



**INTERNATIONAL BUSINESS COMPANIES
(AMENDMENT) ACT, 2009**

(Act No. 7 of 2009)

I assent



A handwritten signature in black ink, appearing to read 'Michel'.

J. A. Michel
President

27th May, 2009

**AN ACT to amend the International Business Companies
Act, 1994 (Cap 100A)**

ENACTED by the President and the National Assembly.

1. This Act may be cited as the International Business Companies (Amendment) Act, 2009. Short title

Amendment
of CAP 216A

2.(1) The International Business Companies Act, 1994 is amended as follows—

(a) in section 2(1)—

(i) by inserting after the definition of “court”, the following definition—

““guarantee member” means a person who holds guarantee membership in a company incorporated under this Act, and whose name is entered in the Guarantee Member Register of the company kept under this Act;”;

(ii) by inserting after the definition of “securities”, the following definition—

““shareholder” means—

(a) a person registered as a shareholder in the Share Register kept under section 28(1); or

(b) a holder of a bearer share;”;

(b) by inserting after section 3, the following section—

Company
limited by
shares or
guarantee

“3A.(1) A company incorporated under this Act may be—

(a) a company limited by shares and having the liability of its shareholders limited to the amount, if any, unpaid on the shares held by each of them;

(b) a company limited by guarantee not having a share capital and having the liability of its guarantee members limited

to such amount as the members may each undertake to contribute to the assets of the company in the event of its being wound up; or

- (c) a company limited by guarantee and having a share capital.

(2) In the case of a company limited by guarantee, whether or not having a share capital, at least one of its members shall be a guarantee member and where the company has a share capital, a guarantee member may also be a shareholder.”;

(c) in section 5 —

- (i) by repealing paragraph (c) of subsection (1) thereof and substituting therefor the following —

“(c) carry on banking as defined in the Financial Institutions Act, 2004;”;

Cap 14 of
2004

- (ii) by repealing paragraph (e) of subsection (1) thereof and substituting therefor the following —

“(e) carry on international corporate services, international trustee services or foundation services as defined in the International Corporate Service Providers Act, 2003;”;

Act 10 of 2003

- (iii) in subsection (2)(c) by inserting the word “its” after the word “maintains”;

- (iv) in paragraph (h) of subsection (2) by

repealing the word “or” after the semi-colon(;);

(v) in paragraph (i) of subsection (2)—

(aa) by repealing the following words, figures and full stop (.) “Civil Aviation Act, 1949 (Overseas Territories) Order 1969.” and substituting therefor the following words, figures and semi-colon (;) “Seychelles Civil Aviation Authority Act, 2005;”

Act 5 of 2005

(bb) by inserting the word “or” after that semi-colon(;); and

(cc) by inserting after that paragraph the following—

“(j) it operates as a mutual fund under the Mutual Fund and Hedge Fund Act, 2008.”;

Act 10 of 2008

(d) in section 11—

(i) in subsection 3(b) by inserting the words “the Government of” after the word “with” in the second place where it occurs;”;

(ii) in subsection 3(b) by repealing the following colon (:) and words after the word “country” in the second place where it occurs “:Provided however that the Registrar may permit the incorporation of a company under a name that includes the word “Seychelles” if the Registrar thinks fit to do so”, and by inserting a semi colon (;) after that word “country”;

(iii) in subsection 3(c) by repealing the full stop (.) after the word “misleading” and by adding after that word “misleading”, the

following words “or being confused with another company wherever registered, or is a registered trademark in Seychelles or elsewhere, of a product.”;

(iv) in paragraph (a) of subsection (5) by repealing the word “or” after the semi colon(;);

(v) in paragraph (b) of subsection (5) by repealing the comma (,) after the word “confuse” and substituting therefor a semi colon (;) and the word “or”;

(vi) by inserting after paragraph (b) of subsection (5), the following—

“(c) is indecent, offensive or, in the opinion of the Registrar is otherwise objectionable or is capable of being misleading or being confused with another company wherever registered, or is a registered trademark in Seychelles or elsewhere of a product.”;

(vii) in subsection (8) by repealing the word “person” thereof and substituting therefor the word “registered agent”, and by repealing the figure “90” thereof and substituting therefor the figure “30”;

