without the need for any notice.

(2) A resolution under subsection (1) may consist of several documents, including written electronic communications, in like form each signed or otherwise assented to by or on behalf of one or more members.

(3) A resolution under this section shall be deemed to be passed when the consent instrument, or the last of several instruments, is last signed or otherwise assented to or on such later date as is specified in the resolution.

### **Court may order meeting**

**123.**(1) The Court may order a meeting of members to be called, held and conducted in such manner as the Court orders if it is of the opinion that –

(a) it is for any reason impracticable to call or conduct a meeting of the members of a company in the manner specified in this Act or in the memorandum and articles of the company; or

(b) it is in the interests of the members of the company that a meeting of members is held.

(2) An application for an order under subsection (1) may be made by a member or director of the company.

(3) The Court may make an order under subsection (1) on such terms, including as to the costs of conducting the meeting and as to the provision of security for those costs, as it considers appropriate.

(4) Where such an order is made, the Court may give such ancillary or consequential directions as it thinks expedient; and these may include a direction that one member of the company present in person or by proxy be deemed to constitute a meeting.

#### **Resolution passed at adjourned meeting**

**124.** Where a resolution is passed at an adjourned meeting of the members or any class of members of a company, the resolution is for all purposes to be treated as having been passed on the date on which it was in fact passed, and is not to be deemed passed on any earlier date.

#### **Keeping of minutes and resolutions of members**

**125.**(1) A company shall keep –

(a) minutes of all meetings of its members;

(b) minutes of all meetings of any class of its members;

(c) copies of all written resolutions consented to by its members; and

(d) copies of all written resolutions consented to by any class of its members.

(2) The records referred to in subsection (1) (which in this Sub-Part shall be referred to as “minutes and resolutions”) shall be kept for at least seven years from the date of the meeting or written resolution, as applicable.

(3) A company that contravenes this section shall be liable to a penalty fee of US\$25 for each day or part thereof during which the contravention continues.

(4) A director who knowingly permits a contravention under this section shall be liable to a penalty fee of US\$25 for each day or part thereof during which the contravention continues.

#### **Location of minutes and resolutions of members**



**126.**(1) A company shall keep its minutes and resolutions at such place inside or outside of Seychelles as the directors shall determine.

(2) Where a company does not keep its minutes and resolutions at its registered office, it shall notify in writing its registered agent of the physical address of the place at which its minutes and resolutions are kept.

(3) Where there is a change in the place at which its minutes and resolutions are kept, a company shall, within 14 days of the change, notify in writing its registered agent of the physical address of the place at which its minutes and resolutions are kept.

(4) A company that contravenes subsections (1), (2) or (3) shall be liable to a penalty fee of US\$25 for each day or part thereof during which the contravention continues.

(5) A director who knowingly permits a contravention under subsections (1), (2) or (3) shall be liable to a penalty fee of US\$25 for each day or part thereof during which the contravention continues.

### **Inspection of minutes and resolutions of members**

**127.**(1) A director of a company is entitled to inspect the company's minutes and resolutions without charge.

(2) A member of a company is entitled to inspect without charge minutes and resolutions of those classes of members of which he is a member.

(3) A person's right to inspection under subsections (1) or (2) is subject to such reasonable notice or other restrictions as the company may by its articles or by resolution of directors impose, but so that not less than 2 hours in each business day be allowed for inspection.

(4) A person with the right to inspection under subsections (1) or (2) is entitled to request a copy of any of the company's minutes and resolutions which the person is entitled to inspect, in which event the company may charge a reasonable copying fee.

(5) If an inspection under subsections (1) or (2) is refused, or if a copy document requested under subsection (4) is not made available within 21 business days of the request –

(a) the company commits an offence and is liable on conviction to a fine not exceeding US\$5,000; and

(b) the aggrieved person may apply to the Court for an order that he should be permitted to inspect the relevant minutes and resolutions or that a copy of such minutes and resolutions be provided to him.

(6) On an application under subsection (5), the Court may make such order as it considers just.

## **PART VII – DIRECTORS**

## **Sub-Part I – Management of Companies**

### **Management of company**

**128.** Subject to any modifications or limitations in the company’s memorandum or articles –

- (a) the business and affairs of a company shall be managed by, or under the direction or supervision of, the directors of the company; and
- (b) the directors of a company have all the powers necessary for managing, and for directing and supervising, the business and affairs of the company.

### **Carrying out of company obligations by directors**

**129.** Wherever in this Act an obligation or duty is placed on a company or a company is authorised to do any act then unless it is otherwise provided such obligation, duty or act shall be carried out or caused to be carried out by the directors of the company.

### **Minimum number of directors**

**130.(1)** A company shall at all times have at least one director appointed in accordance with this Act, except where otherwise provided by another written law of Seychelles.

(2) Subsection (1) does not apply during the period between the incorporation of the company and the appointment of the first directors.

(3) Subject to subsection (1), the number of directors of a company may be fixed by, or in the manner provided in, the company’s articles.

### **De facto directors**

**131.(1)** Without limiting the manner in which the expression “director” is to be read by virtue of section 2 and subject to subsection (3), a person who has not been formally appointed as a director of a company but who occupies the position of director, or who manages, directs or supervises the business and affairs of the company, shall be treated as a director of the company.

(2) A person who, by virtue of subsection (1), is treated as a director of a company is in this Act referred to as a de facto director.

(3) A person shall not be a de facto director of a company by reason only of the fact that he or she gives advice in a professional capacity to the company or any of the directors of it.

(4) If at any time a company does not have a director who has been formally appointed as such, any de facto director is deemed to be a director of the company for the purposes of this Act.

### **Delegation of powers**

**132.**(1) Subject to any restrictions in the memorandum or articles of the company, the board of a company may delegate to a committee of directors, a director or employee of the company, or to any other person, any one or more of its powers, except that the directors have no power to delegate the following powers –

- (a) to approve distributions by the company, including to make a determination under section 70(1) or 71(1) that the company will, immediately after a proposed distribution, satisfy the solvency test;
- (b) to amend the memorandum or articles;
- (c) to designate committees of directors;
- (d) to delegate powers to a committee of directors;
- (e) to appoint or remove directors;
- (f) to appoint or remove an agent;
- (g) to approve a plan or merger, consolidation or arrangement; or
- (h) to approve the company's voluntary winding up under Sub-Part II or Sub-Part III of Part XVII.

(2) A board that delegates a power under subsection (1) is responsible for the exercise of the power by the delegate as if the power had been exercised by the board, unless the board –

- (a) believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on directors of the company by this Act and the company's memorandum and articles; and
- (b) has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate.

## **Sub-Part II – Appointment, Removal and Resignation of Directors**

### **Eligibility of directors**

**133.**(1) Subject to subsection (2), the company's memorandum and articles and to the provisions of the International Corporate Service Providers Act (Cap 275), a director of a company shall be an individual or a body corporate.

(2) The following persons shall not be a director of a company –

- (a) an individual who –
  - (i) is a minor;
  - (ii) is an incapacitated adult; or

- (iii) is an undischarged bankrupt;
  - (b) a body corporate which is dissolved or has commenced winding up;
  - (c) a person who is disqualified, under this Act, any other written law or by an order of the Court, from being a director; or
  - (d) a person who, in respect of a particular company, is prohibited by the memorandum or articles from being a director of the company.
- (3) A person who acts as a director of a company whilst prohibited from doing so under subsection (2) is nevertheless deemed to be a director of the company for the purposes of any provision of this Act that imposes a duty or obligation on a director.

### **Appointment of directors**

**134.**(1) The subscriber or subscribers to the company's memorandum or a majority of them shall, within nine months of the date of incorporation of the company, appoint the first director or directors of the company.

- (2) Subsequent directors of a company may be appointed –
- (a) unless the memorandum or articles provide otherwise, by the members by ordinary resolution; or
  - (b) where permitted by the memorandum or articles, by a resolution of the directors.
- (3) A director is appointed for such term as may be specified in there resolution appointing him.
- (4) Unless the memorandum or articles of a company provide otherwise, the directors of a company may appoint one or more directors to fill a vacancy on the board.
- (5) For the purposes of subsection (4) –
- (a) there is a vacancy on the board if a director dies or otherwise ceases to hold office as a director prior to the expiration of his term of office; and
  - (b) the directors may not appoint a director for a term exceeding the term that remained when the person who ceased to be a director left or otherwise ceased to hold office.
- (6) A director holds office until his successor takes office or until his earlier death, resignation or removal.

### **Nomination of Reserve directors**

**135.** Where a company has only one member who is an individual and that member is also the sole director of the company, notwithstanding anything contained in the memorandum or articles, that sole member/director may, by instrument in writing, nominate a person who is not

prohibited from being a director of the company as a reserve director of the company to act in the place of the sole director in the event of his death.

### **Cessation of nomination of Reserve directors**

**136.**(1) The nomination of a person as a reserve director of the company ceases to have effect if –

- (a) before the death of the sole member/director who nominated him –
  - (i) the person resigns as reserve director; or
  - (ii) the sole member/director revokes the nomination in writing; or
- (b) the sole member/director who nominated him ceases to be the sole member/director of the company for any reason other than his death.

(2) Subject to subsection (1), on the death of the sole member/director who nominated him, a reserve director shall become a director of the company for all purposes under this Act including with respect to the obligations and liabilities of a director.

### **Removal of directors**

**137.**(1) Subject to the memorandum or articles of a company, a director of the company may be removed from office by resolution of the members of the company.

(2) Subject to the memorandum and articles, a resolution under subsection (1) may only be passed –

- (a) at a meeting of the members called for the purpose of removing the director or for purposes including the removal of the director; or
- (b) by a written resolution passed by in excess of half of the votes of the members of the company entitled to vote.

(3) The notice of a meeting called under subsection (2)(a) shall state that the purpose of the meeting is, or the purposes of the meeting include, the removal of a director.

(4) Where permitted by the memorandum or articles of a company, a director of the company may be removed from office by a resolution of the directors.

(5) Subject to the memorandum and articles, subsections (2) and (3) apply to a resolution of directors passed under subsection (4) with the substitution, in subsection (3), of “directors” for “members”.

### **Resignation of directors**

**138.**(1) A director of a company may resign his office by giving written notice of his resignation to the company and the resignation has effect from the date the notice is received by the company or from such later date as may be specified in the notice.

(2) A director of a company shall resign forthwith if he is, or becomes, prohibited to act as a director under section 133.

### **Appointment of alternate directors**

**139.**(1) Subject to the memorandum and articles of a company and to the provisions of the International Corporate Service Providers Act (Cap 275), a director of the company may appoint as an alternate any other director or any other person who is not prohibited from appointment as a director under section 133 to –

- (a) exercise the appointing director's powers; and
- (b) carry out the appointing director's responsibilities,

in relation to the taking of decisions by the directors in the absence of the appointing director.

(2) The appointing director may, at any time, terminate the alternate's appointment.

(3) The appointment of an alternate director and its termination shall be in writing and written notice of the appointment and termination shall be given by the appointing director to the company –

- (a) within such period as may be specified in the memorandum or articles; or
- (b) if no period is specified in the memorandum or articles, as soon as reasonably practicable.

(4) The termination of the appointment of an alternate director does not take effect until written notice of the termination has been given to the company.

(5) An alternate director –

- (a) has no power to appoint an alternate, whether of the appointing director or of the alternate director; and
- (b) does not act as an agent of or for the appointing director.

### **Rights and duties of alternate directors**

**140.**(1) An alternate director has the same rights as the appointing director in relation to any directors' meeting and any written resolution circulated for written consent.

(2) Any exercise by the alternate director of the appointing director's powers in relation to the taking of decisions by the directors, is as effective as if the powers were exercised by the appointing director.

(3) An alternate director is liable for his own acts and omissions as an alternate director and Sub-Part III of this Part applies to a person appointed as an alternate director, when acting as such.

### **Emoluments of directors**

**141.** Subject to the memorandum or articles of a company, the directors of the company may fix the emoluments of directors in respect of services to be rendered in any capacity to the company.

### **Continuing liability**

**142.** A director who vacates office remains liable under any provisions of this Act and under any other written law of Seychelles that impose liabilities on a director in respect of his acts or omissions or decisions made whilst he was a director.

### **Validity of acts of director**

**143.** The acts of a person acting as a director are valid notwithstanding that it is later discovered that –

- (a) the person's appointment as a director was defective;
- (b) the person is prohibited from acting as a director under section 132;
- (c) the person had ceased to hold office; or
- (d) the person was not entitled to vote on the matter in question.

## **Sub-Part III - Duties of Directors and Conflicts**

### **Duties of directors**

**144.** Subject to this section and section 145, a director, in exercising his powers and performing his duties, shall –

- (a) act in accordance with the company's memorandum and articles;
- (b) act honestly and in good faith and in what the director believes to be in the best interests of the company; and
- (c) exercise the care, diligence and skill that a reasonably prudent person would exercise in the same circumstances.

### **Directors of subsidiaries, etc**

**145.(1)** A director of a company that is a wholly-owned subsidiary may, when exercising powers or performing duties as a director, if expressly permitted to do so by the memorandum or articles of the company, act in a manner which he believes is in the best interests of that company's parent even though it may not be in the best interests of the company.

(2) A director of a company that is a subsidiary, but not a wholly-owned subsidiary, may, when exercising powers or performing duties as a director, if expressly permitted to do so by

the memorandum or articles of the company and with the prior agreement of the members, other than its parent, act in a manner which he believes is in the best interests of that company's parent even though it may not be in the best interests of the company.

(3) A director of a company that is carrying out a joint venture between the members may, when exercising powers or performing duties as a director in connection with the carrying out of the joint venture, if expressly permitted to do so by the memorandum or articles of the company, act in a manner which he believes is in the best interests of a member or members, even though it may not be in the best interests of the company.

### **Avoidance of breach**

**146.**(1) Subject to subsection (2) and without prejudice to the operation of any rule of law empowering the members, or any of them, to authorise or ratify a breach of section 144, no act or omission of a director shall be treated as a breach of section 144 if –

- (a) all of the members of the company authorise or ratify by resolution of members the act or omission; and
- (b) after the act or omission the company will be able to discharge its liabilities as they fall due.

(2) Subsection (1) shall not operate, in respect of any act or omission of a director in breach of section 144, to avoid or reduce –

- (a) any fine or penalty which may be imposed under this Act or any other written law of Seychelles; or
- (b) any other criminal or regulatory liability on the part of the director or the company.

### **Reliance on records and reports**

**147.**(1) Subject to subsection (2), a director of a company, when exercising his powers or performing his duties as a director, is entitled to rely upon the register of members and upon books, records, financial statements and other information prepared or supplied, and on professional or expert advice given, by –

- (a) an employee of the company whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
- (b) a professional adviser or expert in relation to matters which the director believes on reasonable grounds to be within the person's professional or expert competence; and
- (c) any other director, or committee of directors upon which the director did not serve, in relation to matters within the director's or committee's designated authority.

(2) Subsection (1) applies only if the director –

- (a) acts in good faith;



- (b) makes proper inquiry where the need for the inquiry is indicated by the circumstances; and
- (c) has no knowledge that his reliance on the register of members or the books, records, financial statements and other information or expert advice is not warranted.

### **Disclosure of interest**

**148.**(1) Where a director of a company has an interest in a transaction entered into or to be entered into by the company which to a material extent conflicts or may conflict with the interests of the company, the director shall, within 7 days after becoming aware of the fact that he has such an interest, disclose the interest to the board of the company.

- (2) A director of a company is not required to comply with subsection (1) if –
  - (a) the transaction or proposed transaction is between the director and the company; and
  - (b) the transaction or proposed transaction is or is to be entered into in the ordinary course of the company's business and on usual terms and conditions.
- (3) For the purposes of subsection (1), a disclosure to the board to the effect that a director is a member, director, other officer or trustee of another named company or other person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction.
- (4) Subject to section 149(1), the failure by a director to comply with subsection (1) does not affect the validity of a transaction entered into by the director or the company.
- (5) For the purposes of subsection (1), a disclosure is not made to the board unless it is made or brought to the attention of every director on the board.
- (6) Any disclosure at a meeting of the directors shall be recorded in the minutes of the meeting.
- (7) A director who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding US\$10,000.

### **Avoidance by company of transactions in which director is interested**

**149.**(1) Subject to this section, a transaction entered into by a company in respect of which a director is interested is voidable by the company unless the director's interest was –

- (a) disclosed to the board in accordance with section 148 prior to the company entering into the transaction; or
- (b) not required to be disclosed by virtue of section 148(2).

- (2) Notwithstanding subsection (1), a transaction entered into by a company in respect of which a director is interested is not voidable by the company if –
- (a) the material facts of the interest of the director in the transaction are known by the members entitled to vote at a meeting of members and the transaction is approved or ratified by a resolution of members; or
  - (b) the company received fair value for the transaction.
- (3) For the purposes of subsection (2), a determination as to whether a company receives fair value for a transaction shall be made on the basis of the information known to the company and the interested director at the time that the transaction was entered into.
- (4) Subject to the memorandum and articles, a director of a company who is interested in a transaction entered into or to be entered into by the company may –
- (a) vote on a matter relating to the transaction;
  - (b) attend a meeting of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purposes of a quorum; and
  - (c) sign a document on behalf of the company, or do any other thing in his capacity as a director, that relates to the transaction.
- (5) The avoidance of a transaction under subsection (1) does not affect the title or interest of a person in or to property which that person has acquired if the property was acquired –
- (a) from a person other than the company (“the transferor”);
  - (b) for valuable consideration; and
  - (c) without knowledge of the circumstances of the transaction under which the transferor acquired the property from the company.

#### **Sub-Part IV – Register of Directors**

##### **Register of directors**

**150.**(1) A company shall keep at its registered office in Seychelles a register to be known as a register of directors containing –

- (a) the name and address of each person who is a director or alternate director of the company and of any person who has been nominated as a reserve director of the company, identifying whether the person is a director, alternate director or reserve director;
- (b) the date on which each person whose name is entered in the register was appointed as a director or alternate director, or nominated as a reserve director, of the company;

- (c) the date on which each person named as a director or alternate director ceased to be a director or alternate director of the company;
  - (d) the date on which the nomination of any person nominated as a reserve director ceased to have effect; and
  - (e) such other information as may be prescribed by regulations made by the Minister.
- (2) A company shall ensure that the information required by subsection (1) to be kept in its register of directors is accurate and up-to-date.
- (3) The register of directors may be in such form as the directors approve, but if it is in magnetic, electronic or other data storage form, the company must be able to produce legible evidence of its contents.
- (4) The register of directors is *prima facie* evidence of any matters directed or permitted by this Act to be contained therein.
- (5) A company that contravenes subsection (1) or (2) shall be liable to a penalty fee of US\$500 and an additional penalty fee of US\$50 for each day or part thereof during which the contravention continues.
- (6) A director who knowingly permits a contravention under subsection (1) or (2) shall be liable to a penalty fee of US\$500 and an additional penalty fee of US\$50 for each day or part thereof during which the contravention continues.

### **Inspection of register of directors**

**151.**(1) A director or member of a company is entitled without charge to inspect the company's register of directors.

- (2) A person's right to inspection under subsection (1) is subject to such reasonable notice or other restrictions as the company may by its articles or by resolution of directors impose, but so that not less than 2 hours in each business day be allowed for inspection.
- (3) A person with the right to inspection under subsection (1) is entitled to request a copy of the company's register of directors or an extract of it, in which event the company may charge a reasonable copying fee.
- (4) If an inspection under subsection (1) is refused, or if a copy document requested under subsection (3) is not made available within 21 business days of the request –
- (a) the company commits an offence and is liable on conviction to a fine not exceeding US\$5,000; and
  - (b) the aggrieved person may apply to the Court for an order that he should be permitted to inspect the register or that a copy of the register or an extract of it be provided to him.

(5) On an application under subsection (4), the Court may make such orders as it considers just.

### **Filing of directors with Registrar**

**152.**(1) Subject to section 390, a company shall file a copy of its register of directors for registration by the Registrar within 30 days of –

- (a) the appointment of its first directors under section 134; and
- (b) in the case of a company continued or converted into a company under this Act, within 30 days of its continuation or conversion.

(2) A company that has filed for registration by the Registrar a copy of its register of directors under subsection (1) shall, within thirty days of any change in the content of its register of directors, file for registration by the Registrar a copy of its updated register of directors containing the change or changes.

(3) A company that contravenes subsection (1) or (2) shall be liable to a penalty of US\$250 and to an additional penalty of US\$25 for each day or part thereof during which the contravention continues.

(4) A director who knowingly permits a contravention under subsection (1) or (2) shall be liable to a penalty of US\$250 and to an additional penalty of US\$25 for each day or part thereof during which the contravention continues.

(5) A copy of a company's register of directors filed pursuant to subsection (1) or (2) shall be kept by the Registrar and shall not be disclosed or made available in any manner to any person except –

- (a) in obedience of a court order;
- (b) when compelled by the enforcement of any law;
- (c) to the registered agent of a company to which the register relates;
- (d) to a specified third party upon authorisation of the registered agent or a director of a company to which the register relates.

(6) For the purposes of compliance with subsection (1) and (2), it shall be sufficient if the first register of directors filed by a company with the Registrar contains only the particulars of its current directors as at the time of the first filing.

## **Sub-Part V –Directors Meetings and Resolutions**

### **Meetings of directors**

**153.**(1) Subject to the memorandum or articles of a company, the directors of a company may meet at such times and in such manner and places within or outside Seychelles as they may determine to be necessary or desirable.

(2) Subject to the memorandum and articles, any one or more directors may convene a meeting of directors.

(3) A director shall be deemed to be present at a meeting of directors if –

(a) the director participates by telephone or other electronic means; and

(b) all directors participating in the meeting are able to hear each other.

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

#### **Notice of meeting of directors**

**154.**(1) Subject to a requirement in a company's memorandum or articles for a longer notice period, a director shall be given not less than 2 days' notice of a meeting of directors.

(2) Notwithstanding subsection (1), subject to the memorandum or articles, a meeting of directors held in contravention of that subsection is valid if all of the directors, or such majority thereof as may be specified in the memorandum or articles entitled to vote at the meeting, have waived the notice of the meeting; and, for this purpose, the presence of a director at the meeting shall be deemed to constitute waiver on his part.

(3) The inadvertent failure to give notice of a meeting to a director, or the fact that a director has not received the notice, does not invalidate the meeting.

#### **Resolutions of directors**

**155.**(1) A resolution of directors may be passed –

(a) at a meeting of directors; or

(b) subject to the memorandum and articles, as a written resolution.

(2) Subject to the memorandum and articles, a resolution of directors is passed at a meeting of directors by a majority of the votes cast by directors who are present at the meeting and entitled to vote on the resolution.

(3) A written resolution is a resolution consented to in writing or by telex, telegram, cable or other written electronic communication, without the need for any notice –

(a) by such majority of the votes of the directors entitled to vote on the resolution as may be specified in the memorandum or articles; or

- (b) in the absence of any provision in the memorandum or articles, by all of the directors entitled to vote on the resolution.
- (4) A written resolution –
- (a) may consist of several documents, including written electronic communications, in like form each signed or assented to by one or more directors and
  - (b) shall be deemed to be passed when the written consent instrument, or the last of several instruments, is last signed or otherwise assented to or on such later date as is specified in the resolution.

### **Keeping of minutes and resolutions of directors**

**156.**(1) A company shall keep –

- (a) minutes of all meetings of its directors;
  - (b) minutes of all meetings of any committees of its directors;
  - (c) copies of all written resolutions consented to by its directors; and
  - (d) copies of all written resolutions consented to by any committees of its directors.
- (2) The records referred to in subsection (1) (which in this Sub-Part shall be referred to as “minutes and resolutions”) shall be kept for at least seven years from the date of the meeting or written resolution, as applicable.
- (3) A company that contravenes subsection (1) shall be liable to a penalty fee of US\$25 for each day or part thereof during which the contravention continues.
- (4) A director who knowingly permits a contravention under subsection (1) shall be liable to a penalty fee of US\$25 for each day or part thereof during which the contravention continues.

### **Location of minutes and resolutions of directors**

**157.**(1) A company shall keep its minutes and resolutions at such place inside or outside of Seychelles as the directors shall determine.

- (2) Where a company does not keep its minutes and resolutions at its registered office, it shall notify in writing its registered agent of the physical address of the place at which its minutes and resolutions are kept.
- (3) Where there is a change in the place at which its minutes and resolutions are kept, a company shall, within 14 days of the change, notify in writing its registered agent of the physical address of the place at which its minutes and resolutions are kept.
- (4) A company that contravenes subsections (1), (2) or (3) shall be liable to a penalty fee of US\$25 for each day or part thereof during which the contravention continues.

(5) A director who knowingly permits a contravention under subsections (1), (2) or (3) shall be liable to a penalty fee of US\$25 for each day or part thereof during which the contravention continues.

### **Inspection of minutes and resolutions of directors**

**158.**(1) A director of a company is entitled to inspect the company's minutes and resolutions without charge.

(2) A person's right to inspection under subsection (1) is subject to such reasonable notice or other restrictions as the company may by its articles or by resolution of directors impose, but so that not less than 2 hours in each business day be allowed for inspection.

(3) A director of a company is entitled to request, and be provided with without charge, a copy of any of the company's minutes and resolutions.

(4) If an inspection under subsection (1) is refused, or if a copy document requested under subsection (3) is not made available within 21 business days of the request –

(a) the company commits an offence and is liable on conviction to a fine not exceeding US\$5,000; and

(b) the aggrieved person may apply to the Court for an order that he should be permitted to inspect the relevant minutes and resolutions or that a copy of such minutes and resolutions be provided to him.

(5) On an application under subsection (4), the Court may make such order as it considers just.

## **Sub-Part VI – Indemnification and insurance**

### **Indemnification**

**159.**(1) Subject to subsection (2) and its memorandum or articles, a company may indemnify against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings any person who –

(a) is or was a party or is threatened to be made a party to any threatened, pending or completed proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that the person is or was a director of the company; or

(b) is or was, at the request of the company, serving as a director of, or in any other capacity is or was acting for, another body corporate or a partnership, joint venture, trust or other enterprise.

(2) Subsection (1) does not apply to a person referred to in that subsection unless the person acted honestly and in good faith and in what he believed to be in the best interests of the company and, in the case of criminal proceedings, the person had no reasonable cause to believe that his conduct was unlawful.

(3) For the purposes of subsection (2), a director acts in the best interests of the company if he acts in the best interests of –

- (a) the company's parent; or
- (b) a member or members of the company,

in either case, in the circumstances specified in section 145(1), (2) or (3), as the case may be.

(4) The termination of any proceedings by any judgment, order, settlement, conviction or the entering of a *nolle prosequi* does not, by itself, create a presumption that the person did not act honestly and in good faith and with a view to the best interests of the company or that the person had reasonable cause to believe that his conduct was unlawful.

(5) Expenses, including legal fees, incurred by a director in defending any legal, administrative or investigative proceedings may be paid by the company in advance of the final disposition of such proceedings upon receipt of an undertaking by or on behalf of the director to repay the amount if it shall ultimately be determined that the director is not entitled to be indemnified by the company in accordance with subsection (1).

(6) Expenses, including legal fees, incurred by a former director in defending any legal, administrative or investigative proceedings may be paid by the company in advance of the final disposition of such proceedings upon receipt of an undertaking by or on behalf of the former director to repay the amount if it shall ultimately be determined that the former director is not entitled to be indemnified by the company in accordance with subsection (1) and upon such other terms and conditions, if any, as the company deems appropriate.

(7) The indemnification and advancement of expenses provided by, or granted pursuant to, this section is not exclusive of any other rights to which the person seeking indemnification or advancement of expenses may be entitled under any agreement, resolution of members, resolution of disinterested directors or otherwise, both as to acting in the person's official capacity and as to acting in another capacity while serving as a director of the company.

(8) If a person referred to in subsection (1) has been successful in defence of any proceedings referred to in subsection (1), the person is entitled to be indemnified against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred by the person in connection with the proceedings.

(9) A company shall not indemnify a person in breach of subsection (2) and any indemnity given in breach of that section is void and of no effect.

## **Insurance**

**160.** A company may purchase and maintain insurance in relation to any person who is or was a director of the company, or who at the request of the company is or was serving as a director of, or in any other capacity is or was acting for, another body corporate or a partnership, joint venture, trust or other enterprise, against any liability asserted against the person and incurred by the person in that capacity, whether or not the company has or would have had the power to indemnify the person against the liability under section 159.



## **PART VIII – ADMINISTRATION**

### **Sub-Part I – Registered Office**

#### **Registered office**

**161.**(1) Subject to subsection (2), a company shall at all times have a registered office in Seychelles.

(2) The registered office of a company shall be the same address as the principal place of business in Seychelles of its registered agent.

(3) Subject to subsection (2), the registered office of a company is –

- (a) the place specified as the company’s registered office in its memorandum; or
- (b) if one or more certified change of registered office resolution extracts have been filed with the Registrar under section 162 or 163, the place specified in the last such notice registered by the Registrar.

#### **Change of registered office**

**162.**(1) A company may amend its memorandum to change the location of its registered office –

- (a) notwithstanding any provision to the contrary in the memorandum or articles, by ordinary resolution; or
- (b) if authorised by the memorandum or articles, by resolution of directors,

filed with the Registrar in accordance with section 23, provided that a company’s registered office shall be the same address as the principal place of business in Seychelles of its registered agent.

(2) A change of registered office takes effect on the registration by the Registrar of a certified copy or extract of the resolution referred to in subsection (1) filed in accordance with section 23.

#### **Change of registered office where registered agent changes address**

**163.**(1) Subject to subsection (5), this section applies in relation to a company where –

- (a) the registered office of the company is located at the principal place of business of its registered agent in Seychelles; and
- (b) after the Act commencement date the company’s registered agent changes the location of its principal place of business in Seychelles.

- (2) Where this section applies to a company, its registered agent may change the registered office of the company to the changed location of its principal place of business in Seychelles by filing a notice in the approved form with the Registrar stating –
- (a) that the registered agent has moved the location of its principal place of business in Seychelles and the company intends its registered office to continue to be the principal place of business of the registered agent;
  - (b) if applicable, that the memorandum of the company states the registered agent’s address; and
  - (c) the new address of the registered agent’s principal place of business in Seychelles.
- (3) Upon registration by the Registrar of a notice referred to in subsection (2) –
- (a) the change of registered office under this section takes effect; and
  - (b) if the company’s memorandum stated the registered agent’s address, the memorandum is deemed to be amended to state the changed address of the registered agent’s principal place of business in Seychelles.
- (4) A person who acts as the registered agent for more than one company may file a single notice which combines one or more notices specified in subsection (2).
- (5) This section extends to a former Act company –
- (a) whose registered agent changed the location of its principal place of business in Seychelles within six months prior to the Act commencement date; and
  - (b) which as at the Act commencement date had not changed the location of its registered office.

## **Sub-Part II – Registered Agent**

### **Company to have registered agent**

**164.**(1) A company shall at all times have a registered agent in Seychelles.

(2) No person shall be, or agree to be, the registered agent of a company, unless that person is licensed to provide international corporate services under the International Corporate Services Act.

(3) Unless the last registered agent of the company has resigned in accordance with section 167 or ceased to be the company’s registered agent in accordance with section 168, the registered agent of a company is –

- (a) the person specified as the company’s registered agent in the memorandum; or

- (b) if one or more certified copy or extract resolutions of change of registered agent have been filed with the Registrar under section 169 since the registration of the memorandum, the person specified as the company's registered agent in the last such notice to be registered by the Registrar.
- (4) Except as otherwise provided in this Act, a document required or permitted to be filed with the Registrar by a company, shall only be filed –
- (a) by its registered agent;
  - (b) in relation to a charge created by the company, by its registered agent or as otherwise permitted under Part IX of this Act; or
  - (c) if a liquidator is appointed under Part XVII of this Act in respect of the company, by its registered agent or as otherwise permitted under Part XVII,

Provided that in the event that a document relating to a company is filed with the Registrar by a person permitted to do so under Part IX or Part XVII other than company's registered agent, the Registrar shall send a copy of the filed document to the company's registered agent or otherwise notify it in writing.

