

COMPANIES (AMENDMENT) BILL, 2020*(Bill No. 20 of 2020)***OBJECTS AND REASONS**

The primary object of this Bill is to further improve the ease of doing business in Seychelles by providing a legal framework that is more conducive to the starting and operation of companies. Moreover, the Bill intends to strengthen due diligence and compliance mechanisms.

The Bill removes some onerous and obsolete legal requirements. The subscribers of a company will now be able to sign a memorandum of a company without the need of witnesses to attest the signatures of the subscribers. Similarly, it will no longer be a requirement for a person starting a company to have a signed declaration from an Attorney-at-law or a notary.

Further, the Bill gives the Registrar the power to issue certificates of good standing and certificates of official search which may better facilitate companies in conducting business, progressing business relations and meeting the requirements of certain commercial banks and business partners.

Persons will now be able to reserve a name for either an intended company or an existing company which wants to change its name. Also, companies will have the option of applying to be voluntarily struck off the register of companies but any existing liability of that company will not be extinguished.

The Bill seeks to enhance due diligence and compliance mechanisms. Companies will need to provide full and accurate information about the location of their registered offices and the public can access to this information. The Registrar will have new means to enforce compliance against companies that flout the legal obligation to file their annual returns. Moreover, the Registrar will be able to establish and maintain registers of companies. Further, the Bill introduces an annual fee which is common in other countries and which is currently applied under the International Business Companies Act, 2016.

Further, the Bill makes it a legal requirement for the secretary of a company to be ordinarily resident in Seychelles.

Dated this 5th day of May, 2020.

**FRANK D.R. ALLY
ATTORNEY GENERAL**

COMPANIES (AMENDMENT) BILL, 2020

(Bill No. 20 of 2020)



**A BILL
FOR**

AN ACT to provide for the reservation of names for companies; to require companies to provide more detailed information about their registered office and for the secretary of a company to be ordinarily resident in Seychelles and; to give the Registrar the power to strike off from the register of companies (1) any company that fails to file its annual returns or (2) any company that makes a request to be struck off the register; and to make provision for a register of companies, an annual fee for companies, and the issuance of certificates of good standing and certificates of official search; and for matters incidental thereto.

ENACTED by the President and the National Assembly.

1. This Act may be cited as the Companies (Amendment) Act, 2020. Short title

Amendment of
CAP 40 as last
amended by
Act 5 of 2013

2. The Companies Act, 1972, is amended as follows —

- (a) in section 2 in subsection (1) by inserting in the proper alphabetical order the following definition —

““register of companies” or “register” means the register of companies maintained by the Registrar unless the context specifies otherwise;”;

- (b) in section 5 in subsection (3) by repealing the words “in the presence of at least one witness who must attest the signature”;

- (c) by inserting immediately after section 10 the following new section —

Reservation
of name **“10A.(1)** A person may apply to the Registrar for the reservation of a name for a company set out in the application as —

- (a) the name of an intended company; or

- (b) the name to which an existing company proposes to change its name.

(2) The Registrar may reserve a name for a company if the Registrar is satisfied as to the *bona fides* of the application and that the proposed name by which the intended company or existing company could be registered is not such as to contravene this Act or any other written law.

(3) The Registrar shall, on approving a reservation of a name in accordance with subsection (2), notify the applicant, in writing, and shall register the name as reserved for a period of 30 days from the date of the notice.

(4) If at any time while the name is so reserved in accordance with subsection (3), a person may make an application to the Registrar for an extension of the period, and if the Registrar is satisfied as to the *bona fides* of the application, the Registrar may grant an extension for the reservation of the name for a period not exceeding 5 months from the date of the expiration of the 30 day period under subsection (3).

(5) For the avoidance of doubt, a name for a company shall not be reserved for a period exceeding 6 months.

(6) During the period for which a name is reserved, no company, other than the intended company or an existing company in respect of which the name is reserved, may be registered under this Act, whether originally or on change of name, under the reserved name.

(7) The Minister responsible for finance may prescribe fees and forms for the reservation of a name for a company under this section.”;

- (d) in section 13 by repealing subsections (2) and (3);

(e) in section 100 —

(i) by inserting immediately after subsection (1), the following new subsections —

“(1)A. Subject to section 100B., the registered office of a company at a particular time is the place entered as its registered office in the register of companies.

(1)B. The description of the address or situation of a registered office in the notice under subsection (2) may include the following information, where applicable —

- (a) the floor and room number;
- (b) the name of the building or property;
- (c) name of the street;
- (d) the name of the district;
- (e) the name of the island; and
- (f) any other information required by the Registrar.”;

(ii) in subsection (2), by inserting immediately after the words “record the same” the words “and enter it in the register of companies”;

(iii) in subsection (4), by inserting immediately after the words “under this

section” the words “and entered as its registered office in the register of companies”;

- (iv) by inserting immediately after subsection (5), the following new subsections —

“(6) The change of the registered office shall take effect on the date that the notice of change of registered office is recorded by the Registrar.

