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CHAPTER 253

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COMPANIES (SPECIAL LICENCES) ACT

[1st September, 2003]

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

Interpretation **2.** In this Act –

“Authority” means the Seychelles International Business Authority established by the Seychelles International Business Authority Act

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

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

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

This Act to prevail over certain laws

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

4. The objects of a relevant company as stated in its memorandum shall be limited to the carrying on of any one or more of the businesses specified in Schedule 1.

Objects of a relevant company

5.(1) Before a relevant company is incorporated in accordance with this Act, an application shall be made in the prescribed form to the Registrar through the Authority requesting that the company be incorporated subject to the approval of the Authority.

Application for approval of Authority and incorporation

(2) An application referred to in subsection (1) shall be accompanied by –

- (a) a certificate signed by a legal practitioner practising in Seychelles to the effect that the memorandum and articles of the company comply with the Companies Act 1972 read with this Act;
- (b) names and addresses of shareholders and where any such shareholder is a nominee, the name and address of the person on whose behalf the shares are held by the nominee;
- (c) the memorandum and articles of association duly signed and dated;
- (d) a written declaration containing –
 - (i) the names and addresses of the directors;
 - (ii) the name and address of the secretary;
 - (iii) the address of the registered office of the company;

(iv) a description of each business that the company proposes to engage in;

(e) the name reservation certificate, if any, issued under section 19.

Documents forwarded to Registrar

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

Incorporation

7.(1) The Registrar of Companies may retain and register the memorandum and articles of a company forwarded under section 6 if he is satisfied that they comply with the provisions of the Companies Act 1972.

(2) On the registration of the memorandum and articles of a company under subsection (1), the Registrar of Companies shall issue a certificate under his hand certifying that the company is incorporated under the Companies Act, 1972 and stating the date of the incorporation.

Effect of incorporation

8. Where a relevant company is incorporated or continued in accordance with section 7 or section 15 as the case may be, the provisions of the Companies Act 1972 shall, subject to any provision to the contrary in this Act, apply to and in respect of that company.

Special licence

9.(1) The Authority shall, subject to such regulations as may be made in that behalf, issue a Special Licence to every relevant company to carry on its business.

(2) A relevant company shall not carry on any business unless the company has been issued with a licence under subsection (1) and has complied with the statutory requirements governing the business.

Revocation of
licence etc

10.(1) If the Authority is satisfied that –

- (a) any director, officer, manager or agent of a relevant company has in Seychelles or elsewhere in connection with the management or conduct of the affairs of that company committed an offence involving dishonesty, or has obtained credit or transfer or delivery of assets or performance of services by false representations made fraudulently or by the dishonest concealment of material facts;
- (b) any business or affairs of a relevant company have been conducted illegally or for an illegal purpose;
- (c) any act has been done by or on behalf of a relevant company in Seychelles or elsewhere which has harmed or is likely to harm the reputation of Seychelles; or
- (d) a relevant company has failed to comply with a condition of the Special Licence in disregard of a reminder in writing,

the Authority may serve a written notice on the relevant company of the Authority's intention to revoke the Special Licence, stating the grounds on which such revocation will be made and requiring the company within one month from the service of the notice to make written representations which the Authority will take into consideration.

(2) If within one month from the service of a notice under subsection (1), the relevant company does not make written representations, or if the Authority after considering any representations which the relevant company makes within that time is satisfied that the ground specified in the notice for the proposed revocation is made out, the Authority may by notice

served on the relevant company revoke the Special Licence granted to it and the notice shall only have effect subject to the provisions of subsection (4).

(3) Within 90 days after the service of the notice of revocation under subsection (2), the relevant company may make an application to the Supreme Court for relief against the notice of revocation and the Court may annul the notice of revocation if the Court is satisfied that the grounds on which the notice of revocation was made do not exist or that the notice of revocation should be annulled for any other reason.

(4) If a notice has been served under subsection (2) and 90 days have elapsed without the relevant company making an application to the Supreme Court; or where an application has been made and it has been refused and the period of time in which an appeal may be preferred to the Court of Appeal has elapsed; or where an appeal to the Court of Appeal has been preferred and it has been decided against the relevant company, then the notice of revocation shall take effect immediately.

Shares

11. A relevant company –

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

Management

12. The business and affairs of a relevant company shall be managed by a board of directors consisting of at least two individuals.