- (5) A company that does not have a registered agent in contravention of subsection (1) shall be liable to a penalty fee of US\$100 and to an additional penalty of US\$25 for each day or part thereof during which the contravention continues.
- (6) A director who knowingly permits the contravention referred to under subsection (5) shall be liable to a penalty fee of US\$100 and to an additional penalty of US\$25 for each day or part thereof during which the contravention continues.
- (7) Subject to section 168(11), a person who contravenes subsection (2) commits an offence and is liable on conviction to a fine not exceeding US\$25,000.

### **Appointment of registered agent**

**165.**(1) If at any time a company does not have a registered agent it shall forthwith, by resolution of members or directors, appoint a registered agent.

- (2) A resolution to appoint a registered agent may be passed –
- (a) notwithstanding any provision to the contrary in the memorandum or articles, by the members of the company; or
  - (b) if authorised by the memorandum or articles, by the directors of the company.
- (3) A notice of appointment of registered agent in the approved form shall be endorsed by the registered agent with its agreement to act as registered agent and filed with the Registrar by the registered agent.
- (4) The appointment of the registered agent takes effect on the registration by the Registrar of the notice filed under subsection (3).

## **Deemed amendment of memorandum, where registered agent changes company name**

**166.**(1) This section applies in relation to a company where –

- (a) the company's registered agent changes its company name; and
  - (b) that registered agent is stated in the memorandum to be the registered agent of the company, whether as the first or a subsequent registered agent.
- (2) Where this section applies to a company, its registered agent may file a notice in the approved form stating –
- (a) that the registered agent has changed its registered name;
  - (b) that the registered agent is stated in the memorandum to be the registered agent of the company, whether as the first or a subsequent registered agent; and
  - (c) the new company name of the registered agent.
- (3) On the registration of a notice referred to in subsection (2), the company's memorandum is deemed to be amended to state the company's new name with effect from the date of registration of the notice.
- (4) A person who acts as the registered agent for more than one company may file a single notice which combines one or more notices specified in subsection (2).

## **Resignation of registered agent**

**167.**(1) A person may resign as the registered agent of a company only in accordance with this section.

- (2) A person wishing to resign as the registered agent of a company shall give not less than 30 days written notice to the company of its intention to resign as registered agent of the company on the date specified in the notice to a person specified in subsection (3)(d).
- (3) A notice under subsection (2) shall –
- (a) state that it is a requirement under this Act that the company have a registered agent in Seychelles;
  - (b) state that the company must appoint a new registered agent by the resignation date specified in the notice;
  - (c) state that the list of the names and addresses of all persons authorised by the Authority to provide registered agent services in Seychelles can be found on the Authority's Website; and
  - (d) be sent forthwith –

(i) by post or personal delivery to a director of the company at his last known address or by email to the director at his last known email address; or

(ii) if the registered agent customarily received its instructions concerning the company from a person other than an officer, employee or member of the company, by post or personal delivery to the person from whom the registered agent last received instructions concerning the company or by email to such person at his last known email address.

(4) If a company does not change its registered agent in accordance with section 169 on or before the resignation date specified in a notice given under subsection (2), after that date the registered agent may notify the Registrar in writing of its resignation as registered agent of the company.

(5) A notice under subsection (4) shall be accompanied by a copy of the notice under subsection (2).

(6) Unless the company has previously changed its registered agent, the resignation of a registered agent is effective as from the day on which the notice of resignation under subsection (4) is registered by the Registrar.

#### **Registered agent ceasing to be eligible to act**

**168.**(1) For the purposes of this section, a person ceases to be eligible to act as a registered agent if the person ceases to hold a licence to provide international corporate services under the International Corporate Service Providers Act (Cap 275).

(2) Where a person ceases to be eligible to act as a registered agent, that person shall, with respect to each company of which it was the registered agent immediately before ceasing to be eligible to act, give notice in accordance with subsection (3) to the company within 30 days of the person ceasing to be eligible to act as a registered agent.

(3) A notice under subsection (2) shall –

(a) state that the person giving the notice has ceased to be eligible to be the company's registered agent;

(b) state that it is a requirement under this Act that the company have a registered agent in Seychelles;

(c) state that the company must appoint a new registered agent within 90 days of the date of the notice;

(d) state that on the expiration of 90 days of the date of the notice, the person giving the notice will cease to be the registered agent of the company, if the company has not by then changed its registered agent;

(e) state that the list of the names and addresses of all persons authorised by the Authority to provide registered agent services in Seychelles can be found on the Authority's Website; and

- (f) be sent forthwith –
  - (i) by post or personal delivery to a director of the company at his last known address or by email to the director at his last known email address; or
  - (ii) if the registered agent customarily received his instructions concerning the company from a person other than an officer, employee or member of the company, by post or personal delivery to the person from whom the registered agent last received instructions concerning the company or by email to such person at his last known email address.
- (4) A person who has given a notice under subsection (2) shall within 14 days of giving such notice file a copy thereof with the Registrar, unless the company which is sent a notice under subsection (2) has changed registered agent since the giving of the notice.
- (5) A company which is given a notice under subsection (2) shall, within 90 days of the date of the notice, change its registered agent in accordance with section 169.
- (6) A person who has ceased to be eligible to act as a registered agent ceases to be the registered agent of each company to which it has sent a notice under subsection (2), through a director or other person specified in subsection (3), on the earlier of –
  - (a) the date that the company changes its registered agent in accordance with subsection (5); or
  - (b) the first day following the expiry of the notice period specified in subsection (5).
- (7) In respect of the period from when a person ceases to be eligible to act as a registered agent under subsection (1) until the person ceases to be the registered agent of its client companies under subsection (6), the person is –
  - (a) only permitted to preserve and transfer records relating to its client companies to a successor registered agent;
  - (b) not permitted to provide any other services licensable under the International Corporate Service Providers Act (Cap 275) to its client companies; and
  - (c) not permitted to form or continue a company, to promote its services as a registered agent or to otherwise conduct any other activities as a registered agent.
- (8) A person who contravenes subsection (2) or (7) commits an offence and is liable on conviction to a fine not exceeding US\$25,000.
- (9) A director who knowingly permits a contravention (by a person who is a body corporate) under subsection (2) or (7) commits an offence and is liable on conviction to a fine not exceeding US\$25,000.

(10) A company that contravenes subsection (5) shall be liable to a penalty fee of US\$25 for each day or part thereof during which the contravention continues.

(11) A person does not contravene section 164(2) by reason only of the fact that –

(a) it ceases to be eligible to act as a registered agent; and

(b) after ceasing to be eligible to act, it continues to be the registered agent of a company during the period from the date it ceases to be eligible to act to the date that the company appoints a new registered agent.

### **Change of registered agent**

**169.**(1) Subject to subsection (2), a company may amend its memorandum to change its registered agent –

(a) notwithstanding any provision to the contrary in the memorandum or articles, by unanimous resolution of members; or

(b) if so permitted by the memorandum or articles, by ordinary resolution or by resolution of directors.

(2) Subject to subsection (3), a company that wishes to change its registered agent shall, within 14 days of the date of the resolution referred to in subsection (1) (the “change of registered agent resolution”), file a certified copy or extract of the change of registered agent resolution with the Registrar in accordance with section 23(1), which shall be filed on the company’s behalf by –

(a) the company’s existing registered agent; or

(b) the company’s proposed new registered agent.

(3) Subject to subsection (4), the Registrar shall not register a certified copy or extract change of registered agent resolution filed by the company’s proposed new registered agent unless the Registrar has also received a written consent from the existing registered agent wherein it consents to the change of registered agent and to the proposed new registered agent filing the extract resolution.

(4) A company’s existing registered agent shall provide its written consent under subsection (3) unless –

(a) it has not been authorised in writing by the company to give its consent to the change of registered agent; or

(b) any fees due and payable to the existing registered agent have not been paid.

(5) A change of registered agent takes effect on the registration by the Registrar of the certified copy or extract of the resolution referred to in subsection (1) filed in accordance with section 23.

(6) A person who fails to comply with subsection (4) within 14 days of the date of the change of registered agent resolution shall be liable to a penalty fee of US\$100 and to an additional penalty of US\$25 for each day or part thereof during which the contravention continues, provided that such 14 day period shall not begin to run until –

- (a) the existing registered agent has been authorised in writing by the company to give its consent to the change of registered agent; and
- (b) any fees due and payable to the existing registered agent have been paid.

### **Sub-Part III – General Provisions**

#### **Company's name to appear in its correspondence, etc**

**170.** The name of a company shall appear in legible characters in all its –

- (a) business letters, statements of account, invoices and order forms;
- (b) notices and other official publications; and
- (c) negotiable instruments and letters of credit purporting to be signed by or on behalf of the company.

#### **Annual return**

**171.**(1) Subject to subsection (2) every company shall, by no later than 31st December in every year after the year in which it was incorporated or continued, or converted into a company, under this Act, furnish to its registered agent in Seychelles an annual return by way of a declaration in the approved form signed by or on behalf of the company and containing the information referred to in the Sixth Schedule.

(2) For the purposes of this section, a former Act company's date of incorporation under this Act shall be deemed to be its date of incorporation or continuation, or conversion into a former Act company, under the former Act.

(3) A company shall not provide a false or misleading return under subsection (1).

(4) A company that contravenes subsection (1) shall be liable to a penalty fee of US\$500.

(5) A company that contravenes subsection (3) commits an offence and is liable on conviction to a fine not exceeding US\$5000.

#### **Service of document**

**172.**(1) Service of a document relating to legal proceedings or any other document may be effected on a company by leaving it at, or sending it by registered post or any other prescribed method to –

- (a) the company's registered office; or



- (b) the principal place of business in Seychelles of the company's registered agent.
- (2) For the purposes of subsection (1)(a), where a company has no registered agent its registered office shall be the principal place of business in Seychelles of the company's last registered agent.
- (3) For the purposes of subsection (1), "registered post" means any system of mail delivery through postal authorities or private courier company which includes proof of delivery by means of the recipient signing for the delivered item.
- (4) Notwithstanding and without prejudice to subsection (1), service of a document on a company may be effected by the Registrar by sending it by ordinary pre-paid post, facsimile transmission or email to the principal place of business in Seychelles of the company's registered agent.
- (5) The Minister may make regulations to provide for the methods by which service of a document on a company may be proved.

### **Furnishing or records**

**173.**(1) For the purposes of this section, "records", in relation to a company, means its –

- (a) accounting records;
  - (b) minutes and resolutions of members kept pursuant to section 125;
  - (c) minutes and resolutions of directors kept pursuant to section 156;
  - (d) annual returns made pursuant to section 171;
  - (e) register of members;
  - (f) register of directors; and
  - (g) *Repealed.*
  - (h) register of charges (if any).
- (2) Where a company is requested pursuant to a written law of Seychelles to furnish all or any of its records (or copies thereof), including (without limitation) a request by –
- (a) the Seychelles Revenue Commission to meet a request for information under a tax treaty;
  - (b) the Financial Intelligence Unit under the Anti-Money Laundering Act; or
  - (c) the Registrar for the purpose of monitoring and assessing compliance with this Act,

the company shall cause the requested records (or copies thereof) to be furnished to the requesting party in Seychelles within the time period specified in the request.

(3) A company that contravenes subsection (2) shall be liable to a penalty fee payable to the Registrar of US\$500 and to an additional penalty of US\$50 for each day or part thereof during which the contravention continues.

(4) A director who knowingly permits a contravention under subsection (2) shall be liable to a penalty fee payable to the Registrar of US\$500 and to an additional penalty of US\$50 for each day or part thereof during which the contravention continues.

#### **Sub-Part IV – Accounting Records**

##### **Keeping of accounting records**

**174.**(1) A company shall keep reliable accounting records that –

- (a) are sufficient to show and explain the company’s transactions;
- (b) enable the financial position of the company to be determined with reasonable accuracy at any time; and
- (c) allow for accounts of the company to be prepared.

(2) For the purposes of subsection (1), accounting records shall be deemed not to be kept if they do not give a true and fair view of the company’s financial position and explain its transactions.

(3) A company that contravenes subsection (1) shall be liable to a penalty fee of US\$100 and an additional penalty fee of US\$25 for each day or part thereof during which the contravention continues.

(4) A director who knowingly permits a contravention under subsection (1) shall be liable to a penalty fee of US\$100 and an additional penalty fee of US\$25 for each day or part thereof during which the contravention continues.

##### **Location and preservation of accounting records**

**175.**(1) A company’s accounting records shall be kept at its registered office or such other place as the directors think fit.

(2) Where a company’s accounting records are kept at a place other than its registered office, the company shall inform its registered agent in writing of the physical address of that place.

(3) Where the place at which a company’s accounting records are kept is changed, the company shall inform its registered agent in writing of the physical address of the new location of the records within 14 days of the change of location.

(4) The accounting records shall be preserved by the company for at least 7 years from the date of completion of the transactions or operations to which they each relate.

(5) A company that contravenes this section commits an offence and is liable on conviction to a fine not exceeding US\$2,500.

### **Inspection of accounting records by directors**

**176.**(1) A director of a company may –

(a) at any reasonable time specified by him, inspect the accounting records of the company without charge and make copies of or take extracts from the records;

(b) require the company to provide originals or copies of the accounting records to it within 14 days.

(2) A company shall comply with a request under subsection (1).

(3) A company that contravenes this section commits an offence and is liable on conviction to a fine not exceeding US\$2,500.

(4) In the case of accounting records not being made available for inspection by a director in contravention of this section, on the application of that director the Court may by order compel inspection or delivery of such records and make such related orders as it thinks fit.

## **PART IX – CHARGES OVER COMPANY PROPERTY**

### **Interpretation**

**177.**(1) In this Part –

“charge” means any form of security interest, including, without limitation –

(a) a charge, by way of fixed or floating charge;

(b) a mortgage;

(c) a pledge; or

(d) a hypothecation,

over property, wherever situated, other than an interest arising by operation of law, and “chargee” and “chargor” shall be construed accordingly;

“liability” includes contingent and prospective liabilities;

“pre-existing charge” means a charge created before the Act commencement date by a former Act company –

- (a) whether or not the charge was registered under section 101A(2) of the former Act; and
- (b) which was not discharged in full and cancelled as at the Act commencement date;

“property” includes immovable property, movable property, money, goods, intellectual property and every other type of property wherever situated and obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property; and

“relevant charge” means a charge created on or after the Act commencement date.

(2) A reference in this Part to the creation of a charge includes a reference to the acquisition of property, wherever situated, which was, immediately before its acquisition, the subject of a charge and which remains subject to that charge after its acquisition and for this purpose, the date of creation of the charge is deemed to be the date of acquisition of the property.

### **Company may charge its assets**

**178.**(1) Subject to its memorandum and articles, a company may, by an instrument in writing, create a charge over all or any of its property.

(2) The governing law of a charge created by a company may be the law of such jurisdiction that may be agreed between the company and the chargee and the charge shall be binding on the company to the extent, and in accordance with, the requirements of the governing law.

(3) Where a company acquires property subject to a charge –

- (a) subsection (1) does not require the acquisition of the property to be by instrument in writing, if the acquisition is not otherwise required to be by instrument in writing; and
- (b) unless the company and the chargee agree otherwise, the governing law of the charge is the law that governs the charge immediately before the acquisition by the company of the property subject to the charge.

### **Register of charges**

**179.**(1) A company shall keep at its registered office in Seychelles a register of all relevant charges and pre-existing charges created by the company, to be known as its register of charges, specifying in respect of each charge –

- (a) if the charge is a charge created by the company, the date of its creation or, if the charge is a charge existing on property acquired by the company, the date on which the property was acquired;
- (b) a short description of the liability secured by the charge;
- (c) a short description of the property charged;

- (d) the name and address of the chargee, who may be acting as a trustee or security agent for other persons;
  - (e) details of any prohibition or restriction, if any, contained in the instrument creating the charge on the power of the company to create any future charge ranking in priority to or equally with the charge.
- (2) The register of charges may be in such form as the directors may approve but if it is in magnetic, electronic or other data storage form, the company must be able to produce legible evidence of its contents.
- (3) A company that contravenes subsection (1) shall be liable to a penalty fee of US\$100 and an additional penalty fee of US\$25 for each day or part thereof during which the contravention continues.
- (4) A director who knowingly permits a contravention under subsection (1) shall be liable to a penalty fee of US\$100 and an additional penalty fee of US\$25 for each day or part thereof during which the contravention continues.

### **Inspection of register of charges**

**180.**(1) A director or member of a company is entitled without charge to inspect the company's register of charges.

(2) A person's right to inspection under subsection (1) is subject to such reasonable notice or other restrictions as the company may by its articles or by resolution of directors impose, but so that not less than 2 hours in each business day be allowed for inspection.

(3) A person with the right to inspection under subsection (1) is entitled to request a copy of the company's register of charges or an extract of it, in which event the company may charge a reasonable copying fee.

(4) If an inspection under subsection (1) is refused, or if a copy document requested under subsection (3) is not made available within 21 business days of the request –

(a) the company commits an offence and is liable on conviction to a fine not exceeding US\$5,000; and

(b) the aggrieved person may apply to the Court for an order that he should be permitted to inspect the register or that a copy of the register or an extract of it be provided to him.

(5) On an application under subsection (4), the Court may make such orders as it considers just.

### **Registration of charges**

**181.**(1) Where a company creates a relevant charge, an application to the Registrar to register the charge may be made by –

- (a) the company acting by its registered agent or a legal practitioner in Seychelles authorised to act on its behalf; or
  - (b) a registered agent (other than the company's registered agent) or a legal practitioner in Seychelles, acting on behalf of the chargee.
- (2) An application under subsection (1) is made by filing –
  - (a) an application, specifying the particulars of the charge referred to in section 179(1)(a) to (e), in the approved form;
  - (b) the instrument, or a certified copy of the instrument, creating the charge; and
  - (c) in the case of an application made by or on behalf of the chargee, a written consent to the application signed by or on behalf of the chargor.
- (3) The Registrar shall keep, with respect to each company, a register, to be known as the Register of Registered Charges, which shall include the following information in relation to every relevant charge registered under this section –
  - (a) if the charge is a charge created by the company, the date of its creation or, if the charge is a charge existing on property acquired by the company, the date on which the property was acquired;
  - (b) a short description of the liability secured by the charge;
  - (c) a short description of the property charged;
  - (d) the name and address of the chargee, who may be acting as a trustee or security agent for other persons; and
  - (e) such other information as the Registrar deems fit.
- (4) If the Registrar is satisfied that the requirements of this Part as to registration have been complied with, upon receipt of an application under subsection (2), the Registrar shall forthwith –
  - (a) register the charge in the Register of Registered Charges kept by him for that company;
  - (b) issue a letter of registration of the charge and send it, together with a sealed copy of the charge instrument or certified copy instrument which was filed, to the person who filed the application under subsection (1); and
  - (c) if the person who filed the application under subsection (1) was not the registered agent of the chargor company, send a copy of the letter of registration of the charge to the registered agent of the chargor company

(5) The Registrar shall state in the Register of Registered Charges and on the letter of registration the date and time on which a charge was registered.

(6) A letter of registration issued under subsection (4) is conclusive proof that the requirements of this Part as to registration have been complied with and that the charge referred to in the letter was registered on the date and time stated in the letter.

(7) A charge registered under this section is not required to be registered in the Register of Deeds (maintained by the Registrar of Deeds under the Mortgage and Registration Act) for a *Date Certain* pursuant to Article 1328 of the Civil Code of Seychelles Act.

### **Variation of registered charges**

**182.**(1) Where there is a variation in the terms of a charge registered under section 181, application for the variation to be registered may be made by –

(a) the company, acting by its registered agent or a legal practitioner in Seychelles authorised to act on its behalf; or

(b) a registered agent (other than the company's registered agent) or a legal practitioner in Seychelles, acting on behalf of the chargee.

(2) An application under subsection (1) is made by filing –

(a) an application in the approved form;

(b) the instrument, or a certified copy of the instrument, varying the terms of the charge; and

(c) in the case of a variation application made by or on behalf of the chargee, a written consent to the application signed by or on behalf of the chargor.

(3) Upon receipt of an application complying with subsection (2), the Registrar shall forthwith –

(a) register the variation of the charge;

(b) issue a letter of registration of the charge variation and send it, together with a sealed copy of the charge variation instrument or certified copy instrument which was filed, to the person who filed the application under subsection (1); and

(c) if the person who filed the application under subsection (1) was not the registered agent of the chargor company, send a copy of the letter of registration of the charge variation to the registered agent of the chargor company.

(4) The Registrar shall state in the Register of Registered Charges and on the letter of variation the date and time on which a variation of charge was registered.

(5) A letter of registration issued under subsection (3) is conclusive proof that the variation referred to in the letter was registered on the date and time stated in the letter.

## **Satisfaction or release of charge**

**183.**(1) A notice of satisfaction or release in the approved form may be filed with the Registrar under this section if –

- (a) all liabilities secured by the charge registered under section 181 have been paid or satisfied in full; or
  - (b) a charge registered under section 181 has ceased to affect the property, or any part of the property, of a company.
- (2) A notice of satisfaction or release shall –
- (a) state whether the charge has been paid or satisfied in full or whether the charge has ceased to affect the property, or any part of the property, of the company;
  - (b) if the charge has ceased to affect the property, or any part of the property of the company, specify the property of the company that has ceased to be affected by the charge, stating whether this is the whole or part of the company's property; and
  - (c) be signed by or on behalf of the chargee.
- (3) A notice of satisfaction or release may be filed by –
- (a) the company acting by its registered agent or a legal practitioner in Seychelles authorised to act on its behalf; or
  - (b) a registered agent (other than the company's registered agent) or a legal practitioner in Seychelles, acting on behalf of the chargee.
- (4) If the Registrar is satisfied that a notice filed under subsection (1) is correctly completed, complies with subsection (2), the Registrar shall forthwith register the notice and issue a letter of satisfaction or release of charge and send –
- (a) the letter to the person who filed the application under subsection (1); and
  - (b) if the person who filed the application under subsection (1) was not the company's registered agent, a copy of the letter to the company's registered agent.
- (5) The Registrar shall state in the Register of Registered Charges and on the letter issued under subsection (4) the date and time on which the notice filed under subsection (1) was registered.
- (6) From the date and time stated in the letter issued under subsection (4)(a), the charge is deemed not to be registered in respect of the property specified in the notice filed under subsection (1).

## **Priorities among relevant charges**



**184.**(1) A relevant charge on property of a company that is registered in accordance with section 181 has priority over –

(a) a relevant charge on the property that is subsequently registered in accordance with section 181; and

(b) a relevant charge on the property that is not registered in accordance with section 181.

(2) Relevant charges which are not registered under section 181 shall rank among themselves in the order in which they were created.

### **Priorities relating to pre-existing charges**

**185.**(1) Pre-existing charges on property of a company shall rank among themselves in the order in which they were created.

(2) In the case of a pre-existing charge on property of a company and a relevant charge on the same property –

(a) the pre-existing charge shall rank ahead of the relevant charge as priority shall be determined based on the order in which each charge was created; and

(b) if the pre-existing charge is registered under section 181, the date of registration shall be disregarded in determining the priority of the pre-existing charge.

(3) Subsection (2) shall apply irrespective of whether the pre-existing charge –

(a) is unregistered;

(b) is registered under section 181; or

(c) was registered under the former Act.

### **Exceptions with respect to priorities**

**186.** Notwithstanding sections 184 and 185 –

(a) the order of priorities of charges is subject to –

(i) any express written consent of the holder of a charge that varies the priority of that charge in relation to one or more other charges that it would, but for the consent, have had priority over; or

(ii) any written agreement between chargees that affects the priorities in relation to the charges held by the respective chargees; and

(b) a registered floating charge is postponed to a subsequently registered fixed charge unless the floating charge contains a prohibition or restriction on the power of

the company to create any future charge ranking in priority to or equally with the charge.

### **Enforcement of charge governed by Seychelles law**

**187.**(1) Where the governing law of a charge created by a company is the law of Seychelles, in the case of a default by the chargor under the terms of the charge, the charge is entitled to the following remedies –

- (a) subject to any limitations or provisions to the contrary in the instrument creating the charge, the right to sell all or any of the property secured by the charge; and
- (b) the right to appoint a receiver who, subject to any limitations or provisions to the contrary in the instrument creating the charge, may –
  - (i) receive distributions and any other income in respect of the property secured by the charge; and
  - (ii) exercise other rights and powers of the chargor in respect of the property secured by the charge,

until such time as the charge is discharged.

(2) Subject to subsection (3), where the governing law of a charge created by a company is the law of Seychelles, the remedies referred to in subsection (1) are not exercisable until –

- (a) a default has occurred and has continued for a period of not less than thirty days, or such shorter period as may be specified in the instrument creating the charge; and
- (b) the default has not been rectified within fourteen days or such shorter period as may be specified in the instrument creating the charge from service of the notice specifying the default and requiring rectification thereof.

(3) Where the governing law of a charge created by a company is the law of Seychelles, if the instrument creating the charge so provides, the remedies referred to in subsection (2) are exercisable immediately on a default occurring.

(4) For the avoidance of doubt, subject to its provisions, a charge may be enforced, including pursuant to subsection 1(a), without an order of the Court.

### **Exercising power of sale under a Seychelles law charge**

**188.**(1) Notwithstanding any provisions to the contrary in a charge governed by Seychelles law, in the event that a chargee is exercising his right of sale pursuant to this Act, the sale shall be at –

- (a) open market value at the time of sale; or
- (b) the best price reasonably obtainable if there is no open market value at the time of sale.

(2) Unless the provisions of a charge governed by Seychelles law specify to the contrary, a sale pursuant to section 187(1)(a) may be conducted in any manner, including by private sale or public auction.

## **PART X – CONVERSIONS**

### **Sub-Part I – General provisions**

#### **Interpretation**

**189.** In this Sub-Part –

- (a) “Ordinary Companies Registrar” means the registrar of companies under the Companies Act; and
- (b) reference to an extract means an extract certified as true by –
  - (i) in the case of a company, its registered agent; or
  - (ii) in the case of an ordinary company, a director or its proposed registered agent.

#### **Declaration of compliance**

**190.**(1) For the purposes of this Part, a declaration of compliance is a declaration, signed by a director, that all the requirements of this Act in respect of the conversion of a company have been fulfilled.

(2) The Registrar, when performing his functions under this Act, may rely upon a declaration of compliance in all respects and accordingly is not bound to enquire further as to whether, in relation to any conversion or transfer, the provisions of this Act have been complied with.

(3) A director who without reasonable excuse makes a declaration which is false, deceptive or misleading in a material particular commits an offence and is liable on conviction to a fine not exceeding US\$10,000.

#### **Conversions not a default**

**191.** A conversion under this Part shall not be regarded –

- (a) as a breach of contract or confidence or otherwise as a civil wrong;
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of rights or liabilities; or
- (c) as giving rise to any remedy, by a party to a contract or other instrument, as an event of default under any contract or other instrument or as causing or permitting the termination of any contract or other instrument or of any obligation or relationship.

**Sub-Part II – Conversion of an ordinary company into an international business company and vice-versa**

**Conversion of ordinary company into international business company**

**192.**(1) An ordinary company may be converted into an international business company, in accordance with the provisions of this section.

(2) The ordinary company cannot be converted unless it has obtained a letter issued by the Seychelles Revenue Commission stating that it has no objection to the ordinary company converting into an international business company.

(3) The ordinary company shall pass a special resolution of members approving –

(a) the conversion of the company into an international business company; and

(b) the alteration of its memorandum and articles such as to conform to the requirements of this Act with respect to the memorandum and articles of an international business company.

(4) The ordinary company shall file with the Registrar –

(a) an extract of the special resolution passed under subsection (3);

(b) its proposed altered memorandum and articles;

(c) a declaration of compliance or an extract thereof;

(d) evidence satisfactory to the Registrar that it is in good standing under the Companies Act; and

(e) a copy of the non-objection letter of the Seychelles Revenue Commission under subsection (2).

(5) Upon receipt of the documents specified in subsection (4) accompanied by the specified fee set out in Part II of the Second Schedule, the Registrar shall –

(a) register the altered memorandum and articles;

(b) issue a certificate of conversion into international business company to the company in the approved form; and

(c) notify in writing the Ordinary Company Registrar of the conversion.

(6) The certificate of conversion into international business company shall be signed by the Registrar and sealed with the Official Seal.

(7) The conversion of the company into an international business company shall take effect from the date of issuance by the Registrar of the certificate of conversion into international business company.

(8) On receipt of notification under subsection (5)(c), the Ordinary Company Registrar shall strike the name of the company off the register of companies registered under the Companies Act.

### **Effect of conversion of ordinary company into international business company**

**193.** Where an ordinary company is converted into an international business company by virtue of section 192 –

(a) all property and rights to which the ordinary company was entitled immediately before that conversion remain the property and rights of the international business company;

(b) the international business company remains subject to all criminal and civil liabilities, and all contracts, debts, and other obligations, to which the ordinary company was subject immediately before its conversion;

(c) all actions and other legal proceedings which, immediately before the conversion, could have been instituted or continued by or against the ordinary company may be instituted or continued by or against the international business company after the conversion; and

(d) a conviction, ruling, order or judgment in favour of or against the ordinary company may be enforced by or against the international business company after the conversion.

### **Conversion of international business company into ordinary company**

**194.(1)** An international business company may be converted into an ordinary company, in accordance with the provisions of this section.

(2) The company shall pass a special resolution –

(a) approving the conversion of the company into an ordinary company;

(b) approving the alteration of its memorandum and articles such as to conform to the requirements of the Companies Act with respect to with the memorandum and articles of a company to be incorporated as an ordinary company.

(3) The company shall file with the Ordinary Company Registrar –

(a) an extract of the special resolution passed under subsection (2);

(b) its proposed altered memorandum and articles;

- (c) a certificate of good standing issued under this Act by the Registrar in respect of the company; and
  - (d) a declaration of compliance or an extract thereof.
- (4) Upon receipt of the documents specified in subsection (3) accompanied by any relevant fee specified under the Companies Act, the Ordinary Company Registrar shall –
- (a) register the altered memorandum and articles;
  - (b) issue a certificate of conversion into ordinary company to the company; and
  - (c) notify in writing the Registrar of the conversion.
- (5) The certificate of conversion into ordinary company shall be signed and sealed by the Ordinary Company Registrar.
- (6) The conversion of the company into an ordinary company shall take effect from the date of issuance by the Ordinary Company Registrar of the certificate of conversion into an ordinary company.
- (7) On receipt of notification under subsection (4)(c), the Registrar shall strike the name of the company off the Register.

### **Effect of conversion of international business company into ordinary company**

**195.** Where an international business company is converted into an ordinary company by virtue of section 194 –

- (a) all property and rights to which the international business company was entitled immediately before that conversion remain the property and rights of the ordinary company;
- (b) the ordinary company remains subject to all criminal and civil liabilities, and all contracts, debts, and other obligations, to which the international business company was subject immediately before its conversion;
- (c) all actions and other legal proceedings which, immediately before the conversion, could have been instituted or continued by or against the international business company may be instituted or continued by or against the ordinary company after the conversion; and
- (d) a conviction, ruling, order or judgment in favour of or against the international business company may be enforced by or against the ordinary company after the conversion.

### **Sub-Part III – Conversion of non-cellular company into protected cell company and vice-versa**

#### **Conversion of non-cellular company into a protected cell company**

**196.**(1) A non-cellular company may be converted into a protected cell company in accordance with the provisions of this section.

(2) The company cannot be converted unless it has the written consent of the Authority in accordance with the provisions of Sub-Part II of Part XIII.

(3) The company shall pass a special resolution –

(a) approving the conversion of the company into a protected cell company;

(b) approving the alteration of its memorandum such as to conform to the requirements of this Act with respect to with the memorandum of a company to be incorporated as a protected cell company;

(4) The special resolution under subsection (3) may also –

(a) approve the alteration of the company's articles; and

(b) approve the creation of cells of the protected cell company and attribute members, shares, capital, assets and liabilities between those cells and between those cells and the core.

(5) The company shall file with the Registrar –

(a) an extract of the special resolution passed under subsection (3);

(b) its proposed altered memorandum and, if applicable, articles;

(c) a declaration of compliance or an extract thereof; and

(d) a copy of the consent of the Authority under subsection (2).

(6) The declaration of compliance shall include a declaration that –

(a) the protected cell company and each cell will satisfy the solvency test immediately after the conversion; and

(b) there are no creditors of the company whose interests will be unfairly prejudiced by the conversion.