(7) The Registrar may prescribe a form for the description of the registered office.”;

- (f) by inserting immediately after section 100 the following new section —

Requirement
to change
registered
office

100A.(1) Where the Registrar is of the opinion that the situation of the registered office of a company has changed without the company giving notice of such change to the Registrar, the Registrar may by written notice require the company to change its registered office and give notice thereof to the Registrar within a specified period for the purpose of record and entry in the register of companies.

(2) The notice by the Registrar under subsection (1) shall be in writing and it may be delivered or sent to —

- (a) the company at its principal office or the principal place where the company carries on business; or

- (b) the secretary or any director of the company.

(3) Where a notice is delivered or sent pursuant to subsection (2), the company shall change its registered office by the date specified in the notice and in compliance with section 100.

(4) Where a company fails to comply with this section, every director and secretary of the company commits an offence and is liable on conviction to a fine not exceeding SCR 20, 000.”;

(g) in section 114 —

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

“(3) If a company fails to comply with this section, the company and its officers shall be liable to —

- (a) pay a fixed administrative fee of SCR5, 000 if the annual returns are sent to the Registrar within 60 days after the period specified in subsection (2);
- (b) pay a fixed administrative fee of SCR10, 000 if the annual returns are sent to the Registrar within 30 days after the period specified in paragraph (a);

- (c) pay a fixed administrative fee of SCR15, 000 if the annual returns are sent to the Registrar within 30 days after the period specified in paragraph (b) but before the company is struck off the register of companies; or
 - (d) be struck off the register of companies in accordance with subsection (6), if the company fails to send its annual returns to the Registrar after the expiry of the period specified in paragraph (c).”;
- (ii) by renumbering subsection (4) as subsection (14);
 - (iii) by inserting immediately after subsection (3) the following new subsections —

“(4) The Registrar shall publish a notice which contains the name of a company whose annual returns are overdue for more than 120 days and an issue of the said notice may be published one day per week for 4 successive weeks in a local newspapers, the Gazette or any other media.

(5) The Registrar is not liable for any publication made in good faith under subsection (4).

(6) The Registrar may strike off the register the name of any company that was published in a notice in accordance with subsection (4) where that company failed to file its annual return and pay the fixed administrative fee under subsection (3).

(7) The Registrar shall immediately, after striking off the register the name of any company, publish a notice in a local newspaper, the Gazette or any media to the effect that a company in question has been struck off the register, the date on which it has been struck off and the reason therefor.

(8) The striking off the register of any company under this section shall not affect the liability of any director, shareholder, secretary, officer or member of the company, and such liability shall continue and may be enforced as if the company had not been struck off the register.

(9) Notwithstanding any other provisions of this Act, if the Registrar strikes the name of a company off the register for failure to submit its annual return, the Registrar may order the name of the company to be restored to the register, within a period of 5 years from the date of the publication of a notice pursuant to subsection (7), if the company —

- (a) pays a fixed restoration fee of SCR2, 500 in the case of

a proprietary company, or a fixed restoration fee of SCR5, 000 in the case of a non-proprietary company; and

- (b) pays a fixed administrative fee of SCR15, 000; and
- (c) submits any annual return that is due to the Registrar.

(10) An application under subsection (9) may be made by any officer or member of the company.

(11) All fees under this section shall be paid to the Registrar.

(12) No liability shall attach for any act performed or thing done by the Registrar under this section.

(13) The Registrar may issue guidelines or administrative directions for the efficient administration of this section including directions in respect of submission of the annual return in electronic format.”;

- (h) in section 169 in subsection (2) by inserting immediately after the words “his nationality,” the words “his Seychelles national identity number or where the person is not a Seychellois or resident in Seychelles, the biographical data in his valid passport or any other document of identity,”;

- (i) in section 170 in subsection (1) by inserting immediately after paragraph (c) the following new paragraph —

“(d) his Seychelles national identity number or where the person is not a Seychellois or resident in Seychelles, the biographical data in his valid passport or any other document of identity”;

- (j) in section 179 by inserting immediately after subsection (2) the following new subsections —

“(3) Notwithstanding any other provision of this Act, the secretary shall ordinarily be resident in Seychelles.

(4) Notwithstanding subsection (2), the office of the secretary shall not be left vacant for more than 90 days of the date that the office becomes vacant.

(5) Where the directors of a company fail to appoint a secretary within the period of 90 days referred to in subsection (4), the Registrar or the Court may, on application by a shareholder or director or the outgoing secretary, order the company or its directors to appoint a secretary.

(6) Where the directors fails to comply with this section, every director of the company commits an offence and is liable on conviction to a fine not exceeding SCR20,000.”;

- (k) in section 305 —

- (i) by inserting immediately after the words “in the Gazette”, wherever they appear, the words “, a local newspaper or any other media”;
- (ii) in subsection (1) by inserting immediately after the words “or is not in operation,”, the words “or where the company fails to pay its annual fee under section 330A,”;
- (iii) by renumbering subsections (7) and (8) as subsections (9) and (10), respectively;
- (iv) by inserting immediately after subsection (6) following the new subsections —

“(7) A director, shareholder, secretary or member of a company may request the Registrar to strike the company off the register and this request shall be accompanied by the prescribed fee.