Secretary

13.(1) A relevant company shall at all times have a secretary of the company and such secretary shall be a resident of Seychelles or a body corporate incorporated in Seychelles.

(2) All applications made and all documents required to be submitted to the Registrar or the Authority under any Act by a relevant company shall be made or submitted through the

secretary who or which shall verify in writing the signature of any person appearing on the application or document.

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

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

Meetings and resolutions

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

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

15.(1) A relevant company shall every year transmit only to the Authority its annual returns and the documents relating to the accounts to be annexed to the annual return not more than 90 days after the end of each financial year of the company.

Annual return and accounts

(2) Section 117 of the Companies Act (relating to offences in connection with annual return) shall apply to a relevant company as if the words “the Registrar” in that section

were repealed and the words “the Authority” were substituted therefor.

16.(1) An international business company incorporated under the International Business Companies Act or a company incorporated under the laws of a jurisdiction outside Seychelles may continue as a company incorporated in accordance with this Act as follows –

Continuation
of an IBC or a
foreign
currency

- (a) articles of continuation, written in the English or French language or, if written in a language other than the English or French language, accompanied by a translation in the English or French language certified by the secretary of the company of the articles of continuation, shall be approved –
 - (i) by a majority of the directors or the other person who is charged with exercising the powers of the company, or
 - (ii) in such other manner as may be established by the company for exercising the powers of the company;
- (b) the articles of continuation shall contain –
 - (i) the name of the company and the name under which it is being continued,
 - (ii) the jurisdiction under which it is incorporated,
 - (iii) the date on which it was incorporated,
 - (iv) the information required to be included in a memorandum, and
 - (v) the amendments to its memorandum and articles, or their equivalent, that are to be

effective upon the registration of the articles of continuation;

- (c) an application for the approval of the Authority for the continuation of the company, together with the articles of continuation, accompanied by a copy of the memorandum and articles of the company, or their equivalent, written in the English or French language or, if written in a language other than the English or French language, accompanied by a translation in the English or French language certified by the secretary of the company of the memorandum and articles or their equivalent and the documents referred to in section 5(2) (a), (b), (d) and (e) shall be submitted to the Authority;
- (d) where the Authority grants its approval, the certificate of such approval and the documents referred to in paragraph (c) other than the document containing the names and addresses of shareholders shall be forwarded to the Registrar who may retain and register the memorandum and articles in the register if he is satisfied that they comply with the provisions of this Act; and
- (e) upon the registration of the articles of continuation, the Registrar shall issue a certificate of continuation under his hand certifying that the company is incorporated under the Companies Act and stating the date of the incorporation.

(2) A certificate of continuation issued by the Registrar under subsection (1) (e) shall be prima facie evidence of compliance with all the requirements of this Act in respect of continuation.

(3) A company incorporated under the laws of a jurisdiction outside Seychelles shall be entitled to continue as a company incorporated in accordance with this Act notwithstanding any provision to the contrary in the laws of the jurisdiction under which it is incorporated.

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

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

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

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

(4) If at the time of the issue by the Registrar of a certificate of continuation under section 16(1) (e) in respect of the company any provisions of the memorandum and articles of the company do not in any respect accord with this Act –

- (a) the provisions of the memorandum and articles continue to govern the company until the provisions are amended to accord with this Act or for a period of 2 years immediately

following the date of the issue of the certificate of continuation, whichever is the sooner;

- (b) any provisions of the memorandum and articles of the company that are in any respect in conflict with this Act cease to govern the company when the provisions are amended to accord with this Act or after the expiration of a period of 2 years after the date of issue of the certificate of continuation whichever is the sooner; and
- (c) the company shall make such amendments to its memorandum and articles as may be necessary to accord with this Act within a period that is not later than 2 years immediately following the date of the issue of the certificate of continuation.

Continuation
outside
Seychelles

18.(1) Subject to any limitations in its memorandum or articles, a relevant company may, by a resolution of directors or by a resolution of members, continue as a company incorporated under the laws of a jurisdiction outside Seychelles in the manner provided under those laws.