(viii) in subsection (8) by repealing the full stop (.) after the word “Act” and substituting therefor a semi colon (;);

(ix) by inserting after subsection (8), the following—

“(9) On the expiry of the period of 30 days referred to in subsection (8), the

Registrar may, on a request by the registered agent and payment of the fee set out in Part 1 of the Schedule, for each 30 day period thereafter, continue reserving such name for future adoption by a company under this Act.”;

(e) in section 12—

- (i) in paragraph (m) of subsection (1) by deleting the full stop (.) and substituting therefor a semi-colon (;);
- (ii) in subsection (1) by adding after paragraph (m), the following paragraphs—

“(n) a statement that the liability of the members is limited;

- (o) in the case of a company limited by guarantee and with or without a share capital, a statement to the effect that every guarantee member of the company undertakes to contribute up to a specified amount to the assets of the company in the event of its being wound up while that member is a guarantee member or within six months of that member ceasing to be a guarantee member for—

- (i) the payment of the liabilities of the company contracted or otherwise incurred before that member ceased to be a guarantee member;
- (ii) the costs, charges and expenses of winding up; and
- (iii) the adjustment of the rights of contributories among themselves.”;

- (f) in section 17, by repealing subsection (3) thereof and substituting therefor the following—

“(3) Subject to section 39A, a company that amends its Memorandum or Articles shall submit an extract of the resolution effecting the amendment certified by the registered agent of the company to the Registrar within 14 days after the resolution is passed, and the Registrar shall retain and register the extract, provided the company may at any time thereafter file with the Registrar a restated Memorandum or Articles as so amended.”;

- (g) in section 28 by repealing paragraph (e) of subsection (1) and substituting therefor the following—

“(e) in the case of shares issued to bearer—

- (i) the names and addresses of the persons who hold bearer shares in the company;
- (ii) the number of each class and series of bearer shares held by each holder thereof;
- (iii) the date on which the name of each holder of bearer shares was entered in the Share Register;
- (iv) the date on which any holder of bearer shares ceased to be a member.”;

- (h) in section 28 by repealing in subsection (3) the words “the Registrar” and substituting therefor the words “its registered agent”;

- (i) by adding after section 28 the following—

Guarantee
Member
Register

“28A.(1) A company incorporated under this Act, which is limited by guarantee, shall cause to be kept one or more registers to be known as the Guarantee Member Register, which shall contain—

- (a) the names and addresses of each guarantee member;
- (b) the class or series of guarantee membership held by each guarantee member;
- (c) the date on which the name of each guarantee member was entered in the Guarantee Member Register; and
- (d) the date on which any person ceased to be a guarantee member.

(2) The Guarantee Member Register 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 copy of the Guarantee Member Register, commencing from the date of the registration of the company, shall be kept at the office of the company referred to in section 38 or such other place as may be determined by the directors, and the company shall inform the registered agent of the address of the other place.

(4) The Guarantee Member Register shall be prima facie evidence of any matters directed or authorised by this Act to be contained in it.

(5) A company that contravenes

subsection (1) or (3) is liable to a penalty of \$25 for each day or part thereof during which the contravention continues.

(6) A director who knowingly permits the contravention of subsection (1) or (3) is liable to a penalty of \$25 for each day or part thereof during which the contravention continues.”;

- (j) by repealing subsection (5) of section 30 thereof and substituting therefor the following subsections—

“(5) A share issued to bearer shall be transferable by delivery of the certificate relating to the share and notification of transfer as defined in subsection (6).

(6) Notification of a transfer of a bearer share in a company incorporated under this Act shall be effected by delivery to the company's registered agent in Seychelles of a written notice signed by the transferor stating the name and address of the transferor and the transferee, and the date on which the certificate relating to the share was delivered to the transferee.

(7) Upon receipt of the notice referred to in subsection (6), the registered agent in Seychelles shall cause to be entered in the Share Register—

- (a) the name and address of the transferee as the holder of the relevant bearer share; and
- (b) the date on which the transferor ceased to be the holder of the relevant bearer share, which shall be deemed to be the date on which the registered agent received notification of transfer.