(7) Upon receipt of the documents specified in subsection (5), the Registrar shall –

(a) register the altered memorandum and, if applicable, articles; and

(b) issue a certificate of conversion into protected cell company to the company in the approved form.

(8) The certificate of conversion into protected cell company shall be signed by the Registrar and sealed with the Official Seal.

(9) The conversion of the company into a protected cell company shall take effect from the date of issuance by the Registrar of the certificate of conversion into protected cell company.

### **Effects of conversion of non-cellular company into protected cell company**

**197.**(1) Where a company is converted into a protected cell company by virtue of section 196 –

(a) all property and rights to which it was entitled immediately before that conversion remain its property and rights;

(b) it remains subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which it was subject immediately before that conversion;

(c) all actions and other legal proceedings which, immediately before that conversion, could have been instituted or continued by or against it may be instituted or continued by or against it in its new name;

(d) a conviction, ruling, order or judgment in favour of or against it before the conversion may be enforced by or against it after the conversion; and

(e) subject to subsection (2), its members, shares, capital, assets and liabilities are attributed between its cells, and between its cells and the core, in accordance with the terms of any special resolution which makes such provision as is mentioned in section 196(4)(b).

(2) Regardless of the provisions of subsection (1)(e) and Part XIII, any creditor who entered into a transaction with a company before that company converted into a protected cell company shall have recourse to all core and cellular assets (other than any cellular assets attributable to a cell created after that conversion) in respect of any liability for that transaction, unless the creditor has agreed otherwise.

(3) If the directors had no reasonable grounds for believing that the protected cell company and each cell would satisfy the solvency test immediately after the conversion, any director who signed the declaration of compliance is personally liable to pay to the core or cell of the protected cell company so much monies as the core or cells had to pay to a creditor which the core or cells would not have had to pay, but for the provisions of subsection (2).

### **Conversion of protected cell company into non-cellular company**

**198.**(1) A protected cell company may be converted into a non-cellular company in accordance with the provisions of this section.

(2) The company cannot be converted unless it has the written consent of the Authority in accordance with the provisions of Sub-Part II of Part XIII.

(3) The company shall pass a special resolution –



- (a) approving the conversion of the protected cell company into a non-cellular company; and
  - (b) approving the alteration of its memorandum such as to conform to the requirements of this Act with respect to with the memorandum of a non-cellular company.
- (4) The special resolution under subsection (3) may also approve the alteration of the company's articles.
- (5) A cell of the company shall, if cell shares have been issued in respect of it, pass a special resolution approving the conversion of the company into a non-cellular company.
- (6) Subject to subsections (7) and (8), the company shall file with the Registrar –
- (a) an extract of the special resolution passed under subsection (3);
  - (b) its proposed altered memorandum and, if applicable, articles;
  - (c) a declaration of compliance or an extract thereof;
  - (d) a copy of the consent of the Authority under subsection (2); and
  - (e) an extract of the special resolution of each cell of the company.
- (7) The declaration of compliance shall include a declaration that –
- (a) the company satisfies the solvency test; and
  - (b) there are no creditors of the company whose interests will be unfairly prejudiced by the conversion.
- (8) Upon receipt of the documents specified in subsection (6), the Registrar shall –
- (a) register the altered memorandum and, if applicable, articles; and
  - (b) issue a certificate of conversion into an ordinary company or protected cell company, as the case may be, to the company in the approved form.
- (9) The certificate of conversion into an ordinary company or international business company, as the case may be, shall be signed by the Registrar and sealed with the Official Seal.
- (10) The conversion of the company into a non-cellular company shall take effect from the date of issuance by the Registrar of the certificate of conversion into ordinary company or international business company, as the case may be.

### **Effects of conversion of protected cell company into non-cellular company**

**199.**(1) Where a protected cell company is converted into a non-cellular company by virtue of section 198 –

- (a) all property and rights to which the core and cells were entitled immediately before that conversion remain the property and rights of the non-cellular company;
  - (b) the non-cellular company remains subject to all criminal and civil liabilities, and all contracts, debts, and other obligations, to which the core and each cell were subject immediately before its conversion;
  - (c) all actions and other legal proceedings which, immediately before the conversion, could have been instituted or continued by or against the core or any cell may be instituted or continued by or against the non-cellular company after the conversion; and
  - (d) a conviction, ruling, order or judgment in favour of or against the core or any cell may be enforced by or against the non-cellular company after the conversion.
- (2) If the Court is satisfied that the conversion would unfairly prejudice a member or creditor of the company, it may, on the application of that person made at any time before the date on which the conversion has effect, or within such further time as the Court may in any particular case allow, make such order as it thinks fit in relation to the conversion, including, without prejudice to the generality of the foregoing, an order –
- (a) directing that effect shall not be given to the conversion;
  - (b) modifying the conversion in such manner as may be specified in the order; or
  - (c) directing the company or its directors to reconsider the conversion or any part of it.
- (3) An order under subsection (2) may be made on such terms and conditions and subject to such penalty as the Court thinks fit.

## **PART XI – MERGERS, CONSOLIDATIONS AND ARRANGEMENTS**

### **Sub-Part I – Mergers and Consolidations**

#### **Interpretation**

**200.** In this Part –

“consolidated company” means the new company that results from the consolidation of two or more constituent companies;

“consolidation” means the consolidating of two or more constituent companies into a new company;

“constituent company” means an existing company that is participating in a merger or consolidation with one or more other existing companies;

“merger” means the merging of two or more constituent companies into one of the constituent companies;

“parent company” means a company that owns at least ninety per cent of the issued shares of each class of shares in another company;

“subsidiary company” means a company at least ninety per cent of whose issued shares of each class of shares are owned by another company;

“surviving company” means the constituent company into which one or more other constituent companies are merged.

### **Approval of merger or consolidation**

**201.**(1) Two or more companies may merge or consolidate in accordance with this section.

(2) The directors of each constituent company that proposes to participate in a merger or consolidation shall approve a written plan of merger or consolidation containing, as the case requires –

- (a) the name and address of the registered office of each constituent company;
- (b) the name and address of the registered office of the surviving company or the proposed consolidated company;
- (c) with respect to each constituent company –
  - (i) the designation and number of issued shares of each class of shares, specifying each such class entitled to vote on the merger or consolidation; and
  - (ii) a specification of each such class, if any, entitled to vote as a class;
- (d) the reason for the merger or consolidation;
- (e) the terms and conditions of the proposed merger or consolidation, including the manner and basis of cancelling, reclassifying or converting shares in each constituent company into shares, debt obligations or other securities in the surviving company or consolidated company, or money or other assets, or a combination thereof; and
- (f) in respect of a merger, a statement of any amendment to the memorandum or articles of the surviving company to be brought about by the merger.

(3) In the case of a consolidation, the plan of consolidation shall have annexed to it a memorandum and articles complying with this Act to be adopted by the consolidated company.

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

(5) The following applies in respect of a merger or consolidation under this section –

- (a) the plan of merger or consolidation shall be authorised by ordinary resolution;
- (b) if a meeting of members is to be held, notice of the meeting, accompanied by a copy of the plan of merger or consolidation, shall be given to each member, whether or not entitled to vote on the merger or consolidation; and
- (c) if it is proposed to obtain the written consent of members, a copy of the plan of merger or consolidation shall be given to each member, whether or not entitled to consent to the plan of merger or consolidation.

### **Registration of merger or consolidation**

**202.**(1) After approval of the plan of merger or consolidation by the directors and members of each constituent company, articles of merger or consolidation shall be executed by each company containing –

- (a) the plan of merger or consolidation;
  - (b) the date on which the memorandum and articles of each constituent company were registered by the Registrar; and
  - (c) the manner in which the merger or consolidation was authorised with respect to each constituent company.
- (2) The articles of merger or consolidation shall be filed with the Registrar together with –
- (a) in the case of a merger, any resolution to amend the memorandum and articles of the surviving company; and
  - (b) in the case of a consolidation, the memorandum and articles for the consolidated company complying with this Act.
- (3) If he is satisfied that the requirements of this Act in respect of merger or consolidation have been complied with and that the proposed name of the surviving or consolidated company complies with Part III of this Act, the Registrar shall –
- (a) register –
    - (i) the articles of merger or consolidation; and
    - (ii) in the case of a merger, any amendment to the memorandum or articles of the surviving company or, in the case of a consolidation, the memorandum and articles of the consolidated company; and
  - (b) issue a certificate of merger or consolidation, as the case may be, in the approved form and, in respect of a consolidation, a certificate of incorporation of the consolidated company.
- (4) For the avoidance of doubt –

(a) in the case of a merger, a certificate of merger issued under subsection (3)(b) shall be issued to the surviving company; and

(b) in the case of a consolidation, a certificate of consolidation and a certificate of incorporation issued under subsection (3)(b) shall be issued to the consolidated company.

(5) A certificate of merger or a certificate of consolidation issued by the Registrar is conclusive evidence of compliance with all requirements of this Act in respect of the merger or consolidation, as the case may be.

### **Merger with subsidiary**

**203.**(1) A parent company may merge with one or more subsidiary companies, without the authorisation of the members of any company, in accordance with this section.

(2) The directors of the parent company shall approve a written plan of merger containing –

(a) the name and address of the registered office of each constituent company;

(b) the name and address of the registered office of the surviving company;

(c) with respect to each constituent company –

(i) the designation and number of issued shares of each class of shares; and

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

(d) the reason for the merger;

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

(f) a statement of any amendment to the memorandum or articles of the surviving company to be brought about by the merger.

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

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

- (5) Articles of merger shall be executed by the parent company and shall contain –
- (a) the plan of merger;
  - (b) the date on which the memorandum and articles of each constituent company were registered by the Registrar; and
  - (c) if the parent company does not own all shares in each subsidiary company to be merged, the date on which a copy of the plan of merger or an outline thereof was made available to, or waived by, the members of each subsidiary company.
- (6) The articles of merger shall be filed with the Registrar together with any resolution to amend the memorandum and articles of the surviving company.
- (7) If he is satisfied that the requirements of this section have been complied with and that the proposed name of the surviving company complies with Part III, the Registrar shall –
- (a) register –
    - (i) the articles of merger; and
    - (ii) any amendment to the memorandum or articles of the surviving company; and
  - (b) issue a certificate of merger in the approved form.
- (8) A certificate of merger issued by the Registrar is conclusive evidence of compliance with all requirements of this Act in respect of the merger.

### **Effect of merger or consolidation**

**204.**(1) A merger or consolidation is effective on the date the articles of merger or consolidation are registered by the Registrar or on such date subsequent thereto, not exceeding thirty days, as is stated in the articles of merger or consolidation.

- (2) As soon as a merger or consolidation becomes effective –
- (a) the surviving company or the consolidated company in so far as is consistent with its memorandum and articles, as amended or established by the articles of merger or consolidation, has all rights, privileges, immunities, powers, objects and purposes of each of the constituent companies;
  - (b) in the case of a merger, the memorandum and articles of the surviving company are automatically amended to the extent, if any, that changes in its memorandum and articles are contained in the articles of merger;
  - (c) in the case of a consolidation, the memorandum and articles filed with the articles of consolidation are the memorandum and articles of the consolidated company;

- (d) assets of every description of each of the constituent companies, including choses in action and the business of each of the constituent companies, immediately vests in the surviving company or the consolidated company, as the case may be; and
  - (e) the surviving company or the consolidated company, as the case may be, is liable for all claims, debts, liabilities and obligations of each of the constituent companies.
- (3) Where a merger or consolidation occurs –
  - (a) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against a constituent company or against any member, director, other officer or agent thereof, is released or impaired by the merger or consolidation; and
  - (b) no proceedings, whether civil or criminal, pending at the time of a merger or consolidation by or against a constituent company, or against any member, director, other officer or agent thereof, are abated or discontinued by the merger or consolidation, but –
    - (i) the proceedings may be enforced, prosecuted, settled or compromised by or against the surviving company or the consolidated company or against the member, director, other officer or agent thereof, as the case may be; or
    - (ii) the surviving company or the consolidated company may be substituted in the proceedings for a constituent company.
- (4) Where a merger or consolidation occurs, the Registrar shall strike off the Register–
  - (a) a constituent company that is not the surviving company in a merger; or
  - (b) a constituent company that participates in a consolidation.

### **Merger or consolidation with foreign company**

**205.**(1) One or more companies may merge or consolidate with one or more foreign companies in accordance with this section, including where one of the constituent companies is a parent company and the other constituent companies are subsidiary companies, if the merger or consolidation is permitted by the laws of each jurisdictions in which each foreign company is incorporated.

- (2) The following applies in respect of a merger or consolidation under this section –
  - (a) a company shall comply with the provisions of this Act with respect to merger or consolidation, as the case may be, and a foreign company shall comply with the laws of the jurisdiction in which it is incorporated; and
  - (b) if the surviving company or the consolidated company is to be incorporated under the laws of a jurisdiction outside Seychelles, it shall file –

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

(ii) an irrevocable appointment of its registered agent in Seychelles as its agent to accept service of process in proceedings referred to in subparagraph (i);

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

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

(3) The effect under this section of a merger or consolidation is the same as in the case of a merger or consolidation under section 201 if the surviving company or the consolidated company is incorporated under this Act.

(4) If the surviving company or the consolidated company is incorporated under the laws of a jurisdiction outside Seychelles, the effect of the merger or consolidation is the same as in the case of a merger or consolidation under section 201 except in so far as the laws of the other jurisdiction otherwise provide.

(5) If the surviving company or the consolidated company is a company incorporated under this Act, the merger or consolidation is effective on the date the articles of merger or consolidation are registered by the Registrar or on such date subsequent thereto, not exceeding thirty days, as is stated in the articles of merger or consolidation.

(6) If the surviving company or the consolidated company is a company incorporated under the laws of a jurisdiction outside Seychelles, the merger or consolidation is effective as provided by the laws of that other jurisdiction.

## **Sub-Part II – Disposition of Assets**

### **Approvals in respect of certain dispositions of assets**

**206.**(1) Subject to the memorandum or articles of a company, any sale, transfer, lease, exchange or other disposition, other than a mortgage, charge, pledge or other encumbrance or the enforcement thereof, of more than fifty per cent in value of the assets of the company, if not made in the usual or regular course of the business carried on by the company, shall be made as follows –



- (a) the sale, transfer, lease, exchange or other disposition shall be approved by the directors by resolution of directors;
  - (b) upon approval of the sale, transfer, lease, exchange or other disposition, the directors shall submit details of the disposition to the members for it to be approved by a resolution of members;
  - (c) if a meeting of members is to be held, notice of the meeting, accompanied by an outline of the disposition, shall be given to each member, whether or not he is entitled to vote on the sale, transfer, lease, exchange or other disposition; and
  - (d) if it is proposed to obtain the written consent of members, an outline of the disposition shall be given to each member, whether or not he is entitled to consent to the sale, transfer, lease, exchange or other disposition.
- (2) This section is subject to section 210.

### **Sub-Part III – Forced Redemptions**

#### **Redemption of minority shares**

**207.**(1) Subject to the memorandum or articles of a company –

- (a) members of the company holding ninety per cent of the votes of the outstanding shares entitled to vote; and
- (b) members of the company holding ninety per cent of the votes of the outstanding shares of each class of shares entitled to vote as a class,

may, in connection with a merger or consolidation, give a written instruction to the company directing it to redeem the shares held by the remaining members.

- (2) Upon receipt of the written instruction referred to in subsection (1), the company shall redeem the shares specified in the written instruction irrespective of whether or not the shares are by their terms redeemable.
- (3) The company shall give written notice to each member whose shares are to be redeemed stating the redemption price and the manner in which the redemption is to be effected.
- (4) This section is subject to section 210.

### **Sub-Part IV – Arrangements**

#### **Arrangements**

**208.**(1) In this section, “arrangement” means –

- (a) an amendment to the memorandum or articles;
- (b) a reorganisation or reconstruction of a company;

- (c) a merger or consolidation of one or more companies that are companies registered under this Act with one or more other companies, if the surviving company or the consolidated company is a company incorporated under this Act;
  - (d) a separation of two or more businesses carried on by a company;
  - (e) any sale, transfer, exchange or other disposition of any part of the assets or business of a company to any person in exchange for shares, debt obligations or other securities of that other person, or money or other assets, or a combination thereof;
  - (f) any sale, transfer, exchange or other disposition of shares, debt obligations or other securities in a company held by the holders thereof for shares, debt obligations or other securities in the company or money or other property, or a combination thereof;
  - (g) a dissolution of a company; and
  - (h) any combination of any of the things specified in paragraphs (a) to (g).
- (2) If the directors of a company determine that it is in the best interests of the company or the creditors or members thereof, the directors of the company may approve a plan of arrangement under this subsection that contains details of the proposed arrangement, notwithstanding that the proposed arrangement may be authorised or permitted by any other provision of this Act or otherwise permitted.
- (3) Upon approval of the plan of arrangement by the directors, the company shall make application to the Court for approval of the proposed arrangement.
- (4) The Court may, upon an application made to it under subsection (3), make an interim or a final order that is not subject to an appeal unless a question of law is involved and in which case notice of appeal shall be given within the period of 21 days immediately following the date of the order, and in making the order the Court may –
- (a) determine what notice, if any, of the proposed arrangement is to be given to any person;
  - (b) determine whether approval of the proposed arrangement by any person should be obtained and the manner of obtaining the approval;
  - (c) determine whether any holder of shares, debt obligations or other securities in the company may dissent from the proposed arrangement and receive payment of the fair value of his shares, debt obligations or other securities under section 210;
  - (d) conduct a hearing and permit any interested person to appear; and
  - (e) approve or reject the plan of arrangement as proposed or with such amendments as it may direct.
- (5) Where the Court makes an order approving a plan of arrangement, the directors of the company, if they are still desirous of executing the plan, shall confirm the plan of arrangement

as approved by the Court whether or not the Court has directed any amendments to be made thereto.

- (6) The directors of the company, upon confirming the plan of arrangement, shall –
  - (a) give notice to the persons to whom the order of the Court requires notice to be given; and
  - (b) submit the plan of arrangement to those persons for such approval, if any, as the order of the Court requires.
- (7) After the plan of arrangement has been approved by those persons by whom the order of the Court may require approval, articles of arrangement shall be executed by the company and shall contain –
  - (a) the plan of arrangement;
  - (b) the order of the Court approving the plan of arrangement; and
  - (c) the manner in which the plan of arrangement was approved, if approval was required by the order of the Court.
- (8) The articles of arrangement shall be filed with the Registrar who shall register them.
- (9) Upon the registration of the articles of arrangement, the Registrar shall issue a certificate of arrangement in the approved form certifying that the articles of arrangement have been registered.
- (10) An arrangement is effective on the date the articles of arrangement are registered by the Registrar or on such date subsequent thereto, not exceeding thirty days, as is stated in the articles of arrangement.

### **Arrangement where company in liquidation**

**209.** The liquidator of a company in liquidation under Sub-Parts II, III or IV of Part XVII may approve a plan of arrangement under section 208 in which case, that section applies *mutatis mutandis* as if “liquidator” was substituted for “directors”.

## **Sub-Part V – Dissenters**

### **Rights of dissenters**

- 210.(1)** A member of a company is entitled to payment of the fair value of his shares upon dissenting from –
- (a) a merger, if the company is a constituent company, unless the company is the surviving company and the member continues to hold the same or similar shares;
  - (b) a consolidation, if the company is a constituent company;

(c) any sale, transfer, lease, exchange or other disposition of more than fifty per cent in value of the assets or business of the company, if not made in the usual or regular course of the business carried on by the company, but not including –

(i) a disposition pursuant to an order of the Court having jurisdiction in the matter; or

(ii) a disposition for money on terms requiring all or substantially all net proceeds to be distributed to the members in accordance with their respective interests within one year after the date of disposition;

(d) a redemption of his shares by the company pursuant to section 207; and

(e) an arrangement, if permitted by the Court.

(2) A member who desires to exercise his entitlement under subsection (1) shall give to the company, before the meeting of members at which the action is submitted to a vote, or at the meeting but before the vote, written objection to the action; but an objection is not required from a member to whom the company did not give notice of the meeting in accordance with this Act or where the proposed action is authorised by written consent of members without a meeting.

(3) An objection under subsection (2) shall include a statement that the member proposes to demand payment for his shares if the action is taken.

(4) Within 21 days immediately following the date on which the vote of members authorising the action is taken, or the date on which written consent of members without a meeting is obtained, the company shall give written notice of the authorisation or consent to each member who gave written objection or from whom written objection was not required, except those members who voted for, or consented in writing to, the proposed action.

(5) A member to whom the company was required to give notice who elects to dissent shall, within 21 days immediately following the date on which the notice referred to in subsection (4) is given, give to the company a written notice of his decision to elect to dissent, stating –

(a) his name and address;

(b) the number and classes of shares in respect of which he dissents; and

(c) a demand for payment of the fair value of his shares,

and a member who elects to dissent from a merger under section 203 shall give to the company a written notice of his decision to elect to dissent within 21 days immediately following the date on which the copy of the plan of merger or an outline thereof is given to him in accordance with section 203.

(6) A member who dissents shall do so in respect of all shares that he holds in the company.

(7) Upon the giving of a notice of election to dissent, the member to whom the notice relates ceases to have any of the rights of a member except the right to be paid the fair value of his shares.

(8) Within 7 days immediately following the date of the expiration of the period within which members may give their notices of election to dissent, or within 7 days immediately following the date on which the proposed action is put into effect, whichever is later, the company or, in the case of a merger or consolidation, the surviving company or the consolidated company, shall make a written offer to each dissenting member to purchase his shares at a specified price that the company determines to be their fair value; and if, within 30 days immediately following the date on which the offer is made, the company making the offer and the dissenting member agree upon the price to be paid for his shares, the company shall pay to the member the amount in money upon the surrender of the certificates representing his shares.

(9) If the company and a dissenting member fail, within the period of 30 days referred to in subsection (8), to agree on the price to be paid for the shares owned by the member, within 21 days immediately following the date on which the period of 30 days expires, the following shall apply –

(a) the company and the dissenting member shall each designate an appraiser;

(b) the two designated appraisers together shall designate an appraiser;

(c) the three appraisers shall fix the fair value of the shares owned by the dissenting member as of the close of business on the day prior to the date on which the vote of members authorising the action was taken or the date on which written consent of members without a meeting was obtained, excluding any appreciation or depreciation directly or indirectly induced by the action or its proposal, and that value is binding on the company and the dissenting member for all purposes; and

(d) the company shall pay to the member the amount in money upon the surrender by him of the certificates representing his shares.

(10) Shares acquired by the company pursuant to subsection (8) or (9) shall be cancelled but if the shares are shares of a surviving company, they shall be available for reissue.

(11) The enforcement by a member of his entitlement under this section excludes the enforcement by the member of a right to which he might otherwise be entitled by virtue of his holding shares, except that this section does not exclude the right of the member to institute proceedings to obtain relief on the ground that the action is illegal.

(12) Only subsections (1) and (8) to (11) shall apply in the case of a redemption of shares by a company pursuant to the provisions of section 207 and in such case the written offer to be made to the dissenting member pursuant to subsection (8) shall be made within 7 days immediately following the direction given to a company pursuant to section 207 to redeem its shares.

#### **Sub-Part VI – Schemes of Compromise or Arrangement**

## **Court application in respect of schemes of compromise or arrangement**

**211.**(1) Where a compromise or arrangement is proposed between a company and its creditors, or any class of them, or between the company and its members, or any class of them, the Court may, on the application of a person specified in subsection (2), order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be summoned in such manner as the Court directs.

(2) An application under subsection (1) may be made by –

- (a) the company;
- (b) a creditor of the company;
- (c) a member of the company; or
- (d) if the company is in liquidation, by the liquidator.

(3) If a majority in number representing seventy five per cent in value of the creditors or class of creditors or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement, if sanctioned by the Court, is binding on all the creditors or class of creditors, or the members or class of members, as the case may be, and also on the company or, in the case of a company in liquidation, on the liquidator and on every person liable to contribute to the assets of the company in the event of its liquidation.

(4) An order of the Court made under subsection (3) shall have no effect until a copy of the order has been filed with the Registrar.

(5) A copy of an order of the Court made under subsection (3) shall be annexed to every copy of the company's memorandum issued after the order has been made.

(6) In this section, "arrangement" includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

(7) Where the Court makes an order with respect to a company under this section, sections 200 to 210 shall not apply to the company.

(8) A company that contravenes subsection (5) commits an offence and is liable on conviction to a fine not exceeding US\$5,000.

## **PART XII – CONTINUATION**

### **Continuation of foreign companies in Seychelles**

**212.**(1) Subject to subsection (2), a foreign company may continue as a company incorporated under this Act in accordance with this Part.

(2) A foreign company may not continue as a company incorporated under this Act unless –

(a) in the foreign jurisdiction in which it is incorporated, the foreign company is in good legal standing under the laws of that jurisdiction; and

(b) a majority of the foreign company's directors or other persons charged with exercising the powers of the foreign company issue a written certificate addressed to the Registrar certifying that –

(i) the foreign company is solvent within the meaning of section 67 of this Act;

(ii) the foreign company is not in the process of being wound up, dissolved or struck off the register in its jurisdiction of incorporation;

(iii) no receiver or administrator (by whatever name any such person is called) has been appointed, whether by a court or in some other manner, in respect of any property of the foreign company;

(iv) there is no outstanding arrangement between the foreign company and its creditors that has not been concluded; and

(v) the law of the foreign jurisdiction in which the foreign company is incorporated does not prohibit its continuation as a company in Seychelles.

(3) A person who provides a false or misleading certificate under subsection (2)(b) commits an offence and is liable on conviction to a fine not exceeding US\$25,000.

### **Articles of continuation**

**213.**(1) A foreign company that wishes to continue as a company incorporated under this Act shall approve articles of continuation in accordance with subsection (2) –

(a) by a majority of its directors or other persons charged with exercising the powers of the foreign company; or

(b) in such other manner as may be established by it for exercising its powers, in accordance with its constitutional documents and the law where it is incorporated.

(2) The articles of continuation shall state –

(a) the name of the foreign company and the name under which it is being continued;

(b) the jurisdiction in which the foreign company is incorporated;

(c) the date on which the foreign company was incorporated;

- (d) that the foreign company wishes to be continued in Seychelles as a company incorporated under this Act; and
  - (e) that the foreign company shall adopt a memorandum and articles which comply with this Act, with effect from its continuation under this Act.
- (3) The articles of continuation shall be signed by or on behalf of the foreign company.

### **Application to continue in Seychelles**

**214.**(1) Subject to subsection (2), an application by a foreign company to continue under this Act shall be made by its intended registered agent filing with the Registrar –

- (a) articles of continuation;
  - (b) a continuation application in the approved form in accordance with Part II of the First Schedule, signed by or on behalf of each subscriber to the company's memorandum and articles adopted in compliance with this Act;
  - (c) a certified copy of the foreign company's certificate of incorporation or equivalent document and its memorandum and articles or equivalent constitutional documents, written in the English or French language or, if they are written in any other language, accompanied by a certified translation, satisfactory to the Registrar, in the English or French language;
  - (d) documentary evidence, satisfactory to the Registrar, that the foreign company is in good legal standing under the laws of the jurisdiction in which it is incorporated;
  - (e) the certificate (or a true extract thereof certified by the foreign company's proposed registered agent in Seychelles) referred to in section 212(2)(b);
  - (f) not less than 3 copies of its proposed memorandum and articles under, and which comply with, this Act; and
  - (g) if the company is to be continued as a protected cell company, the written approval of the Authority given under section 221.
- (2) The documents referred to in subsection (1) shall, upon being filed with the Registrar, be accompanied by the specified fee set out in Part II of the Second Schedule.

### **Continuation**

**215.**(1) Subject to subsection (4), if the Registrar is satisfied that the requirements of this Act in respect of continuation have been complied with, upon receipt of the documents specified in section 214(1), the Registrar shall –

- (a) register the company's articles of continuation and new memorandum and articles;
- (b) allot a unique registration number to the company; and



- (c) issue a certificate of continuation to the company in the approved form.
- (2) The certificate of continuation shall be signed by the Registrar and sealed with the Official Seal.
- (3) A certificate of continuation issued by the Registrar under subsection (1) is conclusive evidence that –
  - (a) all the requirements of this Act as to continuation have been complied with; and
  - (b) the company is continued as a company incorporated under this Act under the name designated in its memorandum on the date specified in the certificate of continuation.
- (4) A company shall not be continued as a protected cell company without written consent of the Authority in accordance with the provisions of Sub-Part II of Part XIII.

#### **Effect of continuation under this Act**

**216.**(1) When a foreign company is continued under this Act –

- (a) this Act applies to the company as if it had been incorporated under section 10;
  - (b) the company is capable of exercising all the powers of a company incorporated under this Act;
  - (c) the company is no longer to be treated as a company incorporated under the laws of a jurisdiction outside Seychelles; and
  - (d) the memorandum and articles filed under section 214(1) become the memorandum and articles of the company.
- (2) The continuation of a foreign company under this Act does not affect –
- (a) the continuity of the company as a legal entity; or
  - (b) the assets, rights, obligations or liabilities of the company.
- (3) Without limiting subsection (2), upon continuation of a foreign company under this Act –
- (a) all property and rights to which the company was entitled immediately before the certificate of continuation is issued are the property and rights of the company;
  - (b) the company is subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which the company was subject immediately before the certificate of continuation is issued;

(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, other officer or agent thereof, is released or impaired by its continuation as a company under this Act; and

(d) no proceedings, whether civil or criminal, pending at the time of the issue by the Registrar of a certificate of continuation by or against the company, or against any member, director, other 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, other officer or agent thereof, as the case may be.

(4) All shares in the continued company that were issued prior to the issue by the Registrar of certificate of continuation shall be deemed to have been issued in conformity with this Act.

### **Continuation outside Seychelles**

**217.**(1) Subject to subsection (2) and to its memorandum or articles, a company for which the Registrar would issue a certificate of good standing under this Act may, by a resolution of directors or by ordinary resolution, continue as a company incorporated under the laws of a jurisdiction outside Seychelles in the manner provided under those laws.

(2) A company that continues as a foreign company does not cease to be a company incorporated under this Act unless –

(a) it has paid all its fees and any penalty or fine required to be paid under this Act;

(b) the laws of the foreign jurisdiction permit such continuation and the company has complied with those laws;

(c) where applicable, the declaration under subsection (3) has been filed with the Registrar;

(d) the required notice and certificate under subsection (4) has been filed with the Registrar; and

(e) the Registrar has issued a certificate of discontinuance of the company under subsection (5).

(3) Where a company that wishes to continue as a foreign company has a charge registered in respect of the property of the company under section 181, it shall file a written declaration by a majority of its directors addressed to the Registrar specifying that –

(a) a notice of satisfaction or release in respect of the charge has been filed and registered under section 183;

(b) where paragraph (a) has not been met, the chargee to whom the registered charge relates has been notified in writing of the intention to continue the company as a foreign company and the chargee has given its consent or has no objection to the continuation; or

(c) where paragraph (a) has not been met and the chargee, after notification under paragraph (b), has not given its consent or expressed non-objection to the continuation, the chargee's interest secured by the registered charge shall not be diminished or in any way compromised by the continuation and the charge shall operate as a liability to which section 218(a) applies.

(4) A company that continues as a foreign company shall file with the Registrar –

(a) a notice of the company's continuation in the approved form; and

(b) for the purposes of establishing compliance with subsection (2)(b), a written certificate (or extract thereof certified by the company's registered agent) addressed to the Registrar by –

(i) a majority of the company's directors; or

(ii) a lawyer qualified and entitled to practice law in the jurisdiction outside Seychelles in which the company is to be continued,

certifying that the laws of the foreign jurisdiction permit such continuation and that the company has complied with those laws.

(5) If the Registrar is satisfied that the requirements of this Act in respect of the continuation of a company under the laws of a foreign jurisdiction have been complied with, the Registrar shall –

(a) issue a certificate of discontinuance of the company in the approved form;

(b) strike the name of the company off the Register of International Business Companies with effect from the date of the certificate of discontinuance; and

(c) publish the striking off of the company in the *Gazette*.