(2) Where a relevant company continues under the laws of a jurisdiction outside Seychelles –

- (a) the Registrar shall strike off the name of the company from the Register and publish a notice of the striking off in the *Gazette*;
- (b) the company continues to be liable for all of its debts, liabilities and obligations that existed prior to its continuation as a company under the laws of the jurisdiction outside Seychelles;
- (c) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become

due, and no cause existing against the company or against any member, director, officer or agent thereof, is released or impaired by its continuation as a company under the laws of the jurisdiction outside Seychelles; and

- (d) no proceedings, whether civil or criminal, pending by or against the company, or against any member, director, officer or agent thereof, are abated or discontinued by its continuation as a company under the laws of the jurisdiction outside Seychelles, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent thereof, as the case may be.

19. The Authority may reserve the proposed name of a relevant company pending the incorporation of that company and issue a certificate stating the name so reserved if an application is made for that purpose in the prescribed manner.

Reservation
of name

20.(1) Notwithstanding any provision of the Stamp Duty Act –

Exemptions

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

shall be exempt from payment of stamp duty.

(2) The Exchange Control Act shall not apply to a relevant company or to any transactions relating to the securities of or in such company between the holders of such securities.

(3) All furniture and equipment excluding motor vehicles imported for the use of the registered office of a relevant company and used only for the purpose of such office shall be exempt from the payment of the trades tax under the Trades Tax Act.

(4) Section 3(1) (b) of the Social Security Act in so far as it requires a person to pay contribution to the Social Security Fund shall not apply to a relevant company.

(5) A relevant company and its expatriate employees in its registered office shall be exempt from the fee in respect of a gainful occupation permit issued under the Immigration Decree.

(6) The exemptions granted by this section shall remain in force for a period of ten years from the date of incorporation of a relevant company, and after such period the exemptions shall continue in force unless a written law provides otherwise.

Taxation **21.** Repealed.

Preservation
of secrecy **22.(1)** Every person shall preserve and aid in preserving secrecy with regard to all matters relating to the shareholding of a relevant company or a shareholder thereof which may come to that person's knowledge in the performance of duties under this Act and except in the performance of the person's duties under this Act, shall not disclose any such matter to any other person or suffer any unauthorised person to have access to any documents which come into his possession in the performance of his duties under this Act.

(2) Every person who is required to preserve and aid in preserving secrecy under subsection (1) shall take and subscribe an oath of secrecy in the prescribed form before assuming duties.

(3) Any person required to preserve and aid in preserving secrecy under subsection (1) shall not be required to produce in any court any document or record containing any matter relating to the shareholding of a relevant company or shareholder thereof or to divulge or communicate to any court any such matter coming to his notice in the performance of his duties under this Act, except as may be necessary for proceedings instituted under or for the purpose of carrying into effect the provisions of the Penal Code, the Anti-Money Laundering Act or the Business Tax Act.

(4) Any person who contravenes the provisions of this section shall be guilty of an offence and shall upon conviction be liable to a fine not exceeding R10,000 or to a term of imprisonment not exceeding 3 years or both such fine and imprisonment.

23. In respect of the several matters mentioned in the first column of the table set out in Schedule 3 to this Act, there shall be paid to the Authority the several fees specified in the second column of the table.

Fees

24.(1) The Minister may make regulations for the purpose of carrying out or giving effect to the provisions of this Act and, without prejudice to the generality of the foregoing, may by regulations –

Regulations

- (a) amend any Schedule;
- (b) prescribe fees payable in respect of a licence under section 9;
- (c) specify the conditions of a licence under section 9; or
- (d) exempt relevant companies from the operation of any specified provision of the Companies Act 1972.

(2) Where the Minister by regulations, amends a Schedule or any regulation, that amendment shall not operate to the disadvantage of a relevant company licensed under section 9 at the time of the coming into effect of the regulations in connection with any concession enjoyed by that company at the time.

SCHEDULE 1

Section 4

Investment management and advice

Offshore banking

Offshore insurance

Reinsurance

Business of

- (a) an investment company
- (b) a holding company
- (c) a marketing company
- (d) a company holding intellectual property
- (e) a headquarters company
- (f) a human resources company
- (g) a franchise company

Business under an ITZ licence

Any other business approved by the Authority

SCHEDULE 2 - Repealed

SCHEDULE 3

FEES

Section 23

(a)	An application for incorporation	US\$200
(b)	Annual licence fee	US\$1000
(c)	Annual return filing fee	US\$200
