

**THE INTERNATIONAL BUSINESS COMPANIES ACT AND
OTHER RELATED LAWS (AMENDMENT) BILL, 2021**

(Bill No.67 of 2021)

OBJECTS AND REASONS

In 2016, Seychelles enacted a new International Business Companies Act (“IBC Act”), which replaced the old International Business Companies Act of 1994. During the implementation of the International Business Companies Act, 2016, over the couple of years, both the Financial Services Authority and private sector have encountered certain issues in relation to the new piece of legislation whereby amendments are required in order to ensure effective compliance on one side and to keep the competitiveness of the product on the other side. Along with the amendments to the International Business Companies Act, 2016, certain consequential and other amendments are also required in the Foundations Act, 2009, the Limited Partnerships Act, 2003 and the Trusts Act, 2021, to comply with the requirement of the Global Forum for Transparency and Exchange of Information on Tax Matters.

2. Amendments are being proposed in the International Business Companies Act, 2016 (Act 15 of 2016), the Foundations Act, 2009 (Cap.270), the Limited Partnerships Act, 2003 (Cap. 281) and the Trusts Act, 2021 (Act 34 of 2021) in line with Seychelles latest review by the Global Forum for Transparency and Exchange of Information on Tax Matters (under the ambit of the OECD), whereby certain observations were made in relation to the accounting records. Therefore, it is proposed to amend the International Business Companies Act, 2016 (Act 15 of 2016), the Limited Partnerships Act, 2003 (Cap. 281), the Foundations Act, 2009 (Cap.270) and the Trusts Act, 2021 (Act 34 of 2021), to sync with the requirements of the OECD.

3. The main amendments proposed under the International Business Companies Act, 2016 (IBC Act) are as follows:

- (a) to amend section 167 of the IBC Act to include enabling provision for the fees applicable when a registered agent

resigns. A fee of \$10 is already provided under paragraph (j) of Part II of the Second Schedule;

- (b) to repeal section 171 of the IBC Act, since the accounting records are now required to be kept in Seychelles and therefore, the submission of annual return becomes obsolete;
- (c) to amend section 175 of the IBC Act to rectify typographical correction (i.e., to remove double-negative) and to require a company which keeps its original accounting records in Seychelles and to inform its registered agent about the physical address of that place;
- (d) to amend section 276 of the IBC Act to allow the Registrar to restore companies that have been dissolved under section 275 and to exempt a company from submitting the consent of the outgoing registered agent during the restoration process, if that agent has resigned following the striking off of the company;
- (e) to amend section 277 of the IBC Act to extend restoration of dissolved companies by the Court to include companies that have been dissolved under section 275 (automatic dissolutions) and to extend the period from 3 years to 5 years, that a dissolved company can apply to Court for restoration;
- (f) to amend section 354(3) of the IBC Act to cap the maximum penalty imposed by the Registrar at US\$10,000;
- (g) to amend section 361 of the IBC Act to increase the penalty fee applicable for noncompliance of submission of annual return and the relevant accompanying documents;
- (h) to repeal the Sixth Schedule (Annual Return Content) of the IBC Act relating to annual return in view of the repeal of section 171;
- (i) amendment to section 60(2) of the International Business Companies (Amendment) Act, 2021 and to commence the said section from 1st January 2022 (rather than 6th August 2021); and

- (j) requirements brought by the IBC (Amendment) Act, 2021 to require a company to lodge its accounting records at its registered office in Seychelles shall apply with retrospective effect whereby every existing company (except a company which already keeps its accounting records in Seychelles) shall lodge its accounting records, relating to transactions over the past 7 years, at the company's registered office in Seychelles, within 6 months from the date of commencement of the International Business Companies (Amendment) Act, 2021.

4. The main amendments being proposed under the Foundations Act (Cap. 270) are as follows —

- (a) to require a foundation which keeps its original accounting records in Seychelles to inform its registered agent of the physical address of that place;
- (b) to replace the existing section 113 to expressly allow interested parties, including beneficiaries, founders and creditors, to apply to the Supreme Court of Seychelles for relief in relation to alleged breaches by councilors or protectors; and
- (c) to provide that the requirements brought by the Foundations (Amendment) Act, 2021 to require a Foundation to lodge its accounting records at its registered office in Seychelles shall apply with retrospective effect whereby every existing foundation (except a foundation which keeps its accounting records in Seychelles) shall lodge its accounting records, relating to transactions over the past 7 years, at the foundation's registered office in Seychelles within 6 months from the date of commencement of the Foundations (Amendment) Act, 2021.