(6) A certificate of discontinuance issued under subsection (5) is prima facie evidence that –

(a) all the requirements of this Act in respect of the continuation of a company under the laws of a foreign jurisdiction have been complied with; and

(b) the company was discontinued on the date specified in the certificate of discontinuance.

(7) Nothing contained in or done pursuant to subsection (3) shall operate as a bar to any legal action a chargee may be entitled to in law against the company.

### **Effect of continuation outside of Seychelles**

**218.** Where a company is continued under the laws of a jurisdiction outside Seychelles –

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

(b) 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, other officer or agent thereof, is released or impaired by its continuation as a company under the laws of the jurisdiction outside Seychelles;

(c) no proceedings, whether civil or criminal, pending by or against the company, or against any member, director, other 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, other officer or agent thereof, as the case may be; and

(d) service of process may continue to be effected on the registered agent of the company in Seychelles in respect of any claim, debt, liability or obligation of the company during its existence as a company under this Act.

## **PART XIII – PROTECTED CELL COMPANIES**

### **Sub-Part I - Interpretation**

#### **Interpretation of this Part**

**219.** In this Part, unless the context requires otherwise –

“administration order” means an order of the Court under section 246 in relation to a protected cell company or any cell thereof,

“administrator” means a person appointed as such by an administration order and as referred to in section 246(3);

“cell securities” means securities created and issued by a protected cell company in respect of any of its cells;

“cell shares” means shares created and issued by a protected cell company in respect of any of its cells;

“cell share capital” means the proceeds of the issue of cell shares, which shall be comprised in the cellular assets attributable to that cell;

“cell transfer order” means an order of the Court under section 238(3) sanctioning the transfer of the cellular assets attributable to any cell of a protected cell company to another person;

“cellular assets” of a protected cell company means the assets of the company attributable to the company’s cells pursuant to section 228(4);

“core”, in relation to a protected cell company, means as defined in section 226;

“core assets” of a protected cell company comprise the assets of the company which are not cellular assets;

“creditors” includes present, future and contingent creditors and, in relation to a protected cell company which is a mutual fund as defined under section 2 of the Mutual Fund and Hedge Fund Act, also includes any investor as defined under section 2 of that Act;

“protected assets” means –

- (a) any cellular assets attributable to any cell of a protected cell company, in respect of a liability not attributable to that cell; and
- (b) any core assets, in respect of a liability attributable to a cell;

“receiver” means a person appointed as such by a receivership order and as referred to in section 240(3);

“receivership order” means an order of the Court under section 240 in relation to a cell of a protected cell company; and

“recourse agreement” means as defined in section 229.

## **Sub-Part II – Formation**

### **Companies which can be protected cell companies**

**220.**(1) A company cannot be incorporated or continued as, or converted into, a protected cell company, unless –

- (a) the company is (or when incorporated will be) licensed by the Authority as a mutual fund under the Mutual Fund and Hedge Fund Act;
- (b) the company is (or when incorporated will be) an issuer of listed securities subject to the listing rules of a Seychelles Securities Exchange or recognised overseas securities exchange within the meaning of the Securities Act; or
- (c) the company is of any other description or carries on (or when incorporated will carry on) such other activity as may be approved by the Authority.

### **Consent of Authority required**

**221.**(1) The following cannot be done except under the authority of and in accordance with the terms and conditions of the written consent of the Authority –

- (a) the incorporation or continuation of a company as a protected cell company;
- (b) the conversion of a non-cellular company into a protected cell company; and
- (c) the conversion of a protected cell company into a non-cellular company.

- (2) The Authority may, from time to time and in such manner as it thinks fit –
- (a) vary or revoke any term or condition subject to which a consent under subsection (1) was granted; and
  - (b) impose any new term or condition in relation to any such consent.
- (3) An application for the consent of the Authority under subsection (1) –
- (a) shall be made to the Authority in such form, and shall be accompanied by such documents and information, verified in such manner, as the Authority may require; and
  - (b) shall be accompanied by the specified fee set out in Part I or Part II, as the case may be, of the Second Schedule.
- (4) A person who contravenes, or who causes or permits any contravention of, any term or condition of a consent of the Authority commits an offence and is liable on conviction to a fine not exceeding US\$20,000.

#### **Determination of applications to and other decisions of Authority**

**222.**(1) In deciding whether to –

- (a) grant any application for consent made under section 221;
- (b) impose any term or condition upon that consent;
- (c) vary or revoke any term or condition of that consent; or
- (d) impose any new term or condition on that consent,

the Authority shall have regard to the protection of the public interest, including the need to protect and enhance the reputation of Seychelles as a financial centre.

(2) If the Authority –

- (a) refuses an application for consent made under section 221;
- (b) imposes terms or conditions upon that consent;
- (c) varies or revokes any term or condition of that consent; or
- (d) imposes any new term or condition on that consent,

it shall give the applicant a written notice of its decision and of that person's right under section 223 to appeal against a decision of the Authority.

#### **Appeals from determinations and other decisions of Authority**

**223.**(1) A person aggrieved by a decision of the Authority may, within 90 days of service of notice of the decision of the Authority, appeal against the decision to the Appeals Board in accordance with the procedure specified in the Financial Services Authority (Appeals Board) Regulations 2014, including against a decision –

- (a) to refuse an application for consent made under section 221;
  - (b) to impose terms or conditions upon that consent;
  - (c) to vary or revoke of any term or condition of that consent; or
  - (d) to impose any new term or condition on that consent; or
  - (e) to revoke that consent.
- (2) On an application under this section the Appeals Board may –
- (a) affirm the decision of the Authority;
  - (b) vary the decision of the Authority; or
  - (c) set aside the decision of the Authority and, if the Appeals Board considers it appropriate to do so, remit the matter to the Authority with such directions as the Appeals Board considers fit.
- (3) Subject to subsection (4), an appeal against a decision of the Authority shall not have the effect of suspending the operation of the decision.
- (4) On an application under this section against a decision of the Authority, the Appeals Board may, on the application of the appellant and on such terms as the Appeals Board thinks just, suspend the operation of the decision pending the determination of the appeal.
- (5) A person dissatisfied with the decision of the Appeals Board may within 30 days of the decision make an appeal to the Court in accordance with regulation 8(8) of the Financial Services Authority (Appeals Board) Regulations 2014.
- (6) The Court may, in respect of an appeal made under subsection (5), affirm, set aside or vary the Appeals Board’s decision and may give such directions as the Court thinks fit and just.

### **Sub-Part III – Status, Cells and Cell Shares**

#### **Status of protected cell companies**

**224.**(1) A protected cell company is a single legal person.

- (2) The creation by a protected cell company of a cell does not create, in respect of that cell, a legal person separate from the company.

#### **Creation of cells**

**225.** A protected cell company may create one or more cells for the purpose of segregating and protecting cellular and core assets or liabilities in the manner provided by this Part.

### **Demarcation of the core**

**226.** The core is the protected cell company excluding its cells.

### **Cell securities**

**227.(1)** A protected cell company may, in respect of any of its cells, create and issue cell securities including cell shares.

(2) The proceeds of the issue of shares other than cell shares created and issued by a protected cell company shall be comprised in the company's core assets.

(3) A protected cell company may make a cellular distribution or a non-cellular distribution accordance with section 71.

(4) The provisions of this Act, subject to the provisions of this Part and unless the context requires otherwise, apply in relation to –

(a) cell shares as they apply to shares which are not cell shares; and

(b) cell share capital as they apply to share capital which is not cell share capital.

(5) Without limiting the generality of subsection (4), the provisions of section 76 (*Shares redeemed at the option of a shareholder*) shall apply *mutatis mutandis* in relation to the cell shares of a protected cell company including such that cell shares in a protected cell company authorised under the Mutual Fund and Hedge Fund Act to operate as a mutual fund may be redeemable at the option of the holder.

## **Sub-Part IV - Assets and Liabilities**

### **Cellular and core assets**

**228.(1)** The assets of a protected cell company are either cellular assets or core assets.

(2) It is the duty of the directors of a protected cell company-

(a) to keep cellular assets separate and separately identifiable from core assets; and

(b) to keep cellular assets attributable to each cell separate and separately identifiable from cellular assets attributable to other cells.

(3) The cellular assets of a protected cell company comprise the assets of the company attributable to the cells of the company.

(4) The assets attributable to a cell of a protected cell company comprise –



- (a) assets represented by the proceeds of cell share capital and reserves attributable to the cell; and
  - (b) all other assets attributable to the cell.
- (5) The core assets of a protected cell company comprise the assets of the company attributable to the core of the company.
- (6) The assets attributable to the core of a protected cell company comprise –
  - (a) assets represented by the proceeds of core share capital and reserves attributable to the core; and
  - (b) all other assets attributable to the core.
- (7) For the purposes of subsections (4) and (6), the expression “reserves” includes retained earnings, capital reserves and share premiums.
- (8) Notwithstanding the provisions of subsection (2), the directors of a protected cell company may cause or permit cellular assets and core assets to be held –
  - (a) by or through a nominee; or
  - (b) by a company the shares and capital interests of which may be cellular assets or core assets, or a combination of both.
- (9) The duty imposed by subsection (2) is not breached by reason only that the directors of a protected cell company cause or permit cellular assets or core assets, or a combination of both, to be collectively invested, or collectively managed by an investment manager, provided that the assets in question remain separately identifiable in accordance with subsection (2).

### **Recourse agreements**

**229.**(1) A “recourse agreement” is a written agreement between a protected cell company and a third party which provides that, pursuant to an arrangement (within the meaning of section 239(2)) effected by the protected cell company, protected assets may, notwithstanding the provisions of this Part, be subject to a liability owed to that third party.

- (2) Before entering into a recourse agreement, each director of the protected cell company who authorises it must make a declaration that he believes, on reasonable grounds, –
  - (a) that no creditor of the company will be unfairly prejudiced by the recourse agreement; and
  - (b) that, unless the memorandum or articles provide to the contrary, –
    - (i) where the protected assets are assets attributable to a cell, the members of that cell; or
    - (ii) where the protected assets are core assets, the members of the core,

have passed a resolution approving the recourse agreement.

(3) A director who without reasonable excuse makes a declaration under subsection (2) which is false, deceptive or misleading in a material particular commits an offence and is liable on conviction to a fine not exceeding US\$7,500.

(4) Any member or creditor of the protected cell company may, subject to such reasonable restrictions as the protected cell company may impose, inspect or request a copy of the directors' declaration.

(5) If a company fails to allow an inspection or refuses a request for a copy under subsection (4) it commits an offence and is liable on conviction to a fine not exceeding US\$2,500.

### **Position of creditors**

**230.**(1) Subject to the terms of any recourse agreement, the rights of creditors of a protected cell company correspond with the liabilities provided for in sections 233 and 234.

(2) Subject to the terms of any recourse agreement, no creditor of a protected cell company has any rights other than the rights referred to in this section and in sections 231, 232, 233 and 234.

(3) There is implied (except in so far as the same is expressly excluded in writing) in every transaction entered into by a protected cell company the following terms –

(a) that no party shall seek, whether in any proceedings or by any other means whatsoever or wherever, to make or attempt to make liable any protected assets;

(b) that if any party succeeds by any means whatsoever or wherever in making liable any protected assets, that party shall be liable to the company to pay a sum equal to the value of the benefit thereby obtained by him; and

(c) that if any party succeeds in seizing or attaching by any means or otherwise levying execution against any protected assets, that party shall hold those assets or their proceeds on trust for and on behalf of the company and shall keep those assets or proceeds separate and identifiable as such trust property.

(4) All sums recovered by a protected cell company as a result of any such trust as is described in subsection (3)(c) shall be credited against any concurrent liability imposed pursuant to the implied term set out in subsection (3)(b).

(5) Any asset or sum recovered by a protected cell company pursuant to the implied term set out in subsection (3)(b) or (3)(c) or by any other means whatsoever or wherever in the events referred to in those subsections shall, after the deduction or payment of any costs of recovery, be applied by the company so as to compensate the cell affected or (as the case may be) the core.

(6) In the event of any protected assets being taken in execution in respect of a liability to which they are not attributable, and in so far as such assets or compensation in respect thereof

cannot otherwise be restored to the cell affected or (as the case may be) the core, the company shall –

(a) cause or procure an independent expert, acting as expert and not as arbitrator, to certify the value of the assets lost to the cell affected or (as the case may be) the core; and

(b) transfer or pay, from the cellular or core assets to which the liability was attributable, to the cell affected or (as the case may be) the core, assets or sums sufficient to restore to the cell affected or (as the case may be) the core, the value of the assets lost.

(7) This section has extra-territorial application.

### **Recourse to cellular assets by creditors**

**231.** Without prejudice to the provisions of sections 230 and 233, and subject to the terms of any recourse agreement, cellular assets attributable to a cell of a protected cell company –

(a) are only available to the creditors of the company who are creditors in respect of that cell and who are thereby entitled, in conformity with the provisions of this Part, to have recourse to the cellular assets attributable to that cell,

(b) are absolutely protected from the creditors of the company who are not creditors in respect of that cell and who accordingly are not entitled to have recourse to the cellular assets attributable to that cell.

### **Recourse to core assets by creditors**

**232.** Without prejudice to the provisions of sections 230 and 234, and subject to the terms of any recourse agreement, core assets of a protected cell company –

(a) are only available to the creditors of the company who are creditors in respect of the core and who are thereby entitled, in conformity with the provisions of this Part, to have recourse to the core assets; and

(b) are absolutely protected from the creditors of the company who are not creditors in respect of the core and who accordingly are not entitled to have recourse to the core assets.

### **Liability of cellular assets**

**233.(1)** Subject to the provisions of subsection (2), and to the terms of any recourse agreement, where any liability arises which is attributable to a particular cell of a protected cell company –

(a) the cellular assets attributable to that cell are liable; and

(b) the liability is not a liability of any protected assets.

(2) In the case of loss or damage which is suffered by a particular cell of a protected cell company and which is caused by fraud perpetrated by or upon the core or another cell, the loss or damage is the liability solely of the company's core assets or (as the case may be) that other cell's assets, without prejudice to any liability of any person other than the company.

(3) Any liability not attributable to a particular cell of a protected cell company is the liability solely of the company's core assets.

(4) Notwithstanding the above provisions of this section, the liabilities under subsection (1)(a) of the cellular assets attributable to a particular cell of a protected cell company shall abate rateably until the value of the aggregate liabilities equals the value of those assets: but the provisions of this subsection do not apply in any situation where there is a recourse agreement or where any of the liabilities of the company's cellular assets arises from fraud such as is referred to in subsection (2).

(5) This section has extra-territorial application.

### **Liability of core assets**

**234.**(1) Subject to the provisions of subsection (2), and to the terms of any recourse agreement, where any liability arises which is attributable to the core of a protected cell company –

- (a) the core assets are liable; and
- (b) the liability is not a liability of any protected assets.

(2) In the case of loss or damage which is suffered by the core of a protected cell company and which is caused by fraud perpetrated by or upon a cell, the loss or damage is the liability solely of the cellular assets of that cell, without prejudice to any liability of any person other than the company.

(3) This section has extra-territorial effect.

### **Disputes as to liability attributable to cells**

**235.**(1) In the event of any dispute as to –

- (a) whether any right is in respect of a particular cell;
- (b) whether any creditor is a creditor in respect of a particular cell;
- (c) whether any liability is attributable to a particular cell; or
- (d) the amount to which any liability is limited,

the Court, on the application of the protected cell company, and without prejudice to any other right or remedy of any person, may issue a declaration in respect of the matter in dispute.

(2) The Court, on hearing an application for a declaration under subsection (1) –

- (a) may direct that any person shall be heard on the application;
- (b) may make an interim declaration, or adjourn the hearing, conditionally or unconditionally;
- (c) may make the declaration subject to such terms and conditions as it thinks fit; and
- (d) may direct that the declaration is binding upon such persons as may be specified.

#### **Attribution of core assets and liabilities**

**236.**(1) Liabilities of a protected cell company not otherwise attributable to any of its cells shall be discharged from the company's core assets.

(2) Income, receipts and other property or rights of or acquired by a protected cell company not otherwise attributable to any cell shall be applied to and comprised in the company's core assets.

#### **Sub-Part V - Dealings with and Arrangements within Protected Cell Companies**

##### **Company to inform persons they are dealing with a protected cell company**

**237.**(1) A protected cell company shall –

- (a) inform any person with whom it transacts that it is a protected cell company; and
  - (b) for the purposes of that transaction, identify or specify the cell in respect of which that person is transacting, unless that transaction is not a transaction in respect of a particular cell, in which case it shall specify that the transaction is in respect of the core.
- (2) If, in contravention of subsection (1), a protected cell company –
- (a) fails to inform a person that he is transacting with a protected cell company, and that person is otherwise unaware that, and has no reasonable grounds to believe that, he is transacting with a protected cell company; or
  - (b) fails to identify or specify the cell or core, as the case may be, in respect of which a person is transacting, and that person is otherwise unaware of, and has no reasonable basis of knowing, which cell or core, as the case may be, he is transacting with,

then, in either such case –

- (i) the directors (notwithstanding any provision to the contrary in the company's memorandum or articles or in any contract with the company or otherwise) incur personal liability to that person in respect of the transaction; and

(ii) the directors have a right of indemnity against the core assets of the company, unless they were fraudulent, reckless or negligent, or acted in bad faith.

(3) Where, pursuant to section 350 the Court relieves a director of all or part of his personal liability under subsection (2)(i), the Court may order that the liability in question shall instead be met from such of the cellular or core assets of the protected cell company as may be specified in the order.

### **Transfer of cellular assets from protected cell company**

**238.**(1) It is lawful, subject to the provisions of subsection (3), for the cellular assets attributable to any cell of a protected cell company, but not the core assets of a protected cell company, to be transferred to another person, wherever resident or incorporated, and whether or not a protected cell company.

(2) A transfer pursuant to subsection (1) of cellular assets attributable to a cell of a protected cell company does not of itself entitle creditors of that company to have recourse to the assets of the person to whom the cellular assets were transferred.

(3) Subject to subsections (8) and (9), no transfer of the cellular assets attributable to a cell of a protected cell company may be made except under the authority of, and in accordance with the terms and conditions of, an order of the Court under this section (a “cell transfer order”).

(4) The Court shall not make a cell transfer order in relation to a cell of a protected cell company –

(a) unless it is satisfied –

(i) that the creditors of the company entitled to have recourse to the cellular assets attributable to the cell consent to the transfer; or

(ii) that those creditors would not be unfairly prejudiced by the transfer; and

(b) without hearing the representations of the Authority thereon.

(5) The Court, on hearing an application for a cell transfer order –

(a) may make an interim order or adjourn the hearing, conditionally or unconditionally;

(b) may dispense with any of the requirements of subsection (4)(a).

(6) The Court may attach such conditions as it thinks fit to a cell transfer order, including conditions as to the discharging of claims of creditors entitled to have recourse to the cellular assets attributable to the cell in relation to which the order is sought.

(7) The Court may make a cell transfer order in relation to a cell of a protected cell company notwithstanding that –

- (a) a liquidator has been appointed to act in respect of the company or the company has passed a resolution for voluntary winding up;
  - (b) a receivership order has been made in respect of the cell or any other cell of the company; or
  - (c) an administration order has been made in respect of the cell, the company or any other cell thereof.
- (8) The provisions of this section are without prejudice to any power of a protected cell company lawfully to make payments or transfers from the cellular assets attributable to any cell of the company to a person entitled, in conformity with the provisions of this Part, to have recourse to those cellular assets.
- (9) Notwithstanding the provisions of this section, a protected cell company does not require a cell transfer order to invest, and change investment of, cellular assets or otherwise to make payments or transfers from cellular assets in the ordinary course of the company's business.
- (10) Section 206 shall not apply to a transfer of cellular assets attributable to a cell of a protected cell company made in compliance with this section.

#### **Arrangements between cells affecting cellular assets, etc**

**239.**(1) For the avoidance of doubt, a protected cell company may, in the ordinary course of its business or the business attributable to any of its cells, effect an arrangement within the meaning of subsection (2).

- (2) An "arrangement" is a dealing with, or a transfer, disposition or attribution of, the cellular or core assets of a protected cell company which has effect –
- (a) as between any of the company's cells;
  - (b) as between the core and any of its cells;
  - (c) as between the company and the core; or
  - (d) as between the company and any of its cells,

but an arrangement does not include a transaction between the company and another person.

(3) The Court, on the application of any person mentioned in subsection (4), and on such terms and conditions as it thinks fit, may make, and subsequently vary, rescind, replace or confirm, an order in respect of –

- (a) the execution, administration or enforcement of an arrangement; or

- (b) any cellular or core assets of a protected cell company subject to, or affected by, an arrangement, including (without limitation) an order as to their attribution, transfer, disposition, tracing, vesting, preservation, application, recovery or delivery.
- (4) An application for an order under subsection (3) may be made by –
- (a) the protected cell company;
  - (b) a director, liquidator or administrator of the company;
  - (c) the receiver or administrator of any cell of the company affected by the arrangement;
  - (d) a manager of the business of the company;
  - (e) a manager of the business of or attributable to any cell of the company affected by the arrangement; or
  - (f) with leave of the Court, any other person who has, directly or indirectly, some interest in, or who is otherwise affected by, the arrangement.
- (5) A protected cell company shall, in respect of an arrangement, make such adjustments to its accounting records, including those of or attributable to its cells, as may be necessary or expedient.
- (6) For the avoidance of doubt –
- (a) the adjustments referred to in subsection (5) may include the transfer, disposition or attribution of assets, rights and liabilities of the protected cell company –
    - (i) as between any of the company’s cells;
    - (ii) as between the core and any of its cells;
    - (iii) as between the company and the core; or
    - (iv) as between the company and any of its cells but without prejudice to the singular legal personality of the company; and
  - (b) the effecting of an arrangement does not require a cell transfer order.
- (7) An order under subsection (3) may be made *ex parte*.
- (8) This section has extra-territorial application.

## **Sub-Part VI - Receivership Orders**

### **Receivership orders in relation to cells**



**240.**(1) Subject to the provisions of this section, if in relation to a protected cell company the Court is satisfied –

- (a) that the cellular assets attributable to a particular cell of the company (and, where the company has entered into a recourse agreement, the assets liable under that agreement) are or are likely to be insufficient to discharge the claims of creditors in respect of that cell;
- (b) that the making of an administration order in respect of that cell would not be appropriate; and
- (c) that the making of an order under this section would achieve the purposes set out in subsection (3),

the Court may make an order under this section (a “receivership order”) in respect of that cell.

(2) A receivership order may be made in respect of one or more cells.

(3) A receivership order is an order directing that the business and cellular assets of or attributable to a cell shall be managed by a person specified in the order (“the receiver”) for the purposes of –

- (a) the orderly winding up of the business of or attributable to the cell; and
- (b) the distribution of the cellular assets attributable to the cell (and, where the company has entered into a recourse agreement, the assets liable under that agreement) to those entitled to have recourse thereto.

(4) A receivership order –

- (a) may not be made if –
  - (i) a liquidator has been appointed to act in respect of the protected cell company; or
  - (ii) the protected cell company has passed a resolution for voluntary winding up;
- (b) may be made in respect of a cell subject to an administration order; and
- (c) shall cease to be of effect upon the appointment of a liquidator to act in respect of the protected cell company, but without prejudice to prior acts.

(5) No resolution for the voluntary winding up of a protected cell company any cell of which is subject to a receivership order shall be effective without leave of the Court.

### **Applications for receivership orders**

**241.**(1) An application for a receivership order in respect of a cell of a protected cell company may be made by –

- (a) the company;
  - (b) the directors of the company;
  - (c) any creditor of the company in respect of that cell;
  - (d) any holder of cell shares in respect of that cell;
  - (e) the administrator of that cell; or
  - (f) the Authority.
- (2) The Court, on hearing an application –
- (a) for a receivership order; or
  - (b) for leave, pursuant to section 240(5), for a resolution for voluntary winding up, may make an interim order or adjourn the hearing, conditionally or unconditionally.
- (3) Notice of an application to the Court for a receivership order in respect of a cell of a protected cell company shall be served upon –
- (a) the company;
  - (b) the administrator (if any) of the cell;
  - (c) the Authority; and
  - (d) such other persons (if any) as the Court may direct,

who shall each be given an opportunity of making representations to the Court before the order is made.

### **Functions of receiver and effect of receivership order**

**242.**(1) The receiver of a cell –

- (a) may do all such things as may be necessary for the purposes set out in section 240(3); and
  - (b) has all the functions of the directors in respect of the business and cellular assets of or attributable to the cell.
- (2) The receiver may at any time apply to Court –
- (a) for directions as to the extent or exercise of any function or power;
  - (b) for the receivership order to be discharged or varied; or

- (c) for an order as to any matter arising in the course of his receivership.
- (3) In exercising his functions and powers the receiver is deemed to act as the agent of the protected cell company and shall not incur personal liability except to the extent that he is fraudulent, reckless or grossly negligent, or acts in bad faith.
- (4) Any person dealing with the receiver in good faith is not concerned to enquire whether the receiver is acting within his powers.
- (5) Where an application has been made for, and during the period of operation of, a receivership order, no proceedings may be commenced or continued against the protected cell company in relation to the cell in respect of which the receivership order was applied for or made except with the consent of the receiver or the leave of the Court and subject (where the Court gives leave) to such terms and conditions as the Court may impose.
- (6) For the avoidance of doubt, rights of set-off and secured interests, including, without limitation, a chargee's rights under a charge, and rights of enforcement thereof, are unaffected by the provisions of subsection (5).
- (7) During the period of operation of a receivership order –
  - (a) the functions of the directors shall cease in respect of the business and cellular assets of or attributable to the cell in respect of which the order was made, and
  - (b) where the company has entered into a recourse agreement affecting the cell, the receiver of the cell shall be deemed a director of the protected cell company in respect of the assets liable under that agreement.

### **Discharge and variation of receivership orders**

**243.**(1) The Court shall not discharge a receivership order unless it appears to the Court that the purpose for which the order was made has been achieved or substantially achieved or is incapable of achievement.

- (2) The Court, on hearing an application for the discharge or variation of a receivership order, may make any interim order or adjourn the hearing, conditionally or unconditionally.
- (3) Upon the Court discharging a receivership order in respect of a cell of a protected cell company on the ground that the purpose for which the order was made has been achieved or substantially achieved, the Court may direct that any payment made by the receiver to any creditor of the company in respect of that cell shall be deemed full satisfaction of the liabilities of the company to that creditor in respect of that cell; and the creditor's claims against the company in respect of that cell are thereby deemed extinguished.
- (4) Nothing in subsection (3) operates so as to affect or extinguish any right or remedy of a creditor against any other person, including any surety of the protected cell company.
- (5) Subject to the provisions of –
  - (a) this Part and any rule of law as to preferential payments;

(b) any agreement between the protected cell company and any creditor thereof as to the subordination of the debts due to that creditor to the debts due to the company's other creditors; and

(c) any agreement between the protected cell company and any creditor thereof as to set-off,

the company's cellular assets attributable to any cell of the company in relation to which a receivership order has been made shall, in the winding up of the business of or attributable to that cell pursuant to the provisions of this Part, be realised and applied in satisfaction of the company's liabilities attributable to that cell *pari passu*.

(6) Any surplus assets shall thereafter be distributed (unless the memorandum or articles provide otherwise) –

(a) among the holders of the cell shares or the persons otherwise entitled to the surplus assets; or

(b) where there are no cell shares and no such persons, among the holders of the core shares,

in each case according to their respective rights and interests in or against the company.

(7) The Court may, upon discharging a receivership order in respect of a cell of a protected cell company, direct that the cell shall be dissolved on such date as the Court may specify.

(8) Immediately upon the dissolution of a cell of a protected cell company, the company may not undertake business or incur liabilities in respect of that cell.

(9) Where a receivership order is discharged or varied under this section the receiver shall –

(a) within 7 days after the day of the order effecting the discharge or variation, send a copy of the order to the Registrar; and

(b) within such time as the Court may direct, send a copy thereof to such other persons as the Court may direct.

### **Remuneration of receiver**

**244.** The remuneration of a receiver and any expenses properly incurred by him are payable, in priority to all other claims, from the cellular assets attributable to the cell in respect of which the receiver was appointed.

### **Information to be given by receiver**

**245.(1)** Where a receivership order has been made, the receiver shall –

(a) forthwith send to the protected cell company notice of the order;

- (b) within 7 days after the day of the making of the order, send a copy of the order to the Registrar;
  - (c) within 28 days after the day of the making of the order –
    - (i) unless the Court orders otherwise, send notice of the order to all creditors of the cell (so far as he is aware of their addresses);
    - (ii) send notice of the order to the Authority; and
  - (d) within such time as the Court may direct, send a copy of the order to such other persons as the Court may direct.
- (2) The Registrar shall give notice of the receivership order in such manner and for such period as he thinks fit.

### **Sub-Part VII – Administration Orders**

#### **Administration order in relation to protected cell companies or cells**

**246.**(1) Subject to the other provisions of this section, where, in relation to a protected cell company, the Court is satisfied –

- (a) that the cellular assets attributed to a particular cell of the company (and, where the company has entered into a recourse agreement, the assets liable under that agreement) are or are likely to be insufficient to discharge the claims of creditors in respect of that cell; or
- (b) that the company’s cellular assets and non-cellular assets are or are likely to be insufficient to discharge the liabilities of the company,

and the Court considers that the making of an order under this section may achieve one of the purposes set out in subsection (4), the Court may make an order under this section (an “administration order”) in respect of that company.

- (2) An administration order may be made in respect of one or more cells.
- (3) An administration order is an order directing that, during the period for which the order is in force, the business and assets of or attributable to the cell or, as the case may be, the business and assets of the company, shall be managed by a person (the “administrator”) appointed by the Court for that purpose.
- (4) The purposes for which an administration order may be made are –
  - (a) the survival as a going concern of the cell or of the company, as the case may be;
  - (b) the more advantageous realisation of the business and assets of or attributable to the cell or (as the case may be) the business and assets of the company than would

be achieved by a receivership of the cell or (as the case may be) by the liquidation of the company.

(5) An administration order, whether in respect of a protected cell company or a cell thereof

–

(a) may not be made if –

(i) a liquidator has been appointed to act in respect of the company; or

(ii) the company has passed a resolution for voluntary winding up;

(b) shall cease to be of effect upon the appointment of a liquidator to act in respect of the company, but without prejudice to prior acts.

(6) No resolution for the voluntary winding up of a protected cell company which, or any cell of which, is subject to an administration order shall be effective without the leave of the Court.

#### **Application for administration order**

**247.**(1) An application to the Court for an administration order, in respect of a protected cell company or any cell thereof, may be made by –

(a) the company;

(b) the directors of the company;

(c) the shareholders or any class of shareholders of the company or of any cell;

(d) any creditor of the company (or, where the order is sought in respect of a cell, any creditor of the company in respect of that cell); or

(e) the Authority.

(2) The Court, on hearing an application –

(a) for an administration order; or

(b) for leave, pursuant to section 246(6), for a resolution for voluntary winding up,

may make an interim order or adjourn the hearing, conditionally or unconditionally.

(3) Notice of an application to the Court for an administration order in respect of a protected cell company or any cell thereof shall be served upon –

(a) the company;

(b) the Authority; and

- (c) such other person (if any) as the Court may direct,

who shall each be given an opportunity of making representations to the Court before the order is made.

### **Functions of administrator and effect of administration order**

**248.**(1) The administrator of a cell of a protected cell company –

- (a) may do all such things as may be necessary for the purposes set out in section 246(4) for which the administration order was made; and

- (b) shall have all the functions and powers of the directors in respect of the business and cellular assets of or attributable to the cell.

(2) The administrator may at any time apply to the Court –

- (a) for directions as to the extent or exercise of any function or power;

- (b) for the administration order to be discharged or varied; or

- (c) for an order as to any matter arising in the course of his administration.

(3) In exercising his functions and powers, the administrator is deemed to act as the agent of the protected cell company, and shall not incur personal liability except to the extent that he is fraudulent, reckless or grossly negligent, or act in bad faith.

(4) Any person dealing with the administrator in good faith is not concerned to enquire whether the administrator is acting within his powers.

(5) Where an application has been made for, and during the period of operation of, an administration order, no proceedings may be commenced or continued against the protected cell company or in relation to a cell in respect of which the administration order was applied for or made except with the consent of the administrator or the leave of the Court and subject (where the Court gives leave) to such terms and conditions as the Court may impose.