(8) A company that contravenes subsection (6) is liable to a penalty of \$25 for each day or part thereof during which the contravention continues.”;

(9) A director who knowingly permits the contravention of subsection (7) is liable to a penalty of \$25 for each day or part thereof during which the contravention continues”;

(k) by repealing section 31 thereof and substituting therefor the following section—

Transfer
of bearer
shares

“31. A transfer of registered shares of a deceased or bankrupt member of a company incorporated under this Act, made by its personal representative, guardian or trustee, as the case may be, or owned by a person as a result of a transfer from a member by operation of law, is of the same validity as if the personal representative, guardian, trustee or transferee respectively had been the registered holder of the shares at the time of the execution of the instrument of transfer;”;

(l) by repealing section 39 thereof and substituting therefor the following section—

Registered
agent

“39.(1) A company incorporated under this Act shall at all times have a registered agent in Seychelles who is licensed to provide international corporate services under the International Corporate Service Providers Act, 2003.

(2) An application made or a document required to be submitted to the Registrar under this Act, by a company incorporated under this Act shall be made or submitted through the registered agent who shall

verify in writing the signature of any person appearing on the application or document.

(3) The registered agent shall accept service on behalf of the company of any notice by the Registrar, and any service of such notice accepted by its registered agent shall be deemed to have been accepted by the company.

Procedure
upon change
of registered
agent

39A.(1) A company upon amending its Memorandum to effect a change of its registered agent or situation of its registered office shall, notwithstanding section 17(3), submit a copy of the extract of the resolution effecting the amendment certified by its registered agent to the Registrar within 14 days after the resolution is passed.

(2) The Registrar shall retain and register the extract of the resolution referred to under subsection (1), provided the company may at any time thereafter file with the Registrar a restated Memorandum or Articles as so amended.

(3) The registered agent referred to in subsection (1) shall, either by itself or by consenting in writing to an incoming registered agent, submit the certified extract of the resolution to the Registrar, unless—

(a) the first mentioned registered agent has not been authorised in writing by the company to consent to the change of registered agent or registered office; or

(b) all fees due to the first mentioned registered agent have not been paid.

(4) A registered agent may resign as

the registered agent of a company incorporated under this Act—

- (a) by giving written notice in accordance with any relevant agreement or in the absence thereof by giving not less than 30 days written notice of resignation to a person specified in subsection (5);
- (b) by providing together with the written notice a list of the names of approved registered agents in Seychelles and their addresses; and
- (c) by filing with the Registrar a copy of the notice before the expiration of the period of notice.

(5) A notice under subsection (4) shall be served on a director of the company or the person from whom the registered agent last received instructions concerning the company.

(6) Where a company appoints a new registered agent before the expiration of the notice of resignation under subsection (4)(a), the resignation of the outgoing registered agent shall take effect on the date of appointment of the new registered agent.”;

(m) in section 82(1)—

- (i) by repealing the words “under the laws” after the word “incorporated” in the first place where it occurs and substituting therefor the words “under the Companies Act, 1972 or the written laws”;
 - (ii) in paragraph (b)(ii), by inserting after the word “the” the words “written law or the”;
- (n) in section 83, by repealing in subsection (1) the words “under the laws” after the word

“incorporated” in the first place where it occurs and substituting therefor the words “under the Companies Act, 1972 or the written laws”;

- (o) in section 85, by repealing subparagraph (iii) of subsection (1)(a) and substituting therefor the following—

“(iii) is no longer to be treated as a company incorporated under the Companies Act, 1972 or under the written laws of a jurisdiction outside Seychelles, as the case may be;”;

- (p) in section 97—

- (i) by repealing paragraphs (a) and (b) of subsection (1) and substituting therefor the following paragraphs—

“(a) no longer satisfies the requirements of this Act for an international business company; or

(b) conducts business or other activities which are, or are likely to be, contrary to the written laws of Seychelles or detrimental to the reputation of Seychelles,

the Registrar shall serve on the company a notice that the name of the company may be struck off the Register, if the company no longer satisfies the requirements referred to in paragraph (a) or conducts such business or other activities as are referred to in paragraph (b).”;

- (ii) by repealing subsection (3) and substituting therefor the following subsection—