(8) The striking off the register of any company under subsection (6) shall not affect the liability of any director, shareholder, secretary, officer or member of a company, and such liability shall continue and may be enforced as if the company has not been dissolved.”;

- (1) by inserting immediately after section 329 the following new section —

Register of
companies

“**329A.**(1) The Registrar may maintain a register of companies registered or deemed to be registered under this Act.

(2) The register of companies maintained by the Registrar under subsection (1) shall contain in respect of every company incorporated under this Act —

- (a) the name and any former name of that company;
- (b) the registration number and date of registration;
- (c) the date of incorporation;
- (d) the address of the registered office;
- (e) the date on which the name of the company was struck off the register of companies, where applicable;
- (f) the date on which the name of the company was restored to the register of companies, where applicable;
- (g) the name and address of the directors and any former director;
- (h) the name and address of the secretary and former secretary; and
- (i) any other information required by the Registrar.

(3) The register of companies maintained by the Registrar under subsection (1) may contain in respect of every overseas company registered under this Act —

- (a) the name and any former name of that company;
- (b) the registration number and date of registration;
- (c) the name and address of the directors and any former director;
- (d) the name of the managing agent of the company in Seychelles;
- (e) the names of persons nominated by the company to receive service on behalf of the company;
- (f) the country of first incorporation of that company; and
- (g) such other information as the Registrar deems fit.

(4) The Registrar may request, from any person who is or intends to be a director, secretary, shareholder, member or an officer of the company, any information or document as the Registrar

considers necessary for the proper administration of this Act.

(5) A request for information under subsection (4) may specify —

- (a) the nature and type of information sought by the Registrar in sufficient detail so as to enable the person to identify and provide the requested information; and
- (b) the form and period within which the required information is to be submitted.

(6) The register of companies shall be kept in such manner as the Registrar considers appropriate including, either wholly or partly, by means of a device or facility —

- (a) that records or stores information electronically or by other means; and
- (b) that permits the information so recorded or stored to be readily inspected or reproduced in any form the Registrar deems appropriate.

(7) The Registrar may issue guidelines or administrative directions

for the efficient administration of this section.”;

- (m) by inserting immediately after section 330 the following new section —

Annual
Fee

“**330A.**(1) A company registered on the register of companies under section 329A shall pay an annual fee of SCR 500 to the Registrar on or before the date of each anniversary of its incorporation, commencing in the year following the company's registration.

(2) If a company fails to pay the annual fee payable in accordance with subsection (1), the company who is in default is liable to pay, in addition to the annual fee, an administrative penalty of SCR 25 to the Registrar for every week or part thereof that default continues.

(3) This section shall come into operation on 1 January 2021.”;

- (n) by inserting immediately after section 333 the following new sections —

Certificate
of good
standing

“**333A.**(1) The Registrar may, on application made by any person, issue a certificate of good standing under the Registrar's hand and seal certifying that a company, on the register of companies, is of good standing where the Registrar is satisfied that —

- (a) the company has paid all fees and penalties

due and payable under this Act for the current year; and

- (b) the Registrar has no knowledge that the company is in contravention of this Act.

(2) The certificate of good standing under subsection (1) may contain a statement whether —

- (a) the company is in the process of being wound up and dissolved;
- (b) a person is a director or secretary of the company;
- (c) any proceedings to remove the company from the register have been instituted.

(3) A certificate of good standing is evidence of standing of the company on the date that the certificate is issued.

(4) An applicant for a certificate of good standing under subsection (1) shall pay a non-refundable application fee as may be prescribed.

(5) Notwithstanding item 9 of the Seventh Schedule, if the application under subsection (1) is approved by the

Registrar, the applicant shall pay the prescribed fee before the certificate of good standing can be issued by the Registrar.

Certificate
of official
search

333B.(1) The Registrar may, on application made by any person, issue a certificate of official search in respect of any company, under the Registrar's hand and seal, which may contain the following particulars —

- (a) the name and any former name of the company;
- (b) the registration number;
- (c) the date of its incorporation under this Act;
- (d) the address of its registered office;
- (e) the name and address of its directors and secretary;
- (f) the due date of the annual fee;
- (g) the nominal share capital; and
- (h) any other information contained in the register of companies requested by the applicant or that the Registrar deems fit to include.

(2) The particulars referred to in subsection (1) may be obtained from —

(a) the register maintained by the Registrar under section 329A.; and

(b) the documents filed with the Registrar.

(3) A certificate of official search is evidence of the information provided with respect of a company on the date that the certificate is issued.

(4) An applicant for a certificate of official search under subsection (1) shall pay a non-refundable application fee as may be prescribed.

(5) Notwithstanding item 9 of the Seventh Schedule, if the application under subsection (1) is approved by the Registrar, the applicant shall pay the prescribed fee before the certificate of official search can be issued by the Registrar.