

## **INTERNATIONAL BUSINESS COMPANIES (AMENDED) ACT, 2021**

### **SUMMARY OF MAIN AMENDMENTS**

Seychelles International Business Companies (IBCs) are incorporated under the International Business Companies Act 2016 (the Act), which has been amended by the International Business Companies (Amendment) Act 2021 (the Amendment Act) and enacted on 6<sup>th</sup> August 2021.

A summary of the main amendments brought in by the Amendment Act include:

**Mandatory company name suffix** – The Act has been widened to permit the name of a company to end with the words: “Limited Liability Company” or “Company”, or with the abbreviation “LLC” or “Co”, as alternatives to the existing mandatory company name endings of the words: “Limited”, “Corporation”, “Limited” or “Incorporated”, or the abbreviation “Ltd”, “Corp”, or “Inc” (section 25(1) and (2) of the Act).

**Written consent to be a director, alternate director or reserve director** – A person can only be appointed as a director or alternate director of a company, or nominated as a reserve director, by providing written consent to do so. However, the written consent requirement does not apply to a director, alternate director, or reserve director appointed or nominated before the commencement of the International Business Companies (Amendment) Act 2021, namely, 6<sup>th</sup> August 2021 (section 134(7) and (8) of the Act).

**Deemed dissolution of struck off companies after one year** – Section 275 of the Act is amended with effect from **1st January 2022** to provide that, where the name of a company that has been struck off the Register under section 272 of the Act (such as for non-payment of annual fees) and remains struck off continuously for a period of **1 (one) year** (instead of 7 years), it is dissolved with effect from the last day of that period.

#### **Attestation of company documents**

Section 41(1) of the Act has been amended to clarify that a document requiring authentication or attestation by a company may be signed by: **(i)** a director of the company; **(ii)** a secretary of the company; **(iii)** an agent of the company authorised to act generally on its behalf; or **(iv)** an agent of the company specifically authorised to authenticate or attest documents on its behalf. An authentication or attestation under subsection (1) does not require the company’s common seal (section 41(2) of the Act).

#### **Penalties for non-compliance with Register of Members requirements**

The penalty for not keeping an up-to-date Register of Members has been changed from a daily US\$500 fee to a discretionary penalty fee not exceeding US\$10,000 (section 104(5) and (6) and 106(6) and (7) of the Act).

#### **Register of Directors**

Section 150 of the Act relating to the Register of Directors has been amended to bring the Act into line with the Registrar’s prescribed-format Registers based on global norms. Pursuant to amend section 150 of the Act, a company is required to keep at its registered office in Seychelles a Register of Directors containing:

- (a) the name 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) in the case of a director, alternate director or reserve director who is an individual, date of birth, nationality and address for service of documents and, if different to the address for service of documents, the usual place of residence;

- (c) in the case of a director, alternate director or reserve director that is a corporate body, its registered office, date of incorporation or registration and the place of incorporation or registration;
- (d) the date on which each person whose name is entered in the register was appointed/ceased to a director or alternate director, or nominated as a reserve director, of the company;
- (f) the date on which the nomination of any person nominated as a reserve director ceased to have effect.

New section 150(3B) of the Act provides that every company shall, within **twelve months** from the commencement of the Amendment Act, comply with the new requirements of section 150(1)(aa) and (ab) and subsection (1A) of the Act in respect of the Register of Directors. Namely, in the case of an individual, date of birth, nationality and address for service of documents and, if different to the address for service of documents, the usual place of residence; for a corporate body, its registered office, date of incorporation or registration and the place of incorporation or registration.

The penalties not keeping an up-to-date Register of Directors have been changed to a discretionary penalty fee not exceeding US\$10,000 (section 150(5) and (6) of the Act).

#### **Penalties for non-compliance with the filing of Register of Directors requirements**

The penalties for breach of the requirements relating to filing of the Register of Directors have been changed to a discretionary penalty fee not exceeding US\$10,000 (section 152(3) and (4) of the Act).

#### **Penalties for non-compliance with the requirements for keeping of directors' minutes and resolutions**

The penalties for not keeping up-to-date minutes and resolutions of directors have been changed from a daily penalty fee of US\$25 to a discretionary penalty fee not exceeding US\$5,000 (section 156(3) and (4) and section 157(4) and (5) of the Act).

#### **Preservation of company records**

A new section 169A of the Act has been introduced. Section 169A(1) provides that a registered agent shall, in respect of each company (including a dissolved company or a struck off company, or a company which has continued outside Seychelles) to which it was or is acting as registered agent, preserve for at least seven years: **(i)** the register of members, register of directors and register of charges of the company, from the date of last striking off or dissolution of the company; **(ii)** the accounting records of the company in the possession of the registered agent, from the date of completion of the transactions or operations to which they each relate ((i) and (ii) together referred to as the **Records**).

#### **Annual return**

The penalties for breach of the requirements relating to furnishing of a company's annual return to its registered agent per section 171(1) of the Act (read with the Sixth Schedule to the Act) have been changed to a discretionary penalty fee not exceeding US\$5,000 (section 171(4) of the Act).

#### **Restoration application to the Registrar (non-Court)**

A new section 276(1C) has been introduced with effect from **1st January 2022**, reducing the time-limit for an application to the Registrar to restore the name of a struck off or dissolved company to: **(i)** within **one year** of the date of the striking off notice published in the Gazette under section 272(4) of the Act; or **(ii)** within **five years** of the date of dissolution.

A restoration application to the Registrar is available (subject to the above time-limits) where a company is struck off the Register for non-payment of annual fees but is not available if the company was struck off the Register pursuant to section 272(1)(a)(ii), (iii) or (iv) of the Act (i.e. has been struck off for fraud or for jeopardizing the reputation of Seychelles as a financial center or has failed to comply with section 5(2) of the Act (business prohibitions and restrictions) (section 276(1A) of the Act). Where a company has been struck off for pursuant to section 272(1)(a)(ii), (iii) or (iv) of the Act, it can only be restored by making an application to the Court.

A new section 276(7) has been introduced, which provides that where a company:

- is not dissolved, but its name has been struck-off the Register under the former Act or the Act, on or before the commencement of the International Business Companies (Amendment) Act, 2021;
- has remained continuously struck-off for one year or more on 31st December, 2021; and
- has not been restored to the Register on or before 31st December, 2021,

the company shall, notwithstanding section 275 of the Act, be deemed to have been dissolved on the 1st January, 2022.

#### **Restoration application to the Court**

Section 277(2) of the Act has been amended with effect from **1st January 2022** to reduce the **time-limit** for an application to the Court, for an order to restore the name of a struck off or dissolved company under section 277(1), to: **(i)** within **one year** of the date of the striking-off notice published in the *Gazette* under section 272(4) of the Act; or **(ii)** within **five years** of the date of dissolution of a company.

A new section 277(4A) of the Act was introduced for clarity: The Court shall not restore the name of a struck off or dissolved company if the Registrar is not satisfied that the company is in compliance of its obligations: **(i)** under the Act relating to accounting records, register of members and register of director; and **(ii)** under the Beneficial Ownership Act 2020 relating to register of beneficial owners.

#### **New section 352A - Duplicate certificates**

If the Registrar is satisfied on receiving evidence that a company's certificate of incorporation, continuation, conversion, re-registration or dissolution has been lost, defaced or destroyed, the Registrar may issue a duplicate certificate, with an endorsement stating that the certificate is a duplicate of the original (section 352A of the Act).

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