(6) For the avoidance of doubt, rights of set-off and secured interests, including, without limitation, a chargee's rights under a charge, and rights of enforcement thereof, are unaffected by the provisions of subsection (5).

(7) During the period of operation of an administration order –

- (a) the functions of the directors shall cease in respect of the business and cellular assets of or attributable to the cell in respect of which the order was made, and

- (b) where the company has entered into a recourse agreement affecting the cell, the administrator of the cell shall be deemed a director of the protected cell company in respect of the assets liable under that agreement.

### **Discharge and variation of administration order**

**249.**(1) The Court shall not discharge an administration order unless it appears to the Court that –

- (a) the purpose for which the order was made has been achieved or is incapable of achievement; or
  - (b) it would otherwise be desirable or expedient to discharge the order.
- (2) The Court, on hearing an application for the discharge of variation of an administration order, may make any interim order or adjourn the hearing, conditionally or unconditionally.
- (3) Upon discharging an administration order, the Court may direct –
- (a) where the administration order was made in respect of a protected cell company, that any payment made by the administrator to any creditor of the company shall be deemed full satisfaction of the liabilities of the company to that creditor and the creditor's claims against the company shall be thereby deemed extinguished;
  - (b) where the administration order was made in respect of a cell, that any payment made by the administrator to any creditor of the company in respect of that cell shall be deemed full satisfaction of the liabilities of the company to that creditor in respect of that cell and the creditor's claims against the company in respect of that cell shall thereby be deemed extinguished.
- (4) Nothing in subsection (3) shall operate so as to affect or extinguish any right or remedy of a creditor against any other person, including any surety of the protected cell company.

#### **Remuneration of administrator**

**250.** The remuneration of an administrator, and any expenses properly incurred by him, shall be payable in priority to all other claims –

- (a) in the case of the administration of a cell, from the cellular assets attributable to the cell; and
- (b) in the case of the administration of a protected cell company, from the non-cellular assets of the company.

#### **Information to be given by administrator**

**251.**(1) Where an administration order has been made, the administrator shall –

- (a) forthwith send to the protected cell company notice of the order;
- (b) within 7 days after the day of the making of the order, send a copy of the order to the Registrar;
- (c) within 28 days after the day of the making of the order –



- (i) unless the Court orders otherwise, send notice of the order to all creditors of the company or all creditors of each cell to which the order relates, as the case may be (so far as he is aware of their addresses);
  - (ii) send notice of the order to the Authority; and
  - (d) within such time as the Court may direct, send a copy of the order to such other persons as the Court may direct.
- (2) The Registrar shall give notice of the administration order in such manner and for such period as he thinks fit.

### **Sub-Part VIII – Liquidation of Protected Cell Companies**

#### **Provisions in relation to liquidation of protected cell company**

**252.**(1) Notwithstanding any statutory provision or rule of law to the contrary, in the liquidation of a protected cell company, the liquidator –

- (a) is bound to deal with the company’s assets in accordance with the requirements set out in paragraphs (a) and (b) of section 228(2); and
  - (b) in discharge of the claims of creditors of the protected cell company, shall apply the company’s assets to those entitled to have recourse thereto in conformity with the provisions of this Part.
- (2) Any provision of an enactment or rule of law which provides that a company’s assets in a winding up shall be realised and applied in satisfaction of the company’s debts and liabilities *pari passu* shall be modified and shall apply in relation to protected cell companies subject to the provisions of this Part.

### **Sub-Part IX - General**

#### **Liability to criminal penalties**

**253.**(1) Where a protected cell company is liable to any criminal penalty, whether under this Act or otherwise, due to the act or default of a cell or an officer acting in relation to a cell, then without prejudice to any liability of that officer, the penalty –

- (a) may only be met by the company from the cellular assets attributable to the cell; and
  - (b) is not enforceable in any way against any other assets of the company, whether cellular or core.
- (2) Where a protected cell company is liable to any criminal penalty, whether under this Law or otherwise, due to the act or default of the core or an officer acting in relation to the core, then without prejudice to any liability of that officer, the penalty –
- (a) may only be met by the company from core assets; and

- (b) is not enforceable in any way against any cellular assets.

## **PART XIV – INVESTIGATIONS OF COMPANIES**

### **Definition of “inspector”**

**254.** In this Part, “inspector” means an inspector appointed by an order made under section 255(2).

### **Investigation order**

**255.**(1) A member or the Registrar may apply to the Court *ex parte* or upon such notice as the Court may require, for an order directing that an investigation be made of the company and any of its associated companies.

- (2) If, upon an application under subsection (1), it appears to the Court that –
  - (a) the business of the company or any of its associates is or has been carried on with intent to defraud any person;
  - (b) the company or any of its associates was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose; or
  - (c) persons concerned with the incorporation, business or affairs of the company or any of its associates have or may have in connection therewith acted fraudulently or dishonestly,

the Court may make any order it thinks fit with respect to an investigation of the company and any of its associated companies by an inspector, who may be the Registrar.

- (3) If a member makes an application under subsection (1), he shall give the Registrar reasonable notice of it, and the Registrar is entitled to appear and be heard at the hearing of the application.
- (4) An applicant under this section shall not be required to give security for costs.

### **Court’s powers**

**256.**(1) An order made under section 255(2) shall include an order appointing an inspector to investigate the company and an order fixing the inspector’s remuneration.

- (2) The Court may, at any time, make any order it considers appropriate with respect to the investigation, including but not limited to making any one or more of the following orders, namely, to –
  - (a) replace the inspector;
  - (b) determine the notice to be given to any interested person, or dispense with notice to any person;

- (c) authorise the inspector to enter any premises in which the Court is satisfied there might be relevant information, and to examine anything, and to make copies of any documents or records, found on the premises;
  - (d) require any person to produce documents or records to the inspector;
  - (e) authorise the inspector to conduct a hearing, administer oaths or affirmations and examine any person upon oath or affirmation, and prescribe rules for the conduct of the hearing;
  - (f) require any person to attend a hearing conducted by the inspector and to give evidence upon oath or affirmation;
  - (g) give directions to the inspector or any interested person on any matter arising in the investigation;
  - (h) require the inspector to make an interim or final report to the Court;
  - (i) determine whether a report of the inspector should be published, and, if so, order the Registrar to publish the report in whole or in part, or to send copies to any person the Court designates;
  - (j) require an inspector to discontinue an investigation; or
  - (k) require the company to pay the costs of the investigation in part or in full.
- (3) The inspector shall file with the Registrar a copy of every report he makes under this section.
- (4) A report received by the Registrar under subsection (3) shall not be disclosed to any person other than in accordance with an order of the Court made under subsection (2)(i).

### **Inspector's powers**

**257.** An inspector –

- (a) has the powers set out in the order appointing him; and
- (b) shall upon request produce to an interested person a copy of the order.

### **Hearing in camera**

**258.(1)** An application under this Part and any subsequent proceedings, including applications for directions in respect of any matter arising in the investigation, shall be heard *in camera* unless the Court orders otherwise.

(2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector under this Part may appear or be heard at the hearing and has a right to be represented by a legal practitioner appointed by him for the purpose.

(3) No person shall publish anything relating to any proceedings under this Part except with the authorisation of the Court.

### **Offences relating to false information**

**259.** A person who, being required under this Part to answer any question which is put to him by an inspector –

(a) knowingly or recklessly makes a statement which is false, misleading or deceptive in a material particular; or

(b) knowingly or recklessly withholds any information the omission of which makes the information which is furnished misleading or deceptive in a material particular,

commits an offence and is liable on conviction to a fine not exceeding US\$10,000.

### **Inspector's report to be evidence**

**260.**(1) A copy of an inspector's report under this Part certified by the Registrar to be a true copy, is admissible in legal proceedings as evidence of the opinion of the inspectors in relation to a matter contained in the report.

(2) A document purporting to be a certificate mentioned in subsection (1) shall be received in evidence and be deemed to be such a certificate unless the contrary is proved.

### **Privilege**

**261.**(1) Nothing in this Part affects the legal professional privilege that exists in respect of a legal practitioner and his client.

(2) An oral or written statement or report made by an inspector or any other person in an investigation under this Part has absolute privilege.

## **PART XV – PROTECTION OF MEMBERS**

### **Power for member to apply to Court**

**262.**(1) A member of a company may apply to the Court for an order under section 264 on the ground that –

(a) the affairs of the company have been, are being or are likely to be, conducted in a manner that is, or is likely to be, oppressive, unfairly discriminatory, or unfairly prejudicial to him in his capacity as a member;

(b) an actual or proposed act or omission of the company (including an act or omission on its behalf) is, or is likely to be, oppressive, unfairly discriminatory, or unfairly prejudicial to him in his capacity as a member; or

(c) the company or a director of the company has engaged in, or proposes to engage in, conduct that contravenes this Act or the memorandum or articles of the company.

(2) The provisions of this Part apply to a person who is not a member of a company but to whom shares in the company have been transferred or transmitted by operation of law, as those provisions apply to a member of the company; and references to a member or members are to be construed accordingly.

### **Power for the Registrar to apply to Court**

**263.** If in the case of a company –

- (a) the Registrar has received a report by an inspector under Part XIV; and
- (b) it appears to the Registrar that –
  - (i) the affairs of the company have been, are being or are likely to be, conducted in a manner that is, or is likely to be, oppressive, unfairly discriminatory, or unfairly prejudicial to the company’s members generally or of some part of its members;
  - (ii) an actual or proposed act or omission of the company (including an act or omission on its behalf) is, or is likely to be, oppressive, unfairly discriminatory, or unfairly prejudicial the company’s members generally or of some part of its members;
  - (iii) the company or a director of the company has engaged in, or proposes to engage in, conduct that contravenes this Act or the memorandum or articles of the company,

the Registrar may apply to the Court for an order under section 264.

### **Powers of Court**

**264.(1)** If the Court is satisfied that an application under section 262 or 263 is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.

- (2) Without prejudice to the generality of subsection (1), the Court’s order may –
- (a) regulate the conduct of the company’s affairs in the future;
  - (b) direct the company or director to comply with, or restrain the company or director from engaging in conduct that contravenes, this Act or the company’s memorandum or articles;
  - (c) otherwise require the company to refrain from doing or continuing an act complained of by the applicant or to do an act which the applicant has complained it has omitted to do;

- (d) in respect of a shareholder of the company, require the company or any other person to acquire the shareholder's shares;
  - (e) amend or require the amendment of the memorandum or articles of the company;
  - (f) require the company or any other person to pay compensation to the member;
  - (g) directing the rectification of the records of the company;
  - (h) set aside any decision made or action taken by the company or its directors in breach of this Act or the memorandum or articles of the company;
  - (i) authorise civil proceedings to be brought in the name and on behalf of the company by a member or such other person or persons and on such terms as the Court may direct;
  - (j) authorise a member or such other person or persons to intervene in proceedings to which the company is a party for the purpose of continuing, defending or discontinuing the proceedings on behalf of the company; and
  - (k) provide for the purchase of the rights of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accounts accordingly.
- (3) No order may be made against the company or any other person under this section unless the company or that person is a party to the proceedings in which the application is made.
- (4) If an order under this section requires the company not to make any, or any specified, alterations in the memorandum or articles, the company shall not then without leave of the Court make such alterations in breach of that requirement.
- (5) An alteration in the company's memorandum or articles made by virtue of an order under this section is of the same effect as if duly made by resolution of the company, and the provisions of this Act apply to the memorandum or articles as so altered accordingly.
- (6) A copy of an order of the Court under this section altering, or giving leave to alter, a company's memorandum or articles shall, within 14 days from the making of the order or such longer period as the Court may allow, be delivered by the company to the Registrar for registration.
- (7) If a company fails to comply with subsection (6), the company commits an offence and is liable on conviction to a fine not exceeding US\$10,000.

## **PART XVI – DISQUALIFICATION ORDERS**

### **Disqualification orders**

**265.**(1) For the purposes of this section “administrator”, in relation to a company, means –

- (a) an administrator appointed under Sub-Part VII of Part XIII; or
  - (b) an administrator otherwise appointed by the Court pursuant to a written law.
- (2) A disqualification order is an order made by the Court prohibiting a person from –
- (a) being a director of any company or any company specified in the order;
  - (b) participating in, or being in any way concerned in, directly or indirectly, the management, formation or promotion of any company or any company specified in the order;
  - (c) being an administrator of any company or any company specified in the order;
  - (d) being a receiver of a cell of any protected cell company or any protected cell company specified in the order;
  - (e) being a liquidator of any company or any company specified in the order.
- (3) The Court can make a disqualification order of its own motion or upon an application made by –
- (a) the Registrar;
  - (b) the Authority;
  - (c) the Minister; or
  - (d) any liquidator, administrator, member or creditor of any company of which the person against whom a disqualification order is sought is or has been a director or is participating or has participated directly or indirectly in the management, formation or promotion such company.
- (4) A person intending to apply for an order under this section shall give not less than 10 days written notice of such intention to each person against whom the order is sought.
- (5) An application for an order under this section shall be served on each person against whom the order is sought.
- (6) A disqualification order may, in the Court's absolute discretion, be granted by consent.
- (7) A disqualification order may contain such incidental and ancillary terms and conditions as the Court thinks fit.
- (8) The Court shall direct that a copy of the order be served upon the Registrar.
- (9) A disqualification order shall have effect for such period not exceeding 5 years as shall be specified therein.

(10) Where a disqualification order is made against a person already subject to such an order, the periods specified in those orders shall run concurrently unless the Court orders them to run consecutively.

### **Ground for making a disqualification order**

**266.**(1) The Court may make a disqualification order where it considers that, by reason of a person's conduct in relation to a company or otherwise, that person is unfit to be concerned in the management, promotion or liquidation of a company.

(2) In determining whether a person is unfit for the purposes of subsection (1), the Court shall have regard to –

- (a) the nature and extent of the person's involvement in or knowledge of any fraud, dishonesty, misconduct or other wrongdoing in connection with a company;
- (b) the person's previous conduct and activities in business or financial matters;
- (c) any convictions the person has for an offence in connection with the promotion, formation, management, liquidation or striking off of a company,
- (d) any convictions the person has for any offence and in particular any offence involving fraud or dishonesty;
- (e) the person's conduct in connection with any company that has gone into insolvent liquidation;
- (f) any misfeasance or breach of any fiduciary or other duty by the person in relation to a company;
- (g) whether the person has been disqualified, by reason of misconduct or unfitness, from being concerned with the management of any foreign company under the law of any place outside Seychelles; and
- (h) such other matters as the Court thinks fit.

### **Right of appeal to the Court of Appeal**

**267.**(1) Any person who is aggrieved by the making of a disqualification order by the Court under section 265 may, within thirty days of the date of the disqualification order, appeal to the Court of Appeal.

(2) Notice of an appeal to the Court of Appeal under subsection (1) shall be served on the Registrar who shall be entitled to appear and be heard at the hearing of the appeal.

(3) On an appeal under this section the Court of Appeal may –

- (a) set aside the disqualification order;
- (b) confirm the disqualification order in its entirety; or



- (c) confirm the disqualification order in part, including, if it thinks fit, to reduce or increase the duration of the disqualification order.
- (4) On an appeal under this section the Court of Appeal may, on the application of the appellant and on such terms as the Court of Appeal thinks just, suspend or modify the operation of the disqualification pending the determination of the appeal.

### **Variation of disqualification orders**

**268.**(1) A person subject to a disqualification order may apply to the Court for a variation in the order and, if satisfied that it would not be contrary to the public interest to do so, the Court may grant an order varying the disqualification order to such extent and under such terms as it sees fit.

(2) An application under this section for the variation of a disqualification order shall not be heard unless the person upon whose application the disqualification order was made has been served with notice of the application to vary not less than 28 days (or such other period as the Court may in its absolute discretion direct) before the date of the hearing and, without prejudice to the foregoing, the Court may –

- (a) direct that notice of the application shall also be served on such other persons as the Court thinks fit; and

- (b) for that purpose adjourn the hearing of the application.

(3) The variation of a disqualification order may, with the consent of the parties and in the Court's absolute discretion, be granted by consent.

(4) The Court shall direct that a copy of an order varying a disqualification order be served upon the Registrar.

### **Revocation of disqualification orders**

**269.**(1) A person subject to a disqualification order may apply to the Court for a revocation of the order on the ground that he is no longer unfit to be concerned in the management of a company, and the Court may grant the application if satisfied that –

- (a) it would not be contrary to the public interest to do so; and

- (b) the applicant is no longer unfit to be concerned in the management of a company.

(2) An application under this section for the revocation of a disqualification order shall not be heard unless the person upon whose application the disqualification order was made has been served with notice of the application to revoke not less than 28 days (or such other period as the Court may in its absolute discretion direct) before the date of the hearing and, without prejudice to the foregoing, the Court may –

- (a) direct that notice of the application to revoke shall also be served on such other persons as the Court thinks fit; and
  - (b) for that purpose adjourn the hearing of the application.
- (3) The revocation of a disqualification order may, with the consent of the parties and in the Court's absolute discretion, be granted by consent.
- (4) The Court shall direct that a copy of the order revoking a disqualification order be served upon the Registrar.

### **Consequences of breaking a disqualification order**

**270.**(1) A person who contravenes any provision of a disqualification order –

- (a) commits an offence and is liable on conviction to a fine not exceeding US\$10,000; and
  - (b) is personally liable for any debts and liabilities of the company in relation to which the contravention was committed which were incurred at any time when he was acting in contravention of the disqualification order.
- (2) A person's liability pursuant to subsection (1)(b) is joint and several with that of the company and of any other person so liable in relation to that company.

### **Register of disqualification orders**

**271.**(1) The Registrar shall keep a register, to be known as the Register of Disqualification Orders, containing particulars of –

- (a) each disqualification order served on the Registrar under section 265(7); and
  - (b) each order varying a disqualification order served on the Registrar under section 268(4).
- (2) When a disqualification order ceases to be in force, the Registrar shall delete the entry from the Register of Disqualification Orders.
- (3) The Register of Disqualification Orders shall be open to inspection on payment of the applicable fee as specified in Part II of the Second Schedule.
- (4) No person shall be construed, by virtue only of an entry in the Register of Disqualification Orders, as having knowledge that another person is the subject of a disqualification order.

## **PART XVII – STRIKING OFF, WINDING UP AND DISSOLUTION**

### **Sub-Part I – Striking off and dissolution**

## Striking off

272.(1) The Registrar may strike the name of a company off the Register if –

- (a) it is satisfied that the company –
  - (i) has ceased to carry on business or is not in operation;
  - (ii) has been used for fraudulent purposes;
  - (iii) may jeopardize the reputation of Seychelles as a financial centre; or
- (b) the company fails to –
  - (i) file any notice or document required to be filed under this Act;
  - (ii) comply with section 164 (*Company to have registered agent*);
  - (iii) comply with a request made pursuant to this Act or other written law of Seychelles by the Seychelles Revenue Commission, the Financial Intelligence Unit or the Registrar for a document or information;
  - (iv) keep a register of directors, register of members, register of charges or accounting records required to be kept by it under this Act or any other records required to be kept by it under this Act; or
  - (iva) register of beneficial owners to be maintained under the Beneficial Ownership Act, 2020;
  - (v) subject to paragraph (c), pay any penalty fees imposed by the Registrar under this Act; or
- (c) the company fails to pay to the Registrar its annual fee or any late payment penalty thereon within 180 days of the due date, provided that striking off under this paragraph shall only occur on 1 January next ensuing.

(2) Before striking the name of a company off the Register on any grounds specified in subsection (1)(a) or (1)(b),–

- (a) the Registrar shall send the company a notice stating that, unless the company shows cause to the contrary within 30 days of the date of the notice, the Registrar shall publish in the *Gazette* a notice of the intended striking-off of the company's name from the Register in accordance with paragraph (b); and
- (b) after the expiration of the 30 day period referred to in the notice given under paragraph (a), unless the company has shown cause to the contrary, the Registrar shall publish in the *Gazette* a notice of its intention to strike the name of the company off the Register at the expiration of 60 days from the date of the publication of the notice in the *Gazette* under this paragraph.

(3) After the expiration of 60 days from the date of the publication of the notice in the *Gazette* under subsection (2)(b), unless the company has shown cause to the contrary, the Registrar may strike the name of the company off the Register.

(4) The Registrar shall publish a notice of the striking of the name of a company off the Register in the *Gazette*.

(5) The striking of the name of a company off the Register is effective from the date on which the Registrar strikes the name off the Register under subsection (3).

(6) Penalty fees imposed for a contravention of this Act shall cease accruing on the date of striking off of the name of a company under this section, provided that all unpaid penalty fees accrued prior to the date of striking off shall remain due and payable to the Registrar.

### **Appeal against striking off**

**273.**(1) A person who is aggrieved by the striking of a company's name off the Register pursuant to a decision of the Registrar under section 272(1) may, within 90 days of the date of the striking off notice published in the *Gazette*, appeal against the Registrar's decision and consequent striking off to the Appeals Board in accordance with the procedure specified in the Financial Services Authority (Appeals Board) Regulations 2014.

(2) On an application under this section the Appeals Board may –

(a) affirm the Registrar's decision and the striking off;

(b) set aside the Registrar's decision and striking off and, if the Appeals Board considers it appropriate to do so, remit the matter to the Registrar with such directions as the Appeals Board considers fit.

(3) A person dissatisfied with the decision of the Appeals Board may within 30 days of the decision make an appeal to the Court in accordance with regulation 8(8) of the Financial Services Authority (Appeals Board) Regulations 2014.

(4) The Court may, in respect of an appeal made under subsection (5), affirm, set aside or vary the Appeals Board's decision and may give such directions as the Court thinks fit and just.

### **Effect of striking off**

**274.**(1) Where the name of a company has been struck off the Register, the company and the directors, members and any liquidator or receiver thereof, shall not –

(a) commence legal proceedings, carry on any business or in any way deal with the assets of the company;

(b) defend any legal proceedings, make any claim or claim any right for, or in the name of, the company; or

(c) act in any way with respect to the affairs of the company.

- (2) Notwithstanding subsection (1), where the name of a company has been struck off the Register, the company, or a director, member, liquidator or receiver thereof, may –
- (a) make application for restoration of the company to the Register;
  - (b) continue to defend proceedings that were commenced against the company prior to the date of the striking-off; and
  - (c) continue to carry on legal proceedings that were instituted on behalf of the company prior to the date of striking-off.
- (3) The fact that the name of a company is struck off the Register does not prevent –
- (a) the company from incurring liabilities;
  - (b) any creditor from making a claim against the company and pursuing the claim through to judgment or execution; or
  - (c) the Financial Intelligence Unit, Seychelles Revenue Commission or any other governmental body from making a claim against the company under a written law of Seychelles and pursuing the claim through to judgment or execution,

and does not affect the liability of any of its members, directors, other officers or agents.

- (4) A company continues to be liable for all fees and penalties payable under this Act notwithstanding that the name of the company has been struck off the Register.

### **Dissolution of company struck off the Register**

**275.** Where the name of a company that has been struck off the Register under section 272 remains struck off continuously for a period of seven years, it is dissolved with effect from the last day of that period and any period during which a company has been struck off in terms of any previous provisions under the former Act shall, for the purpose of this section include that period.

### **Restoration of company to the Register by Registrar**

**276.(1)** Subject to subsections (1A), (2), (3) and (4), where a company is not dissolved but its name has been struck off the Register, the Registrar may, upon application for restoration made in the approved form by a creditor, member, former member, director, former director, liquidator or former liquidator of the company, and upon payment of the restoration fee referred to in Part II of the Second Schedule and all outstanding fees and penalties under this Act and the former Act, restore the name of the company to the register and issue a notice of restoration to the company.

(1A) Subsection (1) shall not apply if the company was struck off the Register pursuant to section 272(1)(a)(ii) or (iii).

(2) Where the name of a company has been struck off the Register under section 272(1)(b)(v) for non-payment of penalty fees imposed by the Registrar under this Act (other

than as referred to in section 272(1)(c)), the company shall not be eligible for restoration under subsection (1) unless the Registrar is satisfied that the contravention of this Act for which the penalty was imposed has been remedied in full.

(3) An applicant under subsection (1) shall engage a person who is licensed to provide international corporate services under the International Corporate Service Providers Act (Cap 275) to act as the restored company's registered agent and who shall file the restoration application on the applicant's behalf with the Registrar.

(4) If the proposed registered agent of the company was not the company's registered agent when it was struck off the Register (the "outgoing registered agent"), the application shall be accompanied by the written consent to the change of registered agent by the outgoing registered agent.

(5) A company's outgoing registered agent shall provide its written consent under subsection (4) unless any fees due and payable to it have not been paid.

(6) A company that is restored to the Register under this section is deemed to have continued in existence as if it had not been struck off the Register.

### **Court application to restore company to Register**

**277.**(1) Subject to subsection (2), where the name of a company has been struck off the Register for any reason, an application to restore the name of the struck off or dissolved company to the Register may be made to the Court by –

(a) a creditor, member, former member, director, former director, liquidator or former liquidator of the company; or

(b) any other person who can establish an interest in having the company restored to the Register.

(2) An application to restore the name of a struck off or dissolved company to the Register under subsection (1) may be made to the Court –

(a) within twelve years of the date of the striking-off notice published in the *Gazette* under section 272(4); or

(b) within five years of the date of dissolution under Sub-Part II, III or IV of the Part XVII of this Act.

(3) Notice of the application shall be served on the Registrar, who is entitled to appear and be heard on the hearing of the application.

(4) On an application under subsection (1) and subject to subsection (5), the Court may –

(a) restore the company to the Register subject to such conditions as it considers appropriate; and

- (b) give such directions or make such orders as it considers necessary or desirable for the purpose of placing the company and any other persons as nearly as possible in the same position as if the company had not been dissolved or struck off the Register.
- (5) Where the Court makes an order restoring a company to the Register, the applicant under subsection (1) shall engage a person who is licensed to provide international corporate services under the International Corporate Service Providers Act (Cap 275) to act as the restored company's registered agent and who shall file a sealed copy of the restoration order on the applicant's behalf with the Registrar.
- (6) On receiving a filed copy of a sealed restoration order filed under subsection (5) but subject to subsection (7), the Registrar shall restore the company to the Register with effect from the date and time that the copy of the sealed order was filed.
- (7) Notwithstanding its receipt of a copy of the sealed restoration order, the Registrar shall not restore the company to the Register until –
- (a) payment to it of all outstanding annual fees and any penalty or other fees payable under this Act in relation to the company; and
  - (b) if the proposed registered agent of the company was not the company's registered agent when it was struck off the Registrar (the "outgoing registered agent"), the Registrar receives a written consent to the change of registered agent by the outgoing registered agent (who must provide such consent unless any fees due and payable to it have not been paid).
- (8) A dissolved company restored under this section is restored to the Register with the name that it had immediately before it was dissolved, provided that if the name of the company has been reused in accordance with the Fifth Schedule, the company is restored to the Register with its name consisting of its company number followed by the word "Limited".
- (9) A company that is restored to the Register under this section is deemed to have continued in existence as if it had not been dissolved or struck off the Register.

#### **Appointment of liquidator of company struck off**

**278.**(1) Where a company has been struck off the Register, the Registrar may apply to the Court for the appointment of a liquidator of the company.

- (2) Where the Court makes an order under subsection (1) –
- (a) the company is restored to the Register; and
  - (b) the liquidator is deemed to have been appointed under section 309 and 315 of this Act.

#### **Undistributed property of dissolved company**

**279.**(1) Subject to subsection (2), any property of a company that has not been disposed of at the date of the company's dissolution vests in the Government of Seychelles.

(2) If a company is restored to the Register, any property, other than money, that was vested in the Government of Seychelles under subsection (1) on the dissolution of the company and that has not been disposed of must be returned to the company upon its restoration to the Register.

(3) The company is entitled to be paid by the Government of Seychelles –

(a) any money received by the Government of Seychelles under subsection (1) in respect of the company; and

(b) if property, other than money, vested in the Government of Seychelles under subsection (1) in respect of the company and that property has been disposed of, an amount equal to the lesser of –

(i) the value of any such property at the date it vested in the Government of Seychelles; and

(ii) the amount realized by the Government of Seychelles by the disposition of that property.

### **Disclaimer**

**280.**(1) In this section, “onerous property” means –

(a) an unprofitable contract; or

(b) property of the company that is unsaleable, or not readily saleable, or that may give rise to a liability to pay money or perform an onerous act.

(2) Subject to subsection (3), the Minister may, by notice in writing published in the *Gazette*, disclaim the Government of Seychelles’ title to onerous property which vests in the Government of Seychelles under section 279.

(3) A statement in a notice disclaiming property under this section that the vesting of the property in the Government of Seychelles first came to the notice of the Minister on a specified date shall, in the absence of proof to the contrary, be evidence of the fact stated.

(4) Unless the Court, on the application of the Minister, orders otherwise, the Minister is not entitled to disclaim property unless the property is disclaimed –

(a) within twelve months of the date upon which the vesting of the property under section 279 came to the notice of the Minister; or

(b) if any person interested in the property gives notice in writing to the Minister requiring him to decide whether he will or will not disclaim the property, within three months of the date upon which he received the notice,

whichever occurs first.



- (5) Property disclaimed by the Minister under this section is deemed not to have vested in the Government of Seychelles under section 279.
- (6) A disclaimer under this section –
- (a) operates so as to terminate, with effect from immediately prior to the dissolution of the company, the rights, interests and liabilities of the company in or in respect of the property disclaimed; and
  - (b) does not, except so far as is necessary to release the company from liability, affect the rights or liabilities of any other person.
- (7) A person suffering loss or damage as a result of a disclaimer under this section –
- (a) shall be treated as a creditor of the company for the amount of the loss or damage, taking into account the effect of any order made by the Court under subsection (8); and
  - (b) may apply to the Court for an order that the disclaimed property be delivered to or vested in that person.
- (8) The Court may, on an application made under subsection (7)(b), make an order under that paragraph if it is satisfied that it is just for the disclaimed property to be delivered to or vested in the applicant.

## **Sub-Part II - Voluntary Winding Up of Solvent Company**

### **Application of this Sub-Part**

- 281.** A company may only be voluntarily wound up under this Sub-Part if –
- (a) it has no liabilities; or
  - (b) it is able to pay its debts as they fall due and the value of its assets equals or exceeds its liabilities.

### **Voluntary winding up plan**

- 282.(1)** Where it is proposed to appoint a liquidator or two or more joint liquidators under this Sub-Part, the directors of the company shall approve a voluntary winding up plan –
- (a) which certifies that the company is and will continue to be able to discharge, pay or provide for the payment of all its debts, liabilities and obligations in full as they fall due and the value of its assets equals or exceeds its liabilities; and
  - (b) stating –
    - (i) the reasons for the winding up of the company;
    - (ii) their estimate of the time required to wind up the company;

(iii) whether or not the liquidator is to be authorised to carry on the business of the company if he determines that to do so would be necessary or in the best interests of the creditors or members of the company;

(iv) the name and address of each individual to be appointed as liquidator; and

(v) whether or not, once the company's affairs are fully wound up pursuant to this Sub-Part, the liquidator is required to send to all members a statement of account of the winding up prepared or caused to be prepared by the liquidator in respect of the winding up, his actions and transactions, including details of any sums paid or received and of disposal of the company's property.

(2) A director making a certification of solvency in a voluntary winding up plan under subsection 1(a) without having reasonable grounds for the opinion that the company is and will continue to be able to discharge, pay or provide for its debts, liabilities and obligations in full as they fall due, commits an offence and is liable on conviction to a fine not exceeding US\$10,000.

### **Commencement of voluntary winding up of solvent company**

**283.**(1) Subject to subsection (2), a company may be wound up voluntarily under this Sub-Part

–

(a) if the company passes –

(i) a special resolution that it be wound up voluntarily; or

(ii) if so permitted by its memorandum or articles, an ordinary resolution that it be wound up voluntarily; or

(b) if the period (if any) fixed by the memorandum or articles for the duration of the company expires and the company passes an ordinary resolution that it be wound up voluntarily; or

(c) if the event (if any) occurs on the occurrence of which the memorandum or articles provide that the company shall be dissolved and the company passes an ordinary resolution that it be wound up voluntarily.