“(3) If the Registrar—

- (a) receives from the company a notice stating that the company no longer satisfies the requirements of this Act for an international business company, or that the company conducts such business or other activities as are referred to in subsection (1)(b); or
- (b) does not receive a reply to a notice served on the company under subsection (2) above,

the Registrar shall publish a notice in the *Gazette* that the name of the company will be struck off the Register unless the company or any other person satisfies the Registrar that the name of the company should not be struck off.”;

(q) in section 98 —

- (i) by repealing in subsection (3) the words “3 years” after the word “within” and substituting therefor the words “10 years”;
- (ii) by repealing the full stop (.) at the end of subsection (3) and adding at the end of subsection (3) after the word “Register” the following words “and all acts done and agreements entered into during the period that the company’s name remained struck off shall, upon the restoration of the name of the company to the Register, be deemed not to be invalid and unenforceable by reason only of the company’s name having been struck off.”;

(r) in section 101, by repealing subsection (1) and substituting therefor the following subsection—

“(1) If the name of a company has been struck off the Register under section 97(4) or (6)

and remains struck off continuously for a period of 3 years or 10 years respectively, the company shall be deemed to have been dissolved, but the Registrar may, if it determines that it is in the best interest of the Republic of Seychelles to do so, apply to the court to have the company put into liquidation and for a person to be appointed as official liquidator.”;

- (s) by inserting after section 101, the following section—

Company
to keep
Register of
hypothecations

“101A.(1) A company incorporated under this Act—

- (a) may keep a register of all hypothecations, mortgages or charges created by the company affecting any of its assets at its registered office or at such other place as the directors may determine; and
- (b) shall inform the company's registered agent in Seychelles of the address of the other place.

(2) A company incorporated under this Act may, by application to the Registrar which shall be in duplicate and contain the information set out in subsection (3), submit for registration—

- (a) the instrument or certified copy of the instrument creating a hypothecation, mortgage or charge over some or all of its assets;
- (b) any instrument or certified copy of the instrument amending any document referred to in paragraph (a); and
- (c) any instrument or certified copy of

the instrument releasing or discharging a hypothecation, mortgage or charge over any or all of its assets,

and the Registrar shall register any such instrument or certified copy of the instrument and file the same in the Register.

(3) The Registrar shall maintain a register in chronological order of all instruments or certified copies thereof registered with the Registrar under subsection (2) specifying—

- (a) the name and address of the company creating the hypothecation, mortgage or charge;
- (b) the name and address of the other party to the hypothecation, mortgage or charge;
- (c) the date of the instrument;
- (d) the amount secured; and
- (e) the description of the assets affected by the instruments.

(6) Registration of an instrument under subsection (2) shall constitute notice to the public of such instrument, but registration shall not, of itself, give the instrument priority over an unregistered or subsequently registered hypothecation, mortgage or charge.

(7) Hypothecations, mortgages or charges created by a company incorporated under this Act shall rank in priority among them in the same order as had this section not come into force.”;

- (t) in section 109, by repealing subsection (4) and substituting therefor the following—

“(4) The exemptions granted by this section shall remain in force for a period of 20 years from the date of incorporation of a company under this Act, and after such period the exemption shall continue in force unless otherwise provided by a written law.”;

- (u) by repealing section 109A;
- (v) in section 112, by adding after subsection (2), the following—

“(3) Where a company is not in good standing as at the date of a request under subsection (1), the Registrar shall issue a certificate of official search under section 113(3) in lieu of a certificate of good standing and no additional fee shall be paid therefor.”;

- (w) in section 113, by adding after subsection (2), the following subsection—

“(3) Any person may request the Registrar for a certificate of official search, in respect of any company incorporated under this Act, containing the following particulars—

- (a) the name and registration number of the company;
- (b) the date of its incorporation;
- (c) its authorised share capital;
- (d) the name and address of its registered agent;
- (e) the address of its registered office;
- (f) the date and description of any hypothecation, mortgage or charge registered;

(g) the date of last payment of annual fees;

(h) the status of the company.”;

Application
of sections

3. The amendments made by sections 98(3) and 101(1) shall apply to any company the name of which has been struck off the Register, but not dissolved at the time of coming into force of this Act.

I certify that this is a correct copy of the Bill which was passed by the National Assembly on the 28th April, 2009.



Marie-Nella Azemia
Clerk of the National Assembly