(2) A voluntary winding up resolution of members under subsection (1) shall not be passed unless –

(a) it approves the voluntary winding up plan referred to in section 282(1) within 30 days of the date of such plan; and

(b) it appoints a liquidator or two or more joint liquidators to wind up the company's affairs and to realise and distribute its assets.

(3) A liquidator shall not be appointed by a resolution passed under this section if –

- (a) a liquidator of the company has been appointed by the Court;
  - (b) an application has been made to the Court to appoint a liquidator of the company and the application has not been dismissed; or
  - (c) the person to be appointed liquidator has not consented to his appointment.
- (4) A resolution under this section is void and of no effect if –
- (a) in contravention of subsection (2), it does not appoint a liquidator; or
  - (b) it appoints a person as liquidator in the circumstances referred to in subsection (3) or in contravention of section 284.
- (5) Subject to the provisions of this section, a voluntary winding up under this Sub-Part commences upon the passing of the members' resolution for voluntary winding up under subsection (1).

#### **Eligibility to be liquidator under this Sub-Part**

**284.**(1) For the purposes of this Sub-Part, an individual is eligible to be appointed and to act as the liquidator of a company if the individual is not disqualified from acting as the liquidator of a company under subsection (2).

- (2) The following individuals are disqualified from being appointed, or acting, as the liquidator of a company –
- (a) a disqualified person under Part XVI or an individual subject to an equivalent disqualification under the laws of a country outside Seychelles;
  - (b) a minor;
  - (c) an incapacitated adult;
  - (d) an undischarged bankrupt;
  - (e) an individual who is, or at any time in the previous two years has been, a director of the company;
  - (f) an individual who acts, or at any time in the previous two years has acted, in a senior management position in relation to the company and whose functions or responsibilities have included functions or responsibilities in relation to the financial management of the company;
  - (g) an individual who is a sole member of the company; and
  - (h) an individual who is a close family member of an individual specified in paragraph (e), (f) or (g).

### **Filing with Registrar**

**285.**(1) Within 21 days from the date of passing a resolution of members for the voluntarily winding up of a company under this Sub-Part, the company shall file with the Registrar, accompanied by the specified fee set out in Part II of the Second Schedule, the following –

- (a) a certified copy or extract of the voluntary winding up resolution of members; and
  - (b) a certified copy or extract of the voluntary winding up plan.
- (2) The company shall cause the certified documents referred to in subsection (1) to be –
- (a) certified as a true copy by the company's registered agent; and
  - (b) filed with the Registrar by the company's registered agent.
- (3) Contravention of subsection (1) shall render void and of no effect –
- (a) the voluntary winding up resolution of members; and
  - (b) the appointment of the or each liquidator.

### **Notice of voluntary winding up**

**286.** The liquidator of a company shall within 40 days of the commencement of the voluntary winding up under this Sub-Part give notice in the approved form of his appointment and of the commencement of the company's voluntary winding up under this Sub-Part by publication in –

- (a) the *Gazette* or a newspaper published and in daily circulation in Seychelles; and
- (b) unless the company has no principal place of business outside Seychelles, a newspaper published and circulating in the place of the company's principal place of business outside Seychelles.

### **Effect of commencement of voluntary winding up**

**287.**(1) Subject to subsections (2) and (3), with effect from the commencement of the voluntary winding up of a company –

- (a) the liquidator has custody and control of the assets of the company; and
  - (b) the directors of the company remain in office but they cease to have any powers, functions or duties other than those required or permitted under this Sub-Part.
- (2) Subsection (1)(a) does not affect the right of a secured creditor to take possession of and realise or otherwise deal with assets of the company over which the creditor has a security interest.

(3) Notwithstanding subsection (1)(b), the directors, after the commencement of the voluntary winding up, may exercise such powers as the liquidator, by written notice, may authorise them to exercise.

(4) A person who purports to exercise any powers of a director at a time when, pursuant to subsection (1), those powers have ceased and their exercise has not been authorised by the liquidator under subsection (3), commits an offence and is liable on conviction to a fine not exceeding US\$10,000.

### **Duties of liquidator under this Sub-Part**

**288.**(1) A liquidator appointed under this Sub-Part shall –

- (a) take possession of, protect and realise the assets of the company;
- (b) identify all creditors of and claimants against the company;
- (c) pay or provide for the payment of, or to discharge, all claims, debts, liabilities and obligations of the company; and
- (d) having done so, distribute any surplus assets of the company amongst the members according to their respective entitlements in accordance with the company's memorandum and articles.

(2) Where any notice or other document relating to a company is required under this Sub-Part to be filed by a company or liquidator appointed under this Sub-Part, the document may only be filed by the company's registered agent.

### **Powers of liquidator in voluntary winding up under this Sub-Part**

**289.**(1) Subject to subsection (2), in order to perform the duties imposed on him under section 288, a liquidator appointed under this Sub-Part has all powers of the company that are not reserved to the members under this Act or in the memorandum or articles, including, but not limited to, the power –

- (a) to take custody of the assets of the company and, in connection therewith, to register any property of the company in the name of the liquidator or that of his nominee;
- (b) to sell any assets of the company at public auction or by private sale without any notice;
- (c) to collect the debts and assets due or belonging to the company;
- (d) to borrow money from any person for any purpose that will facilitate the winding-up and dissolution of the company and to pledge or mortgage any property of the company as security for any such borrowing;
- (e) to negotiate and settle any claim, debt, liability or obligation of the company, including to make any compromise or arrangement with creditors or persons claiming

to be creditors or having or alleging themselves to have any claim of any nature against the company;

(f) to bring or defend, in the name and on behalf of the company or in the name of the liquidator, any action, suit, prosecution or other legal proceedings, whether civil or criminal;

(g) to retain legal advisors, accountants and other advisors and appoint agents;

(h) to carry on the business of the company, as the liquidator may determine to be necessary or to be in the best interests of the creditors or members of the company;

(i) to execute any contract, agreement or other instrument in the name of and on behalf of the company or in the name of the liquidator;

(j) to make calls of capital;

(k) to make, in accordance with this Part, any payment or distribution in money or in other property or partly in each; and

(l) to do and execute all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(2) Subsection (1) is subject to –

(a) an order of the Court in relation to the winding up of the company or the liquidator's powers; and

(b) the rights of a secured creditor in relation to any assets of the company over which the creditor has a security interest.

(3) Notwithstanding subsection (1)(h), a liquidator shall not, without the permission of the Court, carry on the business of a company in voluntary winding up for a period of more than 2 years.

(4) Where more than one liquidator is appointed, every power hereby given may be exercised –

(a) by one or more of them, as may be determined at the time of their appointment;  
or

(b) in default of such determination, by any number not less than two.

#### **Vacancy in office of liquidator under this Sub-Part**

**290.**(1) If a vacancy occurs in the office of liquidator under this Sub-Part, whether because of the death, resignation or removal of the liquidator, unless at least one liquidator remains in office, an eligible individual shall be appointed as replacement liquidator by ordinary resolution.

- (2) An individual appointed as liquidator under this section shall –
- (a) within 14 days of his appointment, file with the Registrar a notice of appointment in the approved form; and
  - (b) within 30 days of his appointment, advertise notice of his appointment by publication in –
    - (i) the *Gazette* or a newspaper published and in daily circulation in Seychelles; and
    - (ii) unless the company has no principal place of business outside Seychelles, a newspaper published and circulating in the place of the company's principal place of business outside Seychelles,

### **Resignation of liquidator under this Sub-Part**

**291.**(1) A liquidator under this Sub-Part may only resign in accordance with this section.

- (2) Subject to subsection (4), the liquidator shall give not less than 14 days' notice of his intention to resign to each member and director of the company.
- (3) The notice of intention to resign shall be accompanied by a summary of the voluntary winding up accounts and a report of the liquidator's conduct of the voluntary winding up.
- (4) The directors and members of the company may resolve to accept less than 14 days' notice of the liquidator's resignation.
- (5) On the expiration of the notice period specified in the notice, or such shorter period of notice that may be accepted by the members and directors under subsection (4), the liquidator may send notice of his resignation to each member and director of the company.
- (6) Where a liquidator resigns, he shall file with the Registrar a notice of his resignation and his resignation takes effect from the date of filing.
- (7) Upon receipt of a notice of resignation filed by a liquidator under subsection (6), the Registrar shall forthwith send a copy of the notice of resignation to the registered agent of the company.

### **Removal of liquidator under this Sub-Part**

**292.**(1) A liquidator under this Sub-Part may only be removed from office by –

- (a) resolution of members of the company; or
  - (b) an order of the Court in accordance with this section.
- (2) The Court may, on application by a person specified in subsection (3), remove the liquidator of a company from office if –

- (a) the liquidator –
    - (i) was not eligible to be appointed, or is not eligible to act, as the liquidator of the company; or
    - (ii) fails to comply with any direction or order of the Court made in relation to the voluntary winding up of the company; or
  - (b) the Court has reasonable grounds for believing that –
    - (i) the liquidator’s conduct of the voluntary winding up is below the standard that may be expected of a reasonably competent liquidator;
    - (ii) the liquidator has an interest that conflicts with his role as liquidator; or
    - (iii) for some other reason, he should be removed as liquidator.
- (3) An application to the Court to remove a liquidator may be made by –
- (a) a director, member or creditor of the company; or
  - (b) with the leave of the Court, any other interested party.
- (4) The Court may require an applicant to give security for the costs to be incurred by the liquidator on the application.
- (5) On the hearing of an application under this section, the Court may make such interim or other order it considers appropriate, including the appointment of a liquidator to replace the liquidator removed by the order.
- (6) Where a liquidator is removed from office by an order of the Court or by resolution of members, the company shall file with the Registrar a copy of the order or a certified copy or extract of the resolution, as the case may be.
- (7) Upon receipt of a copy order or copy or extract resolution under subsection (6), the Registrar shall forthwith send a copy thereof to the registered agent of the company.

### **Rescission of voluntary winding up**

**293.**(1) In the case of a voluntary winding up commenced under this Sub-Part and subject to subsection (3), a company may, prior to filing with the Registrar of a notice of completion of winding up under section 297(1), rescind the company’s voluntary winding up by an ordinary resolution.

(2) A company shall file a certified copy or extract of the resolution referred to in subsection (1) with the Registrar, who shall retain and register it in the Register.

(3) A rescission of a voluntary winding up under subsection (1) only has effect from the date that the certified copy or extract resolution referred to in subsection (1) is registered by the Registrar.



(4) Within 40 days immediately following the date on which the resolution referred to in subsection (1) has been filed with the Registrar, the company shall cause a notice, stating that the company has rescinded its intention to be voluntarily wound up and dissolved, to be published in –

(a) the *Gazette* or a newspaper published and in daily circulation in Seychelles; and

(b) unless the company has no principal place of business outside Seychelles, a newspaper published and circulating in the place of the company's principal place of business outside Seychelles

(5) A company that contravenes subsection (4) shall be liable to a penalty fee of US\$25 for each day or part thereof during which the contravention continues.

(6) A director who knowingly permits a contravention under subsections (4) shall be liable to a penalty fee of US\$25 for each day or part thereof during which the contravention continues.

#### **Termination of voluntary winding up by the Court**

**294.(1)** The Court may, at any time after the appointment of a liquidator under this Sub-Part, make an order terminating the voluntary winding up if it is satisfied that it would be just and equitable to do so.

(2) An application under subsection (1) may be made by the liquidator or by a director, member or creditor of the company.

(3) Before making an order under subsection (2), the Court may require the liquidator to file a report with respect to any matters relevant to the application.

(4) An order under subsection (1) may be made subject to such terms and conditions as the Court considers appropriate and, on making the order or at any time thereafter, the Court may give such supplemental directions or make such other order as it considers fit in connection with the termination of the voluntary winding up.

(5) Where the Court makes an order under subsection (1), the company ceases to be in voluntary winding up and the liquidator ceases to hold office with effect from the date of the order or such later date as may be specified in the order.

(6) Where the Court makes an order under subsection (1), the applicant shall file a copy of the order with the Registrar.

(7) Upon receipt of a copy order under subsection (6), the Registrar shall forthwith send a copy of the order to the registered agent of the company.

#### **Power to apply to Court for directions**

**295.** A liquidator or a director, member or creditor of a company which is being or which is to be voluntarily wound up under this Sub-Part may apply to the Court for directions

concerning any aspect of the winding up; and upon such an application the Court may make such order as it thinks fit.

### **Interim account of conduct of winding up**

**296.**(1) On the expiration of one year beginning on the date of commencement of a voluntary winding up, and on the expiration of each succeeding year, the liquidator shall, if the winding up is not complete, either –

- (a) circulate in writing to all members; or
- (b) summon a general meeting of the members of the company, at which the liquidator shall lay before the meeting,

an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) The liquidator may summon a general meeting of the company at any other time.

### **Dissolution**

**297.**(1) Upon completion of a voluntary winding up under this Sub-Part, the company shall file with the Registrar, accompanied by the applicable fee set out in Part 2 of the Second Schedule, a notice by the company's liquidator in the approved form that the voluntary winding up of the company under this Sub-Part has been completed.

(2) The company shall cause the liquidator's notice referred to in subsection (1) to be filed with the Registrar by the company's registered agent.

(3) Upon receiving a liquidator's notice filed under subsection (1), the Registrar shall –

- (a) strike the name of the company off the Register; and
- (b) issue a certificate of dissolution in the approved form certifying that the company has been dissolved.

(4) Where the Registrar issues a certificate of dissolution under subsection (3), the dissolution of the company is effective from the date of the issue of the certificate.

(5) Immediately following the issue by the Registrar of a certificate of dissolution under subsection (3), the Registrar shall cause to be published in the *Gazette*, a notice that the company has been struck off the Register and dissolved.

## **Sub-Part III – Voluntary Winding Up of Insolvent Company**

### **Application of this Sub-Part**

**298.** Subject to the provisions of this Sub-Part, a company may be voluntarily wound up under this Sub-Part if it is insolvent.

### **Meaning of “insolvent”**

**299.** For the purposes of this Sub-Part and Sub-Part IV (*Compulsory Winding Up by Court*), a company is insolvent if –

- (a) the value of its liabilities exceeds, or will exceed, its assets; or
- (b) it is, or will be, unable to pay its debts as they fall due.

### **Where company found to be insolvent**

**300.**(1) If at any time the liquidator of a company in voluntary liquidation under Sub-Part II (*Voluntary Winding Up of Solvent Company*) is of the opinion that the company is insolvent, he shall forthwith –

- (a) cease carrying out the voluntary winding up under Sub-Part II; and
- (b) provide a written notice thereof to each member and known creditor of the company.

(2) A liquidator who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding US\$10,000.

### **Commencement of voluntary winding up of insolvent company**

**301.**(1) Subject to subsection (2), a company may be wound up voluntarily under this Sub-Part if the company passes a special resolution that it be wound up voluntarily.

(2) A voluntary winding up resolution under subsection (1) shall not be passed unless –

- (a) the resolution –
  - (i) appoints a liquidator or two or more joint liquidators to wind up the company’s affairs and to realise and distribute its assets;
  - (ii) specifies that the company is insolvent for the purposes of this Sub-Part and that the company’s directors have provided the company’s members with a declaration of insolvency under paragraph (b); and
  - (iii) specifies that the proposed voluntary winding up is under this Sub-Part; and
- (b) the company’s directors have provided the company’s members with a declaration of insolvency –
  - (i) stating that the company is insolvent; and
  - (ii) stating the company’s assets and liabilities as at the latest practical date before the making of the statement.

- (3) A liquidator shall not be appointed by a resolution passed under this section if –
- (a) a liquidator of the company has been appointed by the Court;
  - (b) an application has been made to the Court to appoint a liquidator of the company and the application has not been dismissed; or
  - (c) the person to be appointed liquidator has not consented to his appointment.
- (4) A resolution under this section is void and of no effect if –
- (a) in contravention of subsection (2), it does not appoint a liquidator; or
  - (b) it appoints a person as liquidator in the circumstances referred to in subsection (3) or in contravention of section 284 (*Eligibility to be liquidator*).
- (5) Subject to the provisions of this section, a voluntary winding up under this Sub-Part commences upon the passing of the special resolution for voluntary winding up under subsection (1).

#### **Application of certain provisions of Sub-Part II to this Sub-Part**

**302.** The following sections from Sub-Part II shall apply *mutatis mutandis* in relation to a liquidator appointed under this Sub-Part –

- (a) section 284 (*Eligibility to be liquidator*);
- (b) section 287 (*Effect of commencement of voluntary winding up*);
- (c) section 288 (*Duties of liquidator*);
- (d) section 289 (*Powers of liquidator*);
- (e) section 290 (*Vacancy in office of liquidator*);
- (f) section 291 (*Resignation of liquidator*);
- (g) section 292 (*Removal of liquidator*), except that the words “resolution of members” in section 292(1)(a) shall be treated as having been omitted and replaced with the words “resolution of creditors”;
- (h) section 293 (*Rescission of voluntary winding up*), except that the words “ordinary” in section 293(1)(a) shall be treated as having been omitted and replaced with the words “resolution of creditors”;
- (i) section 294 (*Termination of voluntary winding up by the Court*); and
- (j) section 295 (*Power to apply to Court for directions*).

#### **Filing with Registrar**

**303.**(1) Within 21 days from the date of passing a special resolution for the voluntary winding up of a company under this Sub-Part, the company shall file with the Registrar a certified copy or extract of the voluntary winding up resolution, accompanied by the specified fee set out in Part II of the Second Schedule.

(2) The company shall cause the certified copy or extract of the voluntary winding up resolution referred to in subsection (1) to be –

- (a) certified as a true copy by the company's registered agent; and
- (b) filed with the Registrar by the company's registered agent.

(3) Contravention of subsection (1) shall render void and of no effect –

- (a) the voluntary winding up special resolution; and
- (b) the appointment of the or each liquidator.

#### **Notice of voluntary winding up**

**304.** The liquidator of a company shall within 40 days of the commencement of the voluntary winding up under this Sub-Part give notice in the approved form of his appointment and of the commencement of the company's voluntary winding up under this Sub-Part by publication in –

- (a) the *Gazette* or a newspaper published and in daily circulation in Seychelles; and
- (b) unless the company has no principal place of business outside Seychelles, a newspaper published and circulating in the place of the company's principal place of business outside Seychelles.

#### **Liquidator to call first meeting of creditors**

**305.**(1) The liquidator of a company shall, as soon as practicably possible after his appointment under this Sub-Part, call a meeting of the creditors of the company (referred to in this section as "the first creditors' meeting") by, not less than 14 days before the date upon which the meeting is to be held, –

- (a) sending a notice of the meeting to every creditor; and
- (b) advertising the meeting in –
  - (i) the *Gazette* or a newspaper published and in daily circulation in Seychelles; and
  - (ii) unless the company has no principal place of business outside Seychelles, a newspaper published and circulating in the place of the company's principal place of business outside Seychelles.

- (2) Before the date of the first creditors' meeting, the liquidator shall, at the request of a creditor, furnish that creditor with –
- (a) a list of the creditors of the company known to the liquidator; and
  - (b) such other information concerning the affairs of the company as the creditor may reasonably require and that the liquidator is reasonably able to provide.
- (3) The liquidator shall attend the first creditors meeting and, if appointed by the members, shall report to the meeting on any exercise by him of his powers since his appointment.
- (4) At the first creditors' meeting, the creditors may –
- (a) in the case of a liquidator appointed by the members, appoint another liquidator in his place; or
  - (b) appoint a creditors' committee.
- (5) Contravention of subsections (1), (2) or (3) shall constitute an offence and the liquidator is liable on conviction to a fine not exceeding US\$10,000.

#### **Examination of liquidator's accounts by creditors**

**306.**(1) In a winding up under this Sub-Part, when the liquidator has realised the company's assets he shall subject to this section –

- (a) arrange a creditors' meeting for the purpose of examining and verifying the financial statements and creditors' claims and preferences; and
  - (b) fix a date for the distribution of the company's assets.
- (2) In relation to a creditors meeting under subsection (1)(a), the liquidator of a company shall not less than 14 days before the date upon which the meeting is to be held –
- (a) send a notice of the meeting to every creditor; and
  - (b) give notice of the meeting by advertising it in –
    - (i) the *Gazette* or a newspaper published and in daily circulation in Seychelles; and
    - (ii) unless the company has no principal place of business outside Seychelles, a newspaper published and circulating in the place of the company's principal place of business outside Seychelles.
- (3) In relation to a proposed distribution under subsection (1)(b), the liquidator of a company shall not less than 14 days before the date upon which the distribution is to be made –
- (a) send a notice of the distribution to every creditor; and

- (b) give notice of the distribution by advertising it in –
  - (i) the *Gazette* or a newspaper published and in daily circulation in Seychelles; and
  - (ii) unless the company has no principal place of business outside Seychelles, a newspaper published and circulating in the place of the company's principal place of business outside Seychelles.

(4) A member of the company shall have the right to attend the meeting referred to in subsection (1)(a).

(5) Subject to subsections (2) (3), (6) and (7), after holding the meeting referred to in subsection (1)(a), the liquidator shall distribute such part of the company's assets as he thinks fit in relation to any claim.

(6) Subsection (5) is without prejudice to the right of a liquidator, director, member or creditor of a company to apply to the Court for directions concerning any aspect of the winding up, including in relation to a creditor's claim.

(7) If there is a pending application before the Court in relation to any aspect of the winding up, including in relation to a creditor's claim, the liquidator shall not pay or discharge any liabilities and obligations of the company –

- (a) until determination of the application by the Court; or
- (b) before then, with the written consent of all creditors or with the leave of the Court.

### **Statement of account of the winding up prior to dissolution**

**307.**(1) As soon as the company's affairs are fully wound up under this Sub-Part, the liquidator shall prepare or cause to be prepared a written statement of account of the winding up and the actions and transactions of the liquidator, including details of any sums paid or received and of disposal of the company's property.

(2) The liquidator shall provide a copy of his statement of account referred to in subsection (1) to the members of the company.

### **Dissolution**

**308.**(1) Upon completion of a voluntary winding up under this Sub-Part and compliance by the company's liquidator with section 307, the company shall file with the Registrar, accompanied by the specified fee set out in Part II of the Second Schedule, a notice by the company's liquidator in the approved form that section 307 has been complied with and that the voluntary winding up of the company under this Sub-Part has completed.

(2) The company shall cause the liquidator's notice referred to in subsection (1) to be filed with the Registrar by the company's registered agent.

- (3) Upon receiving a liquidator's notice under subsection (1), the Registrar shall –
- (a) strike the company off the Register; and
  - (b) issue a certificate of dissolution in the approved form certifying that the company has been dissolved.
- (4) Where the Registrar issues a certificate of dissolution under subsection (3), the dissolution of the company is effective from the date of the issue of the certificate.
- (5) Immediately following the issue by the Registrar of a certificate of dissolution under subsection (3), the Registrar shall cause to be published in the *Gazette*, a notice that the company has been struck off the Register and dissolved.

#### **Sub-Part IV - Compulsory Winding Up by Court**

##### **Application for compulsory winding up**

**309.**(1) If any of the circumstances specified in section 310 apply to a company, an application may be made to the Court, by the company, by any director, member, creditor or liquidator thereof or by any other interested party, for the compulsory winding up of the company.

(2) An order made by the Court on an application under subsection (1) operates for the benefit of all the company's creditors in the same way as if the application had been presented by them.

##### **Circumstances in which Court may wind company up**

**310.** A company may be wound up by the Court if –

- (a) the company has by special resolution resolved that the company be wound up by the Court;
- (b) the company does not commence business within one year beginning on the date of its incorporation;
- (c) the company suspends business for a whole year;
- (d) the company has no members (other than the company itself where it holds its own shares as treasury shares);
- (e) the company is insolvent within the meaning given in section 299;
- (f) the company has failed to comply with a direction of the Registrar under section 31 to change its name; or
- (g) the Court is of the opinion that it is just and equitable that the company should be wound up.



### **Authority may be heard on winding up application**

**311.**(1) An application for an order for the compulsory winding up of a company referred to in subsection (2) shall not be heard unless a copy of the application is served on the Authority not less than 7 days (or such other period as the Court may, in its absolute discretion, direct) before the day of the hearing of the application.

- (2) The companies mentioned in subsection (1) are –
- (a) a company operating as a mutual fund under the Mutual Fund and Hedge Fund Act;
  - (b) a protected cell company; and
  - (c) companies of any other class or description prescribed by the Authority for the purposes of this section.
- (3) At the hearing of the application the Authority may make representations to the Court which the Court shall take into account in deciding whether or not, and in what manner, to exercise its powers under this Part.

### **Ground on which Registrar, Authority or Minister may make winding up application**

**312.**(1) A company may be wound up by the Court if the Court is of the opinion that it is desirable that the company should be wound up for the protection of the public or of the reputation of Seychelles.

- (2) An application under subsection (1) for the compulsory winding up of a company may be made to the Court only by the Registrar, the Authority or the Minister.
- (3) An order made by the Court on an application under subsection (1) operates for the benefit of all the company's creditors in the same way as if the application had been presented by them.
- (4) This section is in addition to and not in derogation from the other provisions of this Part and any other provision of law relating to winding up.

### **Power to restrain proceedings and appoint provisional liquidator**

**313.** On the making of an application for the compulsory winding up of a company or at any time thereafter, any creditor of the company may apply to the Court for an order –

- (a) restraining, on such terms and conditions as the Court thinks fit, any action or proceeding pending against the company;
- (b) appointing a provisional liquidator to ascertain the company's assets and liabilities, manage its affairs and do all acts authorised by the Court.

### **Powers of Court on hearing application**

**314.** On hearing an application for the compulsory winding up of a company, the Court may grant the application on such terms and conditions as it thinks fit, dismiss the application, or make such other order as it thinks fit.

### **Appointment of liquidator in compulsory winding up**

**315.**(1) When making a compulsory winding up order, the Court shall appoint such liquidator as it thinks fit, who may be a liquidator nominated by the applicant.

(2) The Court may, whether before or after appointing a person to the office of liquidator, order that monies received by him be paid into an account specified by the Court.

(3) Subject to the terms of the liquidator's appointment, a liquidator appointed by the Court shall –

- (a) take possession of, protect and realise the assets of the company;
- (b) identify all creditors of and claimants against the company;
- (c) pay or provide for the payment of, or to discharge, all claims, debts, liabilities and obligations of the company; and
- (d) having done so, distribute any surplus assets of the company amongst the members according to their respective entitlements in accordance with the company's memorandum and articles.

(4) Where any notice or other document is required under this Sub-Part to be filed by a liquidator, if the liquidator is not resident in Seychelles, the document may only be filed by –

- (a) a person licensed to provide international corporate services under the International Corporate Service Providers Act (Cap 275); or
- (b) a legal practitioner in Seychelles,

acting on behalf of the liquidator.

### **Liquidator's remuneration**

**316.** The fees of a liquidator appointed by the Court shall be fixed by the Court.

### **Filing with Registrar**

**317.**(1) Within 21 days after the day on which a compulsory winding up order is made by the Court under this Sub-Part, the company shall file with the Registrar a copy of the compulsory winding up order accompanied by the specified fee set out in Part II of the Second Schedule.

(2) The company shall cause the copy compulsory winding up order referred to in subsection (1) to be filed with the Registrar by the company's registered agent.

### **Notice of compulsory winding up**

**318.** The liquidator of a company that is being compulsorily wound up shall, within 40 days of the compulsory winding up order, give notice of his appointment as liquidator and of the company's compulsory winding up by publication in –

- (a) the *Gazette* or a newspaper published and in daily circulation in Seychelles; and
- (b) unless the company has no principal place of business outside Seychelles, a newspaper published and circulating in the place of the company's principal place of business outside Seychelles.

### **Liquidator to call first meeting of creditors**

**319.(1)** The liquidator of a company shall, as soon as practicably possible after his appointment under this Sub-Part, call a meeting of the creditors of the company (referred to in this section as "the first creditors' meeting") by, not less than 14 days before the date upon which the meeting is to be held, –

- (a) sending a notice of the meeting to every creditor; and
- (b) advertising the meeting in –
  - (i) the *Gazette* or a newspaper published and in daily circulation in Seychelles; and
  - (ii) unless the company has no principal place of business outside Seychelles, a newspaper published and circulating in the place of the company's principal place of business outside Seychelles.

(2) Before the date of the first creditors' meeting, the liquidator shall, at the request of a creditor, furnish that creditor with –

- (a) a list of the creditors of the company known to the liquidator; and
- (b) such other information concerning the affairs of the company as the creditor may reasonably require and that the liquidator is reasonably able to provide.

(3) The liquidator shall attend the first creditors meeting and, if appointed by the members, shall report to the meeting on any exercise by him of his powers since his appointment.

(4) At the first creditors' meeting, the creditors may –

- (a) in the case of a liquidator appointed by the members, appoint another liquidator in his place; or
- (b) appoint a creditors' committee.

(5) Contravention of subsections (1), (2) or (3) shall constitute an offence and the liquidator is liable on conviction to a fine not exceeding US\$10,000.

## **Consequences of appointment of liquidator and compulsory winding up order**

**320.**(1) Subject to subsection (2), with effect from the appointment of a liquidator in a compulsory winding up of a company –

- (a) the liquidator has custody and control of the assets of the company; and
  - (b) the directors of the company remain in office but they cease to have any powers, functions or duties, except to the extent that the liquidator or the Court authorises their continuance.
- (2) Subsection (1)(a) does not affect the right of a secured creditor to take possession of and realise or otherwise deal with assets of the company over which the creditor has a security interest.
- (3) A person who purports to exercise any powers of a director at a time when, pursuant to subsection (1), those powers have ceased and their exercise has not been authorised by the liquidator or the Court, commits an offence and is liable on conviction to a fine not exceeding US\$10,000.
- (4) On the making of a compulsory winding up order, the company shall cease to carry on business except in so far as may be expedient for the beneficial winding up of the company.
- (5) Subject to subsection (4), the company's corporate state and powers shall, notwithstanding anything to the contrary in its memorandum and articles, continue until dissolution.
- (6) A company which contravenes subsection (4) commits an offence and is liable on conviction to a fine not exceeding US\$10,000.

## **Powers of a liquidator appointed by the Court**

**321.**(1) Subject to subsection (2), a liquidator appointed by the Court shall have the following powers –

- (a) to take custody of the assets of the company and, in connection therewith, to register any property of the company in the name of the liquidator or that of his nominee;
- (b) to sell any assets of the company at public auction or by private sale without any notice;
- (c) to collect the debts and assets due or belonging to the company;
- (d) to borrow money from any person for any purpose that will facilitate the winding-up and dissolution of the company and to pledge or mortgage any property of the company as security for any such borrowing;
- (e) to negotiate and settle any claim, debt, liability or obligation of the company, including to make any compromise or arrangement with creditors or persons claiming

to be creditors or having or alleging themselves to have any claim of any nature against the company;

(f) to bring or defend, in the name and on behalf of the company or in the name of the liquidator, any action, suit, prosecution or other legal proceedings, whether civil or criminal;

(g) to retain legal advisors, accountants and other advisors and appoint agents;

(h) to carry on the business of the company, as the liquidator may determine to be necessary or to be in the best interests of the creditors or members of the company;

(i) to execute any contract, agreement or other instrument in the name of and on behalf of the company or in the name of the liquidator;

(j) to make calls of capital;

(k) to pay any creditors in accordance with the provisions of this Part;

(l) to do and execute all such other things as may be necessary for winding up the affairs of the company and distributing its assets; and

(m) to do any other act authorised by the Court.

(2) Subsection (1) is subject to –

(a) an order of the Court in relation to the liquidator's powers, including an order requiring the liquidator to obtain the Court's sanction prior to the exercise of any specified power; and

(b) the rights of any secured creditor in relation to any assets of the company over which the creditor has a security interest.

### **Resignation, removal or death of liquidator**

**322.**(1) In a compulsory winding up –

(a) a liquidator may resign from office or may be removed from office by the Court; and

(b) where a vacancy occurs in the office of liquidator by reason of resignation, removal or death, the Court may fill the vacancy.

(2) Where the Court makes an order under subsection (1), the applicant shall file a copy of the order with the Registrar.

(3) Upon receipt of a copy order under subsection (2), the Registrar shall forthwith send a copy of the order to the registered agent of the company.

### **Examination of liquidator's accounts by creditors**

**323.**(1) In a compulsory winding up, when the liquidator has realised the company's assets he shall subject to this section –

(a) arrange a creditors' meeting for the purpose of examining and verifying the financial statements and creditors' claims and preferences; and

(b) fix a date for the distribution of the company's assets.

(2) In relation to a creditors meeting under subsection (1)(a), the liquidator of a company shall not less than 14 days before the date upon which the meeting is to be held –

(a) send a notice of the meeting to every creditor; and

(b) give notice of the meeting by advertising it in –

(i) the *Gazette* or a newspaper published and in daily circulation in Seychelles; and

(ii) unless the company has no principal place of business outside Seychelles, a newspaper published and circulating in the place of the company's principal place of business outside Seychelles.

(3) In relation to a proposed distribution under subsection (1)(b), the liquidator of a company shall not less than 14 days before the date upon which the distribution is to be made –

(a) send a notice of the distribution to every creditor; and

(b) give notice of the distribution by advertising it in –

(i) the *Gazette* or a newspaper published and in daily circulation in Seychelles; and

(ii) unless the company has no principal place of business outside Seychelles, a newspaper published and circulating in the place of the company's principal place of business outside Seychelles.

(4) A member of the company shall have the right to attend the meeting referred to in subsection (1)(a).

(5) Subject to subsections (2) (3), (6) and (7), after holding the meeting referred to in subsection (1)(a), the liquidator shall distribute such part of the company's assets as he thinks fit in relation to any claim.

(6) Subsection (5) is without prejudice to the right of a liquidator or a director, member or creditor of a company to apply to the Court for directions concerning any aspect of the winding up, including in relation to a creditor's claim.

(7) If there is a pending application before the Court in relation to any aspect of the winding up, including in relation to a creditor's claim, the liquidator shall not pay or discharge any liabilities and obligations of the company –

- (a) until determination of the application by the Court; or
- (b) before then, with the written consent of all creditors or with the leave of the Court.

### **Power to apply to Court for directions**

**324.** A liquidator or a director, member or creditor of a company which is being or which is to be compulsorily wound up may apply to the Court for directions concerning any aspect of the winding up; and upon such an application the Court may make such order as it thinks fit.

### **Statement of account of the compulsory winding up prior to dissolution**

**325.(1)** As soon as the company's affairs are fully wound up, the liquidator shall prepare or cause to be prepared a written statement of account of the winding up, giving details of the conduct of the liquidation and the actions and transactions of the liquidator, including the disposal of the company's property.

(2) The liquidator shall provide a copy of his statement of account referred to in subsection (1) to –

- (a) the Court; and
- (b) the members of the company.

(3) The copy of the statement of account provided to the Court under subsection (2) shall not be open to public inspection.

### **Dissolution**

**326.(1)** Upon completion of a winding up under this Sub-Part and compliance by the company's liquidator with section 325, the company shall file with the Registrar, accompanied by the specified fee set out in Part II of the Second Schedule, a notice by the company's liquidator in the approved form that section 325 has been complied with and that the compulsory winding up of the company has completed.

(2) The company shall cause the liquidator's notice referred to in subsection (1) to be filed with the Registrar by the company's registered agent.

(3) Upon receiving a liquidator's notice under subsection (1), the Registrar shall –

- (a) strike the company off the Register; and
- (b) issue a certificate of dissolution in the approved form certifying that the company has been dissolved.

(4) Where the Registrar issues a certificate of dissolution under subsection (3), the dissolution of the company is effective from the date of the issue of the certificate.

(5) Immediately following the issue by the Registrar of a certificate of dissolution under subsection (3), the Registrar shall cause to be published in the *Gazette*, a notice that the company has been struck off the Register and dissolved.

## **Sub-Part V - Provisions of General Application in Winding Up**

### **Interpretation**

**327.** For the purposes of this Sub-Part –

- (a) “charge” means as defined in section 176;
- (b) “privilege” means a privilege pursuant to articles 2102 or 2103 of the Civil Code of Seychelles Act;
- (c) a “secured creditor” is a creditor of a company who –
  - (i) has a charge over any of the company’s assets; or
  - (ii) is entitled to a privilege over any of the company’s assets;
- (d) “secured assets”, with respect to a charge or privilege, means assets over which the charge or privilege exists.

### **Liquidator to call meetings of creditors**

**328.(1)** The liquidator shall call a meeting of the creditors of a company in liquidation if –

- (a) a meeting is requisitioned by the creditors of the company in accordance with subsection (2); or
- (b) he is directed to do so by the Court.

(2) A creditors’ meeting may be requisitioned in writing by not less than ten per cent in value of the creditors of the company.

### **Distribution of company assets**

**329.(1)** Subject to the provisions of –

- (a) this Act, including, without limitation, sections 330, 331 and 332;
- (b) any agreement between the company and any creditor thereof as to the subordination of the debts due to that creditor to the debts due to the company’s other creditors; and
- (c) any agreement between the company and any creditor thereof as to set-off,



the company's assets in a winding up shall be realised and shall be applied in satisfaction of the company's debts and liabilities on a *pari passu* basis.

(2) Any surplus assets of the company shall thereafter be distributed (unless the memorandum or articles provide otherwise) among the members according to their respective rights and interests in the company.

### **Expenses of winding up**

**330.** All costs, charges and expenses properly incurred in the winding up of a company, including the remuneration of the liquidator, are payable from the company's assets in priority to all other claims.

### **Secured creditors**

**331.**(1) A secured creditor has a security interest in secured assets.

(2) Subject to subsections (3) and (4), where a company is being wound up or becomes insolvent, the amount due to a secured creditor is payable from the secured assets or the proceeds of sale thereof, in priority to all other claims.

(3) Priority among secured creditors with security over the same secured assets shall be determined in accordance with sections 184, 185 and 186.

(4) Once the secured assets, over which a secured creditor has a security interest, has been exhausted but the liabilities owed by the company to the secured creditor have not been paid and discharged in full, the secured creditor becomes an unsecured creditor and ranks *pari passu* with other unsecured creditors.

(5) In the winding up of a company, any privilege under articles 2101 of the Civil Code of Seychelles Act shall be deemed to be void, and a creditor claiming such rights shall be deemed to be an unsecured creditor.

### **Preferential payments**

**332.**(1) In this section "relevant date" means –

(a) with respect to a company ordered to be wound up compulsorily which has not previously commenced to be wound up voluntarily, the date of the winding up order; and

(b) in any other case, the date of the commencement of the winding up.

(2) Subject to sections 330 and 331 and subsection (3), in a winding up of a company there shall be paid in priority to all other debts –

(a) all tax, fees or penalties (if any) payable by the company to the Registrar or Authority under this Act, and having become due and payable within twelve months next before the relevant date; and

- (b) all wages, salary and other emoluments of any employee of the company, not exceeding US\$6,000 in aggregate per employee, in respect of services rendered to the company during three months before the relevant date, provided that an employee owed an amount exceeding US\$6,000 may claim the excess amount as a non-priority debt together with any other non-priority unsecured creditors of the company.
- (3) The debts referred to in subsection (2) shall –
- (a) rank equally among themselves and be paid in full unless the assets are insufficient to meet them in which case they shall abate in equal proportions; and
- (b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.
- (4) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the debts referred to in subsection (1) shall be discharged forthwith so far as the assets are sufficient to meet them.
- (5) Where any payment on account of salary or other emoluments has been made to any employee of a company out of money advanced by some person for that purpose, that person shall, in a winding up, have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which that employee would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

#### **No share transfers after commencement of winding up**

**333.** Any transfer of a company's shares made after the commencement of a winding up, other than a transfer made to or with the sanction of the liquidator, is void.

#### **Company to be notified of winding up application**

**334.** The Court shall not hear an application for the winding up of a company under this Act unless satisfied that the company has been notified of the date, time and place of the hearing of the application.

#### **Hearing in camera**

**335.** An application to the Court under this Part and any subsequent proceedings, including applications for directions, shall be heard *in camera* unless the Court orders otherwise.

#### **Company not to undertake business once dissolved**

**336.(1)** Immediately upon the dissolution of a company (whether by means of a voluntary winding up, a compulsory winding up or otherwise), the company –

- (a) ceases to exist as a legal entity incorporated or continued under this Act; and

(b) shall not undertake business or contract debts or obligations.

(2) Any member of a company who causes or permits the company to contravene subsection (2)(b) is personally liable in respect of any debt or obligation undertaken.

### **Remedy against delinquent officers**

**337.**(1) Where in the course of the winding up of a company it appears that any person described in subsection (2) –

- (a) has appropriated or otherwise misapplied any of the company's assets;
- (b) has become personally liable for any of the company's debts or liabilities; or
- (c) has otherwise been guilty of any misfeasance or breach of fiduciary duty in relation to the company,

the liquidator or any creditor or member of the company may apply to the Court for an order under this section.

(2) The persons mentioned in subsection (1) are –

- (a) any past or present officer of the company;
- (b) any other person who, directly or indirectly, is or has been in any way concerned in or has participated in the promotion, formation or management of the company.

(3) On an application under subsection (1), the Court may examine the conduct of the person concerned and may order him –

- (a) to repay, restore or account for such money or such property;
- (b) to contribute such sum to the company's assets;
- (c) to pay interest upon such amount, at such rate and from such date,

as the Court thinks fit in respect of the default, whether by way of indemnity or compensation or otherwise.

### **Improper preferences in or prior to winding up**

**338.**(1) A creditor, member or the liquidator of a company may apply to the Court for an order under this section if the company has given a preference to any person at any time after the commencement of a period of 6 months immediately preceding the relevant date.

(2) For the purposes of this section –

- (a) a company gives a preference to a person if –

- (i) that person is one of the company's creditors or is a surety or guarantor for any of the company's debts or other liabilities; and
  - (ii) the company does anything, or permits anything to be done, which improves that person's position in the company's liquidation;
- (b) the relevant date is the earlier of –
  - (i) the date of any application to the Court for the compulsory winding up of the company; or
  - (ii) the date of the passing by the company of any resolution of members for the voluntary winding up of the company.
- (3) If on an application under subsection (1) the Court is of opinion that –
  - (a) the company was at the time of giving the preference, or became as a result of giving the preference, insolvent within the meaning of section 299; and
  - (b) the company was influenced in deciding to give a preference by a desire to produce the effect mentioned in subsection (2)(a)(ii),

the Court may make such order as it thinks fit for restoring the position to what it would have been if the company had not given the preference.

- (4) Without prejudice to the generality of subsection (3), but subject to subsection (5), an order under this section may –
  - (a) require any property transferred in connection with the giving of the preference to be vested in the company;
  - (b) require any property to be so vested if it represents in any person's hands the application of either the proceeds of sale of property so transferred or money so transferred;
  - (c) release or discharge (in whole or in part) any security given by the company;
  - (d) require any person to pay, in respect of benefits received by him from the company, such sums to the liquidator as the Court may direct;
  - (e) provide for any surety or guarantor whose obligations to any person were released, reduced or discharged by the giving of the preference to be under such new or revived obligations to that person as the Court thinks fit;
  - (f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order;
  - (g) provide for the extent to which any person whose property is vested by the order in the company, or on whom obligations are imposed by the order, is to be able to claim

in the liquidation for debts or other liabilities which arose from, or were released, reduced or discharged by, the giving of the preference.

(5) An order under this section may affect the property of or impose obligations on any person, whether or not he is the person to whom the preference was given, but shall not –

(a) prejudice any interest in property acquired from a person other than the company in good faith, for value and without notice of the existence of circumstances enabling an order under this section to be applied for;

(b) prejudice an interest deriving from such an interest; or

(c) require a person to pay a sum to the liquidator in respect of a benefit received by that person at a time when he was not a creditor of the company, and received by him in good faith, for value and without notice of the existence of circumstances enabling an order under this section to be applied for.

(6) In the application of this section to any case where the person given a preference is connected with the company –

(a) the reference in subsection (1) to 6 months is to be read as a reference to 2 years; and

(b) the company is presumed, unless the contrary is shown, to have been influenced in deciding to give the preference by such desire as is mentioned in subsection (3)(b).

(7) For the purposes of subsection (6) a person is “connected” with the company at any time if the company knew or ought to have known at that time that –

(a) that person had any significant direct or indirect proprietary, financial or other interest in or connection with the company (other than as a creditor, surety or guarantee), or

(b) another person had any such interest in or connection with both that person and the company.

(8) The fact that something is done or permitted pursuant to a Court order does not, without more, prevent it from being a preference.

(9) This section is without prejudice to any other remedy.

## **PART XVIII – FRAUDULENT AND WRONGFUL TRADING**

### **Offence of fraudulent trading**

**339.** If any business of a company is carried on with intent to defraud creditors (whether of the company or of any other person), or for any fraudulent purpose, every person who is knowingly a party to the carrying on of the business in that manner commits an offence and is liable on conviction to a fine not exceeding US\$100,000 or to imprisonment for a term not exceeding 5 years or to both.

### **Civil liability for fraudulent trading**

**340.**(1) If in the course of –

- (a) the winding up of a company; or
- (b) the winding up of the business of or attributable to the cell of a protected cell company in accordance with a receivership order or administration order,

it appears that any business of the company or cell (as the case may be) has been carried on with intent to defraud creditors (whether of the company, of the cell or of any other person), or for any fraudulent purpose, subsection (2) has effect.

(2) The Court, on the application of –

- (a) the liquidator, administrator, or any creditor or member of the company; or
- (b) the administrator, receiver, or any creditor or member of the cell of the protected cell company,

may declare that any persons who were knowingly parties to the carrying on of the business in the manner mentioned above shall be liable to make such contributions to the company's or cell's (as the case may be) assets as the Court thinks proper.

### **Civil liability of directors for wrongful trading**

**341.**(1) Subject to subsection (3), if in the course of the winding up of a company it appears that subsection (2) applies to a person, the Court, on the application of the liquidator or any creditor or member of the company, may declare that that person shall be liable to make such contribution to the company's assets as the Court thinks proper.

(2) This subsection applies in relation to a person if –

- (a) the company has gone into insolvent liquidation;
- (b) at some time before the commencement of the winding up of the company, that person knew or ought to have concluded that there was no reasonable prospect of the company avoiding going into insolvent liquidation; and
- (c) that person was a director of the company at that time.

(3) The Court shall not make a declaration under this section in respect of any person if it is satisfied that, after the condition specified in subsection (2)(b) was first fulfilled in relation to him, he took every step with a view to minimising the potential loss to the company's creditors that he ought to have taken.

(4) For the purposes of subsections (2) and (3), the facts which a director of a company ought to know, the conclusions which he ought to reach and the steps which he ought to take are those which would be known, reached or taken by a director complying with section 144.

(5) For the purposes of this section a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.

(6) This section is without prejudice to section 340.

### **Civil liability of directors for wrongful trading: cells of protected cell company**

**342.**(1) Subject to subsection (3), if in the course of the winding up of the business of or attributable to a cell of a protected cell company in accordance with a receivership order or administration order, it appears that subsection (2) applies to a person, the Court, on the application of the administrator, receiver, or any creditor or member of the cell, may declare that that person shall be liable to make such contribution to the cell's assets as the Court thinks proper.

(2) This subsection applies in relation to a person if –

(a) the cell has gone into insolvent liquidation;

(b) at some time before the commencement of the winding up, that person knew or ought to have concluded that there was no reasonable prospect of the cell avoiding insolvent liquidation; and

(c) that person was a director of the protected cell company at that time.

(3) The Court shall not make a declaration under this section in respect of any person if it is satisfied that, after the condition specified in subsection (2)(b) was first fulfilled in relation to him, he took every step with a view to minimising the potential loss to the cell's creditors that he ought to have taken.

(4) For the purposes of subsections (2) and (3), the facts which a director of a protected cell company ought to know, the conclusions which he ought to reach and the steps which he ought to take are those which would be known, reached or taken by a director complying with section 144.

(5) For the purposes of this section a cell goes into insolvent liquidation if the cellular assets attributable to the cell (and, where the company has entered into a recourse agreement, the assets liable under that agreement) are insufficient to discharge the claims of creditors in respect of that cell and the expenses of the receivership order or administration order (as the case may be).

(6) This section is without prejudice to section 340.

### **Proceedings under sections 340, 341 or 342**

**343.**(1) On the hearing of an application under section 340, 341 or 342, the applicant may himself give evidence or call witnesses.

(2) Where under section 340, 341 or 342 the Court makes a declaration, it may give such further directions as it thinks proper for giving effect thereto; and in particular the Court may –

(a) provide for the liability of any person under the declaration to be a charge on –

(i) any debt or obligation due from the company or cell to him;

(ii) any mortgage, charge, pledge, lien or other security on assets of the company or cell held by or vested in him;

(iii) any interest in any mortgage charge, hypothecation, lien or other security on assets of the company or cell held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf; and

(b) make such further orders as may be necessary for enforcing any charge imposed under this subsection.

(3) For the purposes of subsection (2)(a) “assignee” –

(a) includes a person to whom or in whose favour, by the directions of the person made liable, the debt, obligation, mortgage, charge, pledge, lien or other security was created, issued or transferred or the interest created, but

(b) does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(4) Where the Court makes a declaration under section 340, 341 or 342 in relation to a person who is a creditor of the company or cell of the protected cell company (as the case may be), it may direct that the whole or any part of any debt owed by the company or cell to that person and any interest thereon shall rank in priority after all other debts owed by the company or cell and after any interest on those debts.

(5) Sections 340, 341 or 342 have effect notwithstanding that the person concerned may be criminally liable in respect of matters on the ground of which the declaration under the section is to be made.

## **PART XIX – REGISTRAR**

### **Registrar of International Business Companies**

**344.** Subject to the provisions of this Act, the Registrar is responsible for –

(a) performing the functions of the Registrar under this Act; and

(b) the administration of this Act.

### **Official seal**



**345.** The Registrar shall cause to be prepared a seal to be known as the Official Seal for use by the Registrar in the authentication or other issue of documents required for or in connection with companies incorporated or continued under this Act.

## **Registers**

**346.**(1) The Registrar shall maintain –

- (a) a Register of International Business Companies containing the information referred to in subsection (2);
- (b) with respect to each company in accordance with section 181(3), a Register of Registered Charges; and
- (c) a Register of Disqualification Orders in accordance with section 271.

(2) The Register of International Business Companies maintained by the Registrar under subsection (1)(a) shall contain –

- (a) the name of each company incorporated or continued, or converted into a company, under this Act;
- (b) the registration number of each company incorporated or continued, or converted into a company, under this Act;
- (c) the date on which each company was incorporated or continued, or converted into a company, under this Act;
- (d) the address of each company's registered office;
- (e) the date on which any company is struck off the Register of International Business Companies;
- (f) the date on which any company is restored to the Register of International Business Companies; and
- (g) subject to subsection (4), the name and address of each company's directors; and
- (h) such other information as the Registrar deems fit.

(3) The registers maintained by the Registrar under subsection (1) and the information contained in any document filed may be kept in such manner as the Registrar considers fit including, either wholly or partly, by means of a device or facility –

- (a) that records or stores information magnetically, electronically or by other means; and

(b) that permits the information recorded or stored to be inspected and reproduced in legible and usable form.

(4) In the event that a copy of a company's register of directors has not been filed with the Registrar under section 152, the Registrar shall not be required to specify the name and address of the company's directors in the Register of International Business Companies maintained by it under subsection (1)(a).

### **Inspection of documents filed**

**347.**(1) Except as otherwise provided in this Act or any other written law of Seychelles, a person may during ordinary office hours on payment of the specified fee set out in Part II of the Second Schedule –

- (a) inspect the Registers maintained by the Registrar under section 346(1); and
- (b) inspect any qualifying document filed with the Registrar.

(2) For the purposes of this section and section 348(1)(b), a document is a qualifying document if –

- (a) this Act or any regulations made under this Act, or another enactment, require or expressly permit the document to be filed with the Registrar; and
- (b) the document complies with the requirements of, and is filed with the Registrar in accordance with, this Act, any regulations made under this Act or the other enactment that requires or permits the document to be filed with the Registrar.

### **Copies of documents filed**

**348.**(1) Except as otherwise provided in this Act or any other written law of Seychelles, a person may request, and the Registrar shall provide on payment of the specified fee set out in Part II of the Second Schedule, a certified or uncertified copy –

- (a) certificate of incorporation, merger, consolidation, arrangement, continuation, discontinuance, conversion, dissolution or good standing of a company; or
- (b) of any qualifying document or any part of any qualifying document filed with the Registrar.

(2) A document or a copy or an extract of any document or any part of a document certified by the Registrar under subsection (1) is –

- (a) prima facie evidence of the matters contained therein; and
- (b) admissible in evidence in any proceedings as if it were the original document.

### **Optional registration of specified registers**

**349.**(1) A company may elect to file for registration by the Registrar a copy of any or all of the following –

- (a) its register of members;
- (b) its register of charges; or
- (c) its register of beneficial owners maintained under the Beneficial Ownership Act, 2020.

(2) A company that has elected to file a copy of a register under subsection (1) shall, until such time as it may file a notice under subsection (3), file any changes in the register by filing a copy of the register containing the changes.

(3) A company that has elected to file a copy of a register under subsection (1) may elect to cease registration of changes in the register by filing a notice in the approved form.

(4) If a company elects to file a copy of a register under subsection (1), the company is bound by the contents of the copy register filed then until such time as it may file a notice under subsection (3).

#### **Optional filing of annual financial statements by international business companies**

**350.** A company may, but is not required to, file with the Registrar a copy of its annual financial statements, if any.

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

**351.**(1) The Registrar shall, upon request by any person and on payment of the fee specified in Part II of the Second Schedule, issue a certificate of good standing under the Official Seal in the approved form certifying that a company is in good standing if the Registrar is satisfied that –

- (a) the company is on the Register;
- (b) the company has paid all fees, annual fees and penalties due and payable under this Act; and
- (c) it has no filed record of the company being in voluntary or compulsory liquidation.

(2) The certificate of good standing issued under subsection (1) shall include a statement as to whether –

- (a) the company has filed with the Registrar articles of merger or consolidation that have not yet become effective;
- (b) the company has filed with the Registrar articles of arrangement that have not yet become effective;

- (c) notice of commencement of the company's winding up has been filed with the Registrar; and
  - (d) any proceedings by the Registrar to strike the name of the company off the Register have been instituted.
- (3) In the event that a company is not in good standing as at the date of the request, the Registrar shall issue a certificate of official search under section 352 in lieu of a certificate of good standing and no additional fees shall be paid in respect thereof.

### **Certificate of official search**

**352.**(1) Any person, on payment of the fee specified in Part II of the Second Schedule, may request the Registrar for a certificate of official search under the Official Seal of the Registrar in respect of any company, which shall contain the following particulars –

- (a) the name and registration number of the company;
  - (b) each previous name, if any, of the company;
  - (c) the date of its incorporation or continuation in Seychelles;
  - (d) if applicable, the date of its conversion into a company under this Act;
  - (e) the address of its registered office;
  - (f) the name and address of its registered agent;
  - (g) the due date of the annual fee;
  - (h) whether or not the company is in good standing (and, if not in good standing, the fact of striking off); and
  - (i) the number of –
    - (i) outstanding registered charges; and
    - (ii) satisfied and discharged registered charges.
- (2) The particulars referred to in subsection (1), shall be obtained from –
- (a) the Registers maintained by the Registrar under section 346(1); and
  - (b) the documents filed with the Registrar.

### **Form of documents to be filed**

**353.**(1) The Registrar or the Authority as applicable may approve forms to be used where specified in this Act.

(2) Where a form is required to be in “approved form”, it shall –

- (a) contain the information specified in; and
- (b) have attached to it such documents as may be required by,

the form approved under subsection (1) by the Registrar or the Authority as applicable.

(3) Where this Act requires a document to be delivered in the approved form to the Registrar or the Authority, and the form of the document has not been approved by the Registrar or the Authority in accordance with subsection (1), it shall be sufficient compliance with that requirement if the document is delivered in a form which is acceptable to the Registrar or the Authority as applicable.

### **Penalty fees and the Registrar’s right to refuse to take action**

**354.**(1) The Registrar may –

- (a) refuse to take any action required of him under this Act for which a fee is prescribed until all fees have been paid; or
- (b) for good cause, waive all or any part of any penalty fee imposed under this Act.

(2) Before imposing any penalty fees under this Act by the Registrar, the person concerned shall be given an opportunity of being heard.

(3) The aggregate penalty fees imposed by the Registrar on a person for a breach of a provision of this Act shall be limited to a maximum amount of US\$2,500 per breach.

### **PART XX – Repealed.**

**355.** *Repealed.*

**356.** *Repealed.*

**357.** *Repealed.*

**358.** *Repealed.*

**359.** *Repealed.*

**360.** *Repealed.*

### **PART XXI – MISCELLANEOUS PROVISIONS**

#### **Assessable income to be notified**

**361.**(1) Notwithstanding any provisions of this Act, where a company incorporated, continued or converted under this Act derives assessable income in Seychelles, it shall –

- (a) within one month of deriving the first assessable income, notify the Registrar in writing that it is deriving assessable income and the nature of the activities giving rise to this assessable income; and
  - (b) within one year of deriving the first assessable income, file with the Registrar an Annual Return accompanied by the documents to be annexed to this Annual Return as required under the Companies Act (Cap 40).
- (2) The Registrar shall send a copy of the notice in subsection (1)(a) to the Seychelles Revenue Commission.
- (3) A company which fails to comply with the requirements set out under subsection (1) shall be liable to a penalty of US\$100 and to an additional penalty of US\$25 for each day or part thereof during which the contravention continues.

### **Stamp duty**

**362.**(1) Subject to subsection (2), notwithstanding the provisions of the Stamp Duty Act all instruments relating to –

- (a) the formation of a company;
- (b) transfers of property to or by a company;
- (c) transactions in respect of the shares, debt obligations or other securities of a company;
- (d) the creation, variation or discharge of a charge or other security interests over any property of a company; and
- (e) other transactions relating to the business or assets of a company,

are exempt from the payment of stamp duty.

(2) Subsection (1) does 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) transactions 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.

**363.** *Repealed.*

### **Form of records**

**364.** The records required to be kept by a company under this Act shall be –

- (a) kept in written form; or
- (b) entered or recorded by a system of mechanical or electronic data processing or by any other information storage device that can present or reproduce any required information in intelligible written form.

### **Delivery of electronic records generally**

**365.**(1) Subject to section 367, where there is a requirement in this Act, in any regulations made under this Act or in any company's articles to provide a document to a person, or for a document to accompany another document, the requirement may, unless precluded by the articles of a company, be met by the delivery, or deemed delivery, of an electronic record of the document in accordance with this section or section 366.

- (2) For the purposes of subsection (1), "to provide" includes to send, forward, give, deliver, submit, file, deposit, furnish, issue, leave at, serve, circulate, lay, make available or lodge.
- (3) An electronic record of a document may be delivered to a person by communicating it by electronic means to the person at the address or number that has been notified by the person for the purposes of communication by electronic means.
- (4) This section shall not apply to the sending or receipt of any documents to or by the Court, the Financial Intelligence Unit or the Seychelles Revenue Commission.

### **Deemed delivery by website publication**

**366.**(1) Subject to subsection (4) and unless precluded by the articles of a company, an electronic record of a document is deemed to have been delivered to a person if it is published on a website and the person is sent a notice which includes details of –

- (a) the publication of the document on the website, the address of the website, the place on the website where the document may be found and how the document may be accessed on the website; and
  - (b) how the person is to notify the company that the person elects to receive the document in a physical form if the person wishes to receive the document in a physical form.
- (2) If, in accordance with a notice sent to a person under subsection (1), the person elects to receive a document in a physical form, the company shall send to that person such document within 7 days of receipt of that person's election.
  - (3) The accidental omission of a company to send a document to a person in accordance with subsection (1), or the non-receipt by the person of a document that has been duly sent to that person, does not invalidate deemed delivery of that document to that person pursuant to subsection (1).
  - (4) If there is a requirement that a person have access to a document for a specified period of time, the person must be notified of the publication of the document before the

commencement of the period and, subject to subsection (3), the document must be published on the website throughout the whole of the period.

(5) Nothing in subsection (4) shall invalidate the deemed delivery of an electronic copy of a document under subsection (1) if –

(a) the document is published for at least part of a period; and

(b) the failure to publish it throughout the whole of the period is wholly attributable to circumstances that the person providing the document could not reasonably have been expected to prevent or avoid.

(6) This section shall not apply to the sending or receipt of any documents to or by the Court, the Registrar, the Financial Intelligence Unit or the Seychelles Revenue Commission.

### **Delivery of electronic records to the Registrar**

**367.**(1) Subject to subsection (2), where there is a requirement in this Act or in any regulations made under this Act for a person to provide a document to the Registrar, the requirement may be met by the delivery to the Registrar of an electronic record of the document in a form and manner determined by the Registrar and in accordance with this section.

(2) Subsection (1) shall not apply until such time as the Registrar gives notice by publication in the *Gazette* that it is able to accept delivery of an electronic record of documents in a form and manner determined by the Registrar and in accordance with this section.

(3) For the purposes of subsection (1), “to provide” includes to deliver, send, notify, give notice, forward, submit, apply or make a report to, or to file, register or lodge with.

(4) Notwithstanding any method of authentication required by this Act or under any other written law, the Registrar may direct that any electronic record of a document delivered to the Registrar shall be authenticated in the manner that is directed by the Registrar.

(5) Where an electronic record of a document is delivered to the Registrar that does not comply with the requirements of this section, the Registrar may serve on any person by whom the electronic record was delivered a notice indicating in what respect the electronic record does not comply.

(6) Where the Registrar has served a notice under subsection (5) in respect of an electronic record, the electronic record is deemed not to have been delivered unless —

(a) a replacement electronic record that complies with the requirements of this section is delivered to the Registrar within 14 days after service of the notice; or

(b) where there is no replacement electronic record, the requirements of this section have been met otherwise to the satisfaction of the Registrar.

### **Offences**



**368.**(1) A person who contravenes any requirement of this Act, for which no penalty is provided for in this Act, commits an offence and is liable on conviction to a fine not exceeding US\$50,000.

(2) Where an offence under this Act is committed by a body corporate, a director or other officer who knowingly authorised, permitted or acquiesced in the commission of the offence also commits an offence and is liable on conviction to the penalty specified for the commission of the offence.

### **Accessories and abettors**

**369.** Any person who aids, abets, counsels or procures the commission of an offence under this Act shall also be guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.

### **Liability for false statements**

**370.**(1) Unless otherwise provided in this Act, a person who makes a statement in any document which is required to be filed or delivered to the Registrar under this Act, which, at the time and in the light of circumstances under which it is made, is false or misleading with respect to any material fact or omits to state any material fact, the omission of which makes the statement false or misleading, commits an offence and is liable on conviction to a fine not exceeding US\$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) It shall be a defence for a person accused of committing an offence under subsection (1) to prove that the person did not know that the statement was false or misleading, or could not reasonably have known that the statement was false or misleading.

### **Power of Court to grant relief**

**371.**(1) This section shall apply to –

- (a) a director or former director of a company;
- (b) a liquidator or former liquidator of a company;
- (c) an auditor or former auditor of a company.

(2) If, in a proceeding for negligence, failure, default or breach of duty against a person to whom this section applies, it appears to the Court –

- (a) that the person is or may be liable in respect of negligence, failure, default or breach of duty, but that the person acted in good faith; and
- (b) that having regard to all the circumstances of the case, including those connected with the person's appointment, the person ought fairly to be excused for the negligence, failure or breach of duty,

the Court may relieve that person, either wholly or partly, from liability on such terms as the Court considers fit.

(3) If a person to whom this section applies has reason to believe that a claim will or might be made against him in respect of negligence, default, failure or breach of duty, that person may apply to the Court for relief, and the Court shall have the same power to relieve the person as it would have had if proceedings for negligence, default, or breach of duty had been brought against the person.

### **Declaration by Court**

**372.**(1) A company may, without the necessity of joining any other party, apply to the Court, by motion supported by an affidavit, for a declaration on any question of interpretation of this Act or of the memorandum or articles of the company.

(2) A person acting on a declaration made by the Court as a result of an application under subsection (1) shall be deemed, in so far as regards the discharge of any fiduciary or professional duty, to have properly discharged his duties in the subject matter of the application.

### **Judge in chambers**

**373.**(1) Subject to subsections (2) and (3), a judge of the Court may exercise in chambers any jurisdiction that is vested in the Court by this Act and in exercise of that jurisdiction, the judge may award costs as he sees fit and just.

(2) A civil proceeding issued in the Court by, against or concerning a company in which the names of one or more of its beneficial owners are or will be mentioned shall be heard by a judge in chambers *in camera* instead of open court.

(3) A judge in a civil proceeding under subsection (1) or (2) may restrict or prohibit the publication of any report of the proceeding or any part of the proceeding or any document filed in the course of the proceeding or give such other direction as is necessary to protect the identity of the company's members and beneficial owners.

(4) A person who fails to comply with any restriction, prohibition or direction under subsection (3) commits an offence and is liable on conviction to a fine not exceeding US\$50,000.

### **Appeals against Registrar's decisions**

**374.**(1) Without prejudice to section 273 (*appeal against striking off*), a person aggrieved by a decision of the Registrar may, within 90 days of service of notice of the decision of the Registrar, appeal against the decision to the Appeals Board in accordance with the procedure specified in the Financial Services Authority (Appeals Board) Regulations 2014.

(2) On an application under this section the Appeals Board may –

- (a) affirm the decision of the Registrar;
- (b) vary the decision of the Registrar; or

- (c) set aside the decision of the Registrar and, if the Appeals Board considers it appropriate to do so, remit the matter to the Registrar with such directions as the Appeals Board considers fit.
- (3) Subject to subsection (4), an appeal against a decision of the Registrar shall not have the effect of suspending the operation of the decision.
- (4) On an application under this section against a decision of the Registrar, the Appeals Board may, on the application of the appellant and on such terms as the Appeals Board thinks just, suspend the operation of the decision pending the determination of the appeal.
- (5) A person dissatisfied with the decision of the Appeals Board may within 30 days of the decision make an appeal to the Court in accordance with regulation 8(8) of the Financial Services Authority (Appeals Board) Regulations 2014.
- (6) The Court may, in respect of an appeal made under subsection (5), affirm, set aside or vary the Appeals Board's decision and may give such directions as the Court thinks fit and just.

### **Legal professional privilege**

**375.** Subject to the written laws of Seychelles, where a proceeding is instituted under this Act against a person, nothing in this Act is to be taken to require the person to disclose any information which that person is entitled not to disclose on the grounds of legal professional privilege.

### **Immunity**

**376.** No action, prosecution or other proceedings shall be brought against –

- (a) the Registrar or an employee or agent of the Registrar; or
- (b) the Authority or an employee or agent of the Authority,

in respect of an act done or omitted to be done in good faith by any such person in the proper performance of functions under this Act.

### **Inspections**

**377.(1)** The Registrar, for the sole purpose of monitoring and assessing compliance with this Act, may during normal business hours and after giving reasonable notice to the company –

- (a) access a company's registered office;
- (b) inspect the documents required by this Act to be kept by the company; and
- (c) during or after an inspection request for explanations from any director of the company or from any director of its registered agent.

(2) Any person who in any manner impedes, prevents or obstructs the Registrar, or any of its employees or authorised agents in the conduct of an inspection under this section commits an offence and is liable upon conviction to a fine not exceeding US\$25,000.

### **Non-disclosure obligation and permitted exceptions**

**378.**(1) Subject to subsection (2), the Authority, the Registrar, and each officer, employee and agent of the Authority or the Registrar, shall not disclose to a third party any information or documents acquired in the performance of the functions of the Authority or the Registrar under this Act.

(2) Subsection (1) shall not apply to any disclosure –

- (a) permitted or required under any this Act or any other written law of Seychelles;
- (b) pursuant to an order of the Court;
- (c) in the case of information or documents in relation to a company, with the prior written consent of the company; or
- (d) where the information disclosed is in statistical form or is otherwise disclosed in such a manner that does not enable the identity of any company or other person, to which the information relates, to be ascertained.

### **Position with respect to other laws**

**379** (1) The exemption granted under section 362 of this Act shall prevail notwithstanding any inconsistency with the provision of the Stamp Duty Act.

(2) To the extent of any inconsistency between the Civil Code of Seychelles Act or the Commercial Code Act and –

- (a) Sub-Part VII of Part V of this Act (*Security over shares*);
- (b) Part IX of this Act (*Charges over company property*);
- (c) Part XVII of this Act (*Striking off, winding up and dissolution*); or
- (d) section 382 of this Act (*Modification of Civil Code of Seychelles with respect to companies*),

this Act shall prevail.

(3) To the extent of any inconsistency between the Companies Act and Part X of this Act (*conversions*), this Act shall prevail.

### **Regulations**

**380.** The Minister may make regulations for the purpose of carrying out and giving effect to the provisions of this Act and may by regulations amend any Schedule.

## **Repeal of law**

**381.** The International Business Companies Act 1994 is hereby repealed.

## **Modification of Civil Code of Seychelles with respect to companies**

**382.**(1) With respect to companies (as defined in section 2 of this Act), the Civil Code of Seychelles (as defined in section 2 of the Civil Code of Seychelles Act) is modified as set out in subsections (2) to (5).

(2) That Article 2078 of the Civil Code of Seychelles shall not apply to companies, and the following shall apply in substitution therefor –

“(a) Subject to paragraphs (b) and (c), in the event of default by the borrower in respect of obligations secured by a pawn, on application by the pledgee or other interested person the Court may order that the pawned property be retained by the pledgee or sold as may be authorised by the Court or may make such other or further order as the Court deems fit.

(b) A pledge of shares or other securities issued by a company incorporated under the International Business Companies Act may be enforced, without an order of the Court if so permitted by the terms of the pledge, in accordance with the provisions of Sub-Part VII of Part V of the International Business Companies Act (*Pledges over shares*).

(c) Paragraph (a) shall not affect the sale of pawned property as provided for under paragraph (b) of article 2074.”

(3) That Article 2079 of the Civil Code of Seychelles shall not apply to companies, and the following shall apply in substitution therefor –

“(a) A pledgor shall remain the owner of pawned property, unless, in the event of default in respect of obligations secured by a pawn, the pawned property is sold –

(i) pursuant to an order of the Court; or

(ii) in the case of a pledge of shares or other securities issued by a company incorporated under the International Business Companies Act, in accordance with the provisions of Sub-Part VII of Part V of the International Business Companies Act (*Pledges over shares*).

(b) Until such time that the obligations secured by the pawn are paid and discharged in full or the pawned property is sold as envisaged under in paragraph (a), the pawn will constitute security interests over the pawned property in favour of the pledgee.”

(4) That the second and third sentence of Article 2091-1 of the Civil Code of Seychelles shall not apply to companies.

(5) That Article 2091-3 of the Civil Code of Seychelles shall not apply to companies, and the following shall apply in substitution therefor –

“(a) Subject to paragraph (b), in the event of crystallization a floating charge, on application by the chargee or other interested person the Court may order that the charged property be sold as may be authorised by the Court, or that a receiver be appointed or may make such other or further order as the Court deems fit.

(b) If so permitted under the terms of a written floating charge agreement, in the event of crystallization a floating charge may be enforced, without an order of the Court if so permitted by the terms of the charge, in accordance with the provisions of Part IX of the International Business Companies Act (*Charges over company property*).”

## **PART XXII – TRANSITIONAL PROVISIONS**

### **Former Act companies automatically re-registered under this Act**

**383.**(1) Subject to the provisions of this section, with effect from the Act commencement date every former Act company shall be deemed to be automatically re-registered as an international business company under this Act.

(2) Where a company is re-registered under subsection (1), the Registrar shall, as soon as is practicable, enter the name of the company on the Register and allot a unique number to the company.

(3) The unique number allotted to a company under subsection (2) may, at the discretion of the Registrar, be the number previously allocated to the company as a former Act company.

(4) Except as otherwise provided in this Act, a company that is re-registered under subsection (1), shall be subject to this Act as if it was a company incorporated under this Act.

### **Certificate of re-registration where former Act company re-registered automatically**

**384.**(1) Where a former Act company is automatically re-registered under section 383(1), the Registrar is only required to issue a certificate of re-registration to the company if the company, acting through its registered agent, makes a written request to the Registrar for the issue of a certificate of re-registration.

(2) A certificate of re-registration issued by the Registrar under subsection (1) shall state –

(a) the name and unique registration number of the company;

(b) that the former Act company was re-registered under this Act on the Act commencement date; and

(c) the date of original incorporation or continuation under the former Act.

### **Effect of automatic re-registration under this Act**

**385.**(1) A former Act company that is re-registered under section 383(1), continues in existence as a legal entity and its re-registration under this Act, whether under the same or a different name, does not –

- (a) prejudice or affect its identity;
- (b) affect its assets, rights, liabilities or obligations; or
- (c) affect the commencement or continuation of proceedings by or against the company.

(2) Subject to subsection (1), a former Act company that is re-registered under section 383(1) shall, from its re-registration on the Act commencement date, be treated as a company incorporated under this Act.

#### **Restoration of former Act companies struck off the register maintained under the former Act**

**386.**(1) Every application to restore a former Act company that has been struck off the register kept under the former Act but not dissolved, made on or after the Act commencement date, whether to the Registrar or to the Court, shall be made under, and determined in accordance with, this Act as if the former Act company had been a company struck off the Register under this Act.

(2) Where, pursuant to an application made under subsection (1), a company is restored, it shall be restored to the Register maintained under this Act.

#### **Restoration of dissolved former Act companies**

**387.**(1) An application may be made to the Court under this Act to rescind the dissolution of a former Act company dissolved under the former Act as if it was a company dissolved under this Act on the date that it was dissolved under the former Act.

(2) An application made under subsection (1) –

- (a) shall be made within seven years of the dissolution of the former Act company under the former Act;
- (b) shall be determined in accordance with this Act.

(3) If the dissolution of a former Act company is rescinded in accordance with this section, the company shall be restored to the Register maintained under this Act.

#### **Delivery of records**

**388.** As soon as practicably possible after the Act commencement date, the person who, immediately before the Act commencement date, was the registrar under the former Act, shall deliver to the Registrar (under this Act) all records in its power, possession or control kept pursuant to the former Act.

### **Transition for former Act companies**

**389.**(1) Notwithstanding any other provision of this Act but subject to subsection (2), every former Act company shall have a period of three months from the Act commencement date to comply with the provisions of this Act relating to –

- (a) the keeping of registers and records; and
- (b) the furnishing of annual returns.

(2) Every former Act company shall have a period of twelve months from the Act commencement date to comply with –

- (a) section 126(2) (*notice of location of minutes and resolutions of members*);
- (b) section 157(2) (*notice of location of minutes and resolutions of directors*); and
- (c) section 179 (*register of charges*).

(3) Subject to subsection (4), it shall not be mandatory for a former Act company to amend its memorandum or articles to comply with this Act but to the extent of any inconsistency between –

- (a) a former Act company's memorandum or articles; and
- (b) this Act,

this Act shall prevail.

(4) Where a former Act company's memorandum or articles refers to a provision in or requirement under a former Act, that reference in the former Act company's memorandum or articles to such requirement or provision shall be deemed to be varied and construed as if, as near as possible, it complied with the analogous provision or requirement under this Act.

(5) If, as at the Act commencement date, a former Act company has commenced (but not completed) winding up under sections 87 to 95 of the former Act, the company's winding up and dissolution may –

- (a) proceed and be completed in accordance with sections 87 to 95 of the former Act as if those provisions still applied; or
- (b) be recommenced and completed in accordance with the provisions of Part XVII of this Act.

(6) Where the Registrar issues a certificate of dissolution of a former Act company pursuant to subsection (5)(a), the certificate shall have the same effect as if it was a certificate of dissolution issued by the Registrar under Part XVII of this Act.

### **Transition for all companies**



**390.** Every company shall have a period of –

- (a) twenty-four months from the Act commencement date to comply with section 152 (*Filing of register of directors with the Registrar*); and

**References to companies in other enactments**

**391.** A reference in any written law to a company incorporated, registered or continued under the former Act shall, unless the context otherwise requires, be read as including a reference to a company incorporated, re-registered or continued under this Act.

**Repeal of Cap 100A**

**392.** The International Business Company Act, 1994 (Cap 100A) is hereby repealed.

**FIRST SCHEDULE**  
(section 9(1)(b) and section 214(1)(b))

**PART I**  
**INCORPORATION APPLICATION**

An incorporation application form shall require an applicant to provide (at minimum) the following information –

1. The proposed company name;
2. The proposed registered office address;
3. The full name and address of the proposed first registered agent of the company;
4. Whether the company is to be a company limited by shares, company limited by guarantee or company limited by guarantee and having shares;
5. In the case of a protected cell company, a statement that the written consent of the Authority under section 221 has been given;
6. A statement that the requirements of the Act with respect to incorporation have been complied with.

**PART II**  
**CONTINUATION APPLICATION**

A continuation application form shall require an applicant to provide (at minimum) the following information –

1. The existing name of the company;
2. The proposed name of the company upon continuation;
3. The proposed registered office address in Seychelles;
4. The full name and address of the proposed registered agent of the company;
5. Whether the company is to be a company limited by shares, company limited by guarantee or company limited by guarantee and having shares;
6. In the case of a protected cell company, a statement that the written consent of the Authority under section 221 has been given;
7. A statement that the requirements of the Act with respect to continuation have been complied with.

## SECOND SCHEDULE

### PART I

#### INCORPORATION AND ANNUAL FEES

DESCRIPTION	FEE
<i>(section 9(1))</i> (a) Fee for incorporation of an international business company (other than a protected cell company)	US\$130
<i>(section 221)</i> (b) Application fee for Authority's consent to incorporate, continue as, or to convert a company into, a protected cell company	US\$200
<i>(section 9(1))</i> (c) Fee for incorporation of a protected cell company	US\$500
<i>(section 12)</i> (d) Annual fee - international business company (other than a protected cell company)	US\$140
<i>(section 12)</i> (e) Annual fee – protected cell company	US\$500

### PART II

#### MISCELLANEOUS FEES

DESCRIPTION	FEE
Note – No fee under Part II of the Second Schedule shall be payable by the Seychelles Revenue Commission, the Financial Intelligence Unit or other Seychelles government body in the course of official business in respect of any inspection by it of company documents filed with, or register kept by, the Registrar, or for any certificate of good standing or certificate of official search issued by the Registrar	

<p><i>(section 23)</i>  (a) Registration of a certified copy or extract of a resolution, other than an amendment under section 30, amending the memorandum or articles of a company –</p> <p>(i) filed within 30 days after the date of the resolution;</p> <p>(ii) filed more than 30 days after the date of the resolution</p>	<p>(i) US\$50</p> <p>(ii) US\$100  (No fee will apply under this paragraph for filing an extract resolution changing registered agent – as the fee specified in paragraph (1) applies instead)</p>
<p><i>(section 24)</i>  (b) Filing a restated and amended memorandum or articles of a company (exclusive of fee for filing a certified copy or extract of the amendment approval resolution under paragraph (a))</p> <p>Note – No filing fee is payable in respect of a restated and amended memorandum and articles of a former Act company filed within 2 years of the Act commencement date</p>	<p>US\$50</p> <p>Provided that no fee shall be payable in respect of filing a restated and amended memorandum and articles (changing the company’s name) filed pursuant to a direction made by the Registrar under section 31(1)</p>
<p><i>(section 29(3))</i>  (c) For the continued reservation of a name for future adoption by a company</p>	<p>US\$25</p>
<p><i>(section 30 and 31)</i>  (d) Registration of a certified copy or extract of a resolution amending the memorandum or articles of a company including a change of company name under section 30 –</p> <p>(i) filed within 30 days after the date of the resolution;</p> <p>(ii) filed more than 30 days after the date of the resolution</p>	<p>(i) US\$50</p> <p>(ii) US\$100</p> <p>Provided that no fee shall be payable in respect of a name change resolution extract filed pursuant to a direction made by</p>

	the Registrar under section 31(1)
<p>(section 152(1) and (2))</p> <p>(e) For filing of a copy register of directors of a company</p>	<p>No fee for a 'first filing' under section 152(1);</p> <p>US\$25 for each subsequent filing under section 152(2)</p>
<p>(section 162)</p> <p>(f) For filing of a certified copy or extract of the resolution of registered office of a company (subject to paragraph g below)</p>	<p>US\$50</p> <p>(No fee will apply under this paragraph for filing an extract resolution changing both the registered office and registered agent – as the fee specified in paragraph (l) applies instead)</p>
<p>(section 163(2))</p> <p>(g) For filing notices of change of registered office consequent upon a change of the registered agent's principal place of business in relation to one or more companies, or a combined notice under subsection (4), for:</p> <p>(i) 1 – 500 companies</p> <p>(ii) 501 – 1100 companies</p> <p>(iii) 1101 companies or more</p>	<p>(i) US\$5 per company for the first 500</p> <p>(ii) US\$2.50 per company for the next 600</p> <p>(iii) nil fee in respect of any more companies (subject to payment being made on the first 1100)</p>
<p>(section 165(3))</p> <p>(h) A notice of appointment (note – this fee does not apply if a notice of change of registered agent is filed under section 169; refer paragraph l below)</p>	<p>US\$50</p>
<p>(section 166(2))</p> <p>(i) For filing notices of change of name of registered agent in relation to one or more companies, or a combined notice under subsection (4), for:</p>	

<p>(i) 1 – 500 companies</p> <p>(ii) 501 – 1100 companies</p> <p>(iii) 1101 companies or more</p>	<p>(i) US\$5 per company for the first 500</p> <p>(ii) US\$2.50 per company for the next 600</p> <p>(iii) nil fee in respect of any more companies (subject to payment being made on the first 1100)</p>
<p><i>(section 167(4))</i></p> <p>(j) For filing of a notice of resignation as registered agent of a company</p>	<p>Nil</p>
<p><i>(section 168(4))</i></p> <p>(k) For filing of a notice of ceasing to be eligible to act as registered agent of a company</p>	<p>US\$25</p>
<p><i>(section 169(2))</i></p> <p>(l) For filing of a certified copy or extract resolution of change of registered agent of a company</p>	<p>US\$50</p>
<p><i>(section 181)</i></p> <p>(m) For filing application to register a charge</p>	<p>US\$125</p>
<p><i>(section 182)</i></p> <p>(n) For filing an application to register a variation of a registered charge</p>	<p>US\$75</p>
<p><i>(section 183)</i></p> <p>(o) For filing an application to register a notice of satisfaction or release of charge</p>	<p>US\$75</p>
<p><i>(sections 192 and 194)</i></p> <p>(p) For filing an application for conversion of an ordinary company into international business company or vice-versa</p>	<p>US\$100</p>
<p><i>(section 196 and 198)</i></p> <p>(q) For filing an application for conversion of a non-cellular company into protected cell company or vice-versa</p>	<p>US\$300</p>
<p><i>(section 202(2) and 203(6))</i></p> <p>(r) For filing application to register articles of merger or consolidation</p>	<p>US\$500</p>
<p><i>(section 208(8))</i></p>	<p>US\$500</p>

(s) For filing application to register articles of arrangement	
<i>(section 214(2))</i> (t) For the continuation of a foreign company as an international business company (other than a protected cell company)	US\$100
<i>(section 214(2))</i> (u) For the continuation of a foreign company as a protected cell company	US\$500
<i>(section 217(3))</i> (v) For the registration of a notice of continuation outside of Seychelles	US\$50
<i>(section 271(3))</i> (w) Inspection of Register of Disqualification Orders	US\$25
<i>(section 276(1))</i> (x) For the restoration of the name of a company to the Register by the Registrar:  (i) if the application for restoration is made 6 months or less after the date that the name of the company was struck from the Register; or  (ii) if the application for restoration is made more than 6 months after the date that the name of the company was struck from the Register.	(i) US\$300  (ii) US\$600
<i>(section 277(6))</i> (y) For filing with the Registrar of a sealed copy of an order of the Court for the restoration of the name of a company to the Register	US\$600
<i>(sections 285(1), 293(1), 303(1) and 317(1))</i> (z) For filing (i) a copy or extract of a resolution that a company be voluntarily wound up, or (ii) a copy or extract of a resolution rescinding a company's voluntary winding up or (iii) a copy of the compulsory winding up order	US\$50
<i>(section 297(1), 308(1) and 326(1))</i> (aa) For filing of liquidator's notice that a voluntary liquidation or compulsory of a company has completed (inclusive of issue of certificate of dissolution by Registrar)	US\$75
<i>(section 347)</i> (bb) An inspection of the Register of International Business Companies	US\$10
<i>(section 347)</i> (cc) An inspection of the file of a company	US\$10

<i>(section 347)</i> (dd) An inspection of the Register of Registered Charges (per company)	US\$10
<i>(section 348)</i> (ee) Per page for obtaining a copy of any document available on inspection	US\$1
<i>(section 349)</i> (ff) For the filing of a copy of a register of members, register of charges or register of beneficial owners	US\$10
<i>(section 350)</i> (gg) For the filing of annual financial statement	US\$50
<i>(section 351)</i> (hh) A certificate of good standing	US\$25
<i>(section 352)</i> (ii) A certificate of official search	US\$25
<i>(section 384(1))</i> (jj) A certificate of re-registration – per company	Nil
(kk) Upon the permitted filing with the Registrar of any document relating to a company other than those set out in this Schedule	US\$50
<i>(section 361)</i> (pp) For filing of an Annual Return and the documents to be annexed to the Annual Return	US\$50



**THIRD SCHEDULE**

*(section 26)*

**RESTRICTED WORDS**

<b>PART I</b>
“Bank” “Building Society” “Chamber of Commerce” “Chartered” “Cooperative” “Credit Union” “Government” “Licensing” “Municipal” “Parliament” “Police” “Royal” “Tribunal” “Stock Exchange” or a word or abbreviation conveying a similar meaning
<b>PART II</b>
“Airline” “Assurance” “Bitcoin” “Bureau de Change” “Casino” “Charity” “College” “Council” “Foundation” “Fund” “Gambling” “Gaming” “Hospital” “Insurance” “Insurer” “Lottery” “Military” “Mutual Fund” “Pharmacy” “Polytechnic” “Reinsurance” “School” “Securities” “Seychelles” “Sovereign”

“State”

“Trust”

“Trustee”

“Union”

“University”

and such other words as may be prescribed in writing in guidelines issued by the Registrar

## **FOURTH SCHEDULE**

*(Section 28)*

### **LANGUAGE OF COMPANY NAMES**

#### **Language of company name**

1.(1) The name of a company may be expressed in any language, but where the name is not in the English or French language a translation of the name in the English or French language shall be given to the Registrar certified as true and accurate by an acceptable translator (as defined in section 2(1) of the Act) or by the registered agent of the company or proposed company.

(2) The registered agent shall not give a certificate under sub-paragraph (1), unless it has obtained the translation from or had it confirmed by an acceptable translator.

(3) Where the name of a company is not in the English or French language, the Registrar shall include the name and the English or French language translation of it on the company's certificate of incorporation, continuation or conversion.

#### **Additional foreign character names**

2. (1) Subject to paragraph 4 and where the name of a company is in the English or French language, on an application made under paragraph 3, the Registrar may register a company with an additional foreign character name.

(2) Where a company is registered with an additional foreign character name –

(a) the memorandum shall contain a statement that the company has a foreign character name in addition to its name and shall state the foreign character name; and

(b) wherever the name of the company appears in the memorandum or articles, there shall also be a reference to the foreign character name.

(3) A company shall not be registered with a foreign character name that is –

(a) identical to a foreign character name that is registered, or has been registered, to another company under the Act; or

(b) so similar to a foreign character name that is registered, or has been registered, to another company under the Act that the use of the name would, in the opinion of the Registrar, be likely to confuse or mislead.

(4) Notwithstanding sub-paragraph (3)(b), the Registrar may register a company with an additional foreign character name that is similar to the foreign character name of another company if both companies are associates.

#### **Application for approval and registration of additional foreign character name**

3.(1) An application to the Registrar for the approval and registration of a foreign character name may be made together with the application to incorporate or continue the company or at any time thereafter.

(2) An application under sub-paragraph (1) shall be in the approved form and shall be accompanied by –

(a) a statement certified an acceptable translator or by the registered agent of the company or proposed company –

(i) confirming whether or not the foreign character name is a translation of, or has a meaning equivalent to, the name or proposed name of the company; and

(ii) specifying the meaning or, where it has more than one possible meaning, the meanings of the foreign character name; and

(b) where the application is in relation to an existing company, a certified copy or extract amendment resolution under section 23 and 30 and, if the company has resolved to do so, a restated memorandum and articles under section 24.

(3) The registered agent shall not give a statement under subsection (1), unless it has obtained the statement from or had it confirmed by an acceptable translator.

#### **Approval of foreign character name**

4.(1) The Registrar shall not approve a foreign character name if –

(a) the name does not comply with the Act; or

(b) the Registrar considers that –

(i) the name is offensive or objectionable; or

(ii) it would be contrary to public policy or the public interest to register the name.

(2) The Registrar may refuse to approve a foreign character name if –

(a) he is not satisfied that he understands the full or true meaning of the name, whether by reason of the accuracy of the translation, the context in which the name will, or may be, used or otherwise; or

(b) it is not, whether for technical or other reasons, practicable to register the name.

(3) On approving a foreign character name, whether on incorporation, continuation, change of name or otherwise, the Registrar shall –

(a) register the foreign character company name against the company in the Register of Companies; and

(b) issue a certificate of incorporation, continuation or registration of additional foreign character name, as appropriate, which shall –

(i) indicate that the company has a foreign character name in addition to its name; and

(ii) state both its name and the foreign character name.

### **Change of name where company has foreign character name**

5.(1) If a company that has a foreign character name applies to change its foreign character name, it shall file with the application for a change of name, the documents specified in paragraph 3(2).

(2) Where a company applies to change its foreign character name, paragraph 4 applies, *mutatis mutandis*.

### **Deregistration of foreign character name**

6.(1) A company that is registered with a foreign character name may apply to the Registrar for the deregistration of its foreign character name.

(2) An application under sub-paragraph (1) shall be in the approved form and shall be accompanied by a certified copy or extract amendment resolution under section 23 and 30 and, if the company has resolved to do so, a restated memorandum and articles under section 24.

(3) On an application under sub-paragraph (1), the Registrar may deregister the foreign character name and remove it from the Register.

(4) If the Registrar deregisters the foreign character name of a company, he shall issue a certificate of deregistration of the foreign character name.

### **Powers of Registrar in relation to foreign character names**

7.(1) Without prejudice to sub-paragraphs (2) to (6), sections 25, 26 and 31 shall apply *mutatis mutandis* to foreign character names.

(2) The Registrar may issue a notice under sub-paragraph (3) to a company if –

(a) the Registrar considers that the company's foreign character name –

(i) does not comply with the Act or is offensive or objectionable; or

(ii) is contrary to public policy or to the public interest for the foreign character name to remain on the Register; or

(b) the Registrar forms the opinion that it does not understand the full or true meaning of the name.

(3) Where sub-paragraph (2) applies, the Registrar may issue a notice to the company directing it to apply to change its foreign character name to a foreign character name approved by the Registrar on or before a date specified in the notice, which shall be not less than fourteen days after the date of the notice.

(4) If a company that has received a notice under sub-paragraph (3) fails to file an application to change its foreign character name to a foreign character name approved by the Registrar on or before the date specified in the notice, the Registrar may deregister the name.

(5) Where the Registrar deregisters a foreign character name under this regulation, it shall issue a certificate of change of name to the company.

(6) Where a company's foreign character name has been deregistered under this paragraph it shall, within fourteen days of the date of the certificate of change of name, file a certified copy or extract amendment resolution under section 23 and 30 and, if the company has resolved to do so, a restated memorandum and articles under section 24.

## **FIFTH SCHEDULE**

*(section 32)*

### **REUSE OF COMPANY NAMES**

#### **Interpretation for Schedule**

1. In this Schedule, unless the context otherwise requires –

“Act” means the International Business Companies Act;

“change date” means the date on which the first company changed its name;

“discontinued company” means a company in respect of which the Registrar has issued a certificate of discontinuance under section 217(4)(a) of the Act;

“dissolved company” means a company that has been dissolved under the Act or the former Act;

“first company” means –

- (a) the company or former Act company that has, as the case may be –
  - (i) changed its name;
  - (ii) been dissolved under the Act or a former Act; or
- (b) the discontinued company;

“insolvent” means as defined in section 299 of the Act;

“insolvent company” –

- (a) means –
  - (i) an insolvent company that is in liquidation under Sub-Part III or Sub-Part IV of Part XVII of the Act; or
  - (ii) a company that has been dissolved following the completion of its liquidation under Sub-Part III or Sub-Part IV of Part XVII of the Act;
- (b) does not include a company that has been dissolved for seven years or more;

“second company” means the company that seeks to use the name of the first company, whether on incorporation, continuation or through a change of name.

#### **Registrar may permit reuse of company names**

2.(1) Where permitted under paragraphs 3 or 4, the Registrar may incorporate or continue a company under, or register a change of name of a company to, a name that is identical or similar to the name of –

- (a) a company or former Act company that has –
  - (i) changed its name; or
  - (ii) been dissolved under the Act or the former Act; or
- (b) a discontinued company.

(2) Paragraphs 3 and 4 are subject to paragraphs 6 and 7.

(3) Nothing in paragraphs 3 to 7 is intended to give a company, whether the first company or the second company, any entitlement to the transfer of the name from the first company to the second company.

#### **Use of changed name**

3.(1) Where the first company is a company that has changed its name, the Registrar may permit the previous name of the first company, or a name similar to the previous name of the first company, to be registered to a second company –

- (a) at any time after the expiry of a period of seven years from the date that the first company changed its name; or
- (b) if the first company provides its written consent –
  - (i) where the Registrar is satisfied that the change of name is part of a genuine sale of the business or undertaking, or a substantial part of the business or undertaking, of the first company to the second company, at any time after the first company has changed its name;
  - (ii) where the Registrar is satisfied that the first company and the second company are associated, at any time after the first company has changed its name; or
  - (iii) in any other cases, after the expiry of a period of three years from the date that the first company changes its name.

(2) Where a company has changed its name, and the name, or a similar name, has not yet been registered to a second company, the Registrar may permit the company to change its name to its previous name or a similar name.

#### **Use of name of dissolved company**

4. Where the first company is a dissolved company, the Registrar may permit the name of the first company, or a name similar to the name of the first company, to be registered to a second company at any time after the date that the first company was dissolved.



### **Use of name of discontinued company**

5.(1) Where the first company is a discontinued company, the Registrar may permit the name of the first company, or a name similar to the name of the first company, to be registered to a second company at any time after the expiry of a period of seven years from the date of the certificate of discontinuance issued in respect of the first company.

(2) If a discontinued company is subsequently continued under the Act, the Registrar may permit the company to be continued under its previous name, as stated in the certificate of discontinuance, unless the name has been reused in accordance with this Schedule.

### **Restrictions on multiple uses of same or similar names**

6. The Registrar shall not permit a name, including a similar name, to be registered to –

(a) more than two different companies; or

(b) more than twice to the same company,

in any period of seven years.

### **Restrictions on reuse of names of insolvent companies**

7.(1) Paragraphs 2 to 5 do not apply where the first company is an insolvent company.

(2) If the first company is an insolvent company, the name of the first company, or a name similar to the name of the first company, may only be registered to a second company –

(a) if the liquidator has sold the business or undertaking, or a substantial part of the business or undertaking, of the first company to the second company; or

(b) with the leave of the Court.

## **SIXTH SCHEDULE**

*(section 171)*

### **ANNUAL RETURN CONTENT**

The annual return shall be in such form as the Registrar directs or approves and shall be required (at minimum) to state and declare that as at the date of the annual return –

1. The Company is keeping accounting records in accordance with the requirements of the Act, which accounting records are kept at the following location(s):

*[insert physical address of each location of accounting records]*

2. The Company is keeping minutes of meetings and copies of written resolutions of members and directors in accordance with the requirements of the Act (together referred to as “minutes and resolutions”), which minutes and resolutions are kept at the following location(s):

*[insert physical address of each location of minutes and copy resolutions]*

3. Where the Company is requested pursuant to a written law of Seychelles to furnish all or any of its accounting records and minutes and resolutions or copies thereof, it will cause the requested accounting records and minutes and resolutions or copies thereof to be furnished to the requesting party in Seychelles within the time period specified in the request.