5. The amendments being proposed under the Limited Partnerships Act (LP Act) (Cap. 281) are as follows:

- (a) to amend section 11A of the L P Act to rectify a typographical correction and to require a limited partnership which keeps its original accounting records in Seychelles to inform its registered agent of the physical address of that place;

- (b) the requirements brought by the Limited Partnerships (Amendment) Act, 2021 to require a limited partnership to lodge its accounting records at its registered office in Seychelles shall apply with retrospective effect whereby every existing limited partnership (except a limited partnership which keeps its accounting records in Seychelles) shall lodge its accounting records, relating to transactions over the past 7 years, at the limited partnership's registered office in Seychelles within 6 months from the date of commencement of the Limited Partnerships (Amendment) Act, 2021.

6. The main amendments being proposed under the Trusts Act are as follows —

- (a) to amend section 11 of the Trusts Act to rectify a typographical correction;
- (b) to amend section 27 of the Trusts Act to require an approved trustee which keeps the original accounting records in Seychelles, other than at its principal place of business or registered office, to keep a written record of the physical address of that place;
- (c) to amend section 28 of the Trusts Act to remove the requirement to keep register of trustees, beneficiaries, settlors and protector; and
- (d) to keep the accounting records of the trusts under its administration in Seychelles shall apply with retrospective effect whereby every trustee (except where the accounting records in relation to the trust is being kept in Seychelles) shall have a period of 6 months from the date of commencement of the Trusts Act, 2021 and to lodge in Seychelles, the accounting records relating to transactions over the past 7 years, in respect of all trusts under its administration.

Dated this 10th day of December, 2021.

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

**THE INTERNATIONAL BUSINESS COMPANIES ACT AND
OTHER RELATED LAWS (AMENDMENT) BILL, 2021**

(Bill No. 67 of 2021)



A BILL

FOR

AN ACT TO AMEND THE INTERNATIONAL BUSINESS COMPANIES ACT, 2016 (ACT 15 OF 2016), LIMITED PARTNERSHIPS ACT, 2003 (CAP. 281), THE FOUNDATIONS ACT, 2009 (CAP.270) AND THE TRUSTS ACT, 2021 (ACT 34 OF 2021).

ENACTED by the President and the National Assembly.

**PART 1
PRELIMINARY**

Short title and commencement

1. This Act may be cited as the International Business Companies Act and Other Related Laws (Amendment) Act, 2021 and save as otherwise provided, the provisions of this Act shall come into force at once.

PART 2
AMENDMENTS TO THE INTERNATIONAL BUSINESS
COMPANIES ACT, 2016 (ACT 15 OF 2016)

2. The International Business Companies Act, 2016 (Act 15 of 2016) (hereinafter in this Part referred to as the principal Act) is hereby amended as follows —

Amendment of section 167

- (a) Section 167 of the principal Act is amended in subsection (5), by inserting after the words “under subsection (2)” the words “and the fee specified in Part II of the Second Schedule”;

Repeal of section 171

- (b) Section 171 of the principal Act is hereby repealed;

Amendment of section 173

- (c) Section 173 of the principal Act is amended in subsection (1) by repealing paragraph (d);

Amendment of section 175

- (d) Section 175 of the principal Act is amended —
- (i) in subsection (1B), in the opening paragraph, by repealing the word “not” after the words “other than a company”;
- (ii) by repealing subsection (2A) and substituting therefor the following subsections —
- “(2A) Where a company —
- (a) keeps a copy of its accounting records at its registered office;
- (b) keeps its original accounting records

in Seychelles at a place other than at its registered office,

the company shall notify in writing its registered agent of the physical address of the place where the original accounting records are kept.

(2B) Where there is a change in the place at which its original accounting records 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 original accounting records are kept.”;

Amendment of section 276

- (e) Section 276 of the principal Act is amended, with effect from 1st January, 2022 —
- (i) in subsection (1C),
 - (a) in paragraph (a), by repealing the word “date” and substituting therefor the words “date of striking off under section 272(1)(c) or within one year from the date”;
 - (b) in paragraph (b), by repealing the words “Sub-Part II, III or IV”, and substituting therefor the words “Sub-Part I,”;
 - (ii) in subsection (4), by inserting after the words “by the outgoing registered agent” the words “, unless the outgoing registered agent has resigned as registered agent of the company after the company was struck-off”;

Amendment of section 277

- (f) Section 277 of the principal Act is amended with effect from 1st January, 2022 —

- (i) in subsection (2), —
 - (A) in paragraph (a), by repealing the word “date” and substituting therefor the words “date of striking off under section 272(1)(c) or within one year from the date”;
 - (B) in paragraph (b), —
 - (a) by repealing the words “three years”, and substituting therefor the words “five years”;
 - (b) by repealing the words “Sub-Part”, and substituting therefor the words “Sub-Part I.”;
- (ii) in subsection (4A), by repealing the words “the Registrar” and substituting therefor the words “the Court”;

Amendment of section 354

- (g) Section 354 (3) of the principal Act is amended by repealing the words “US\$5,000” and substituting therefor the words “US\$10,000”;

Amendment of section 361

- (h) Section 361 (3) of the principal Act is amended by repealing the words “of US\$100 and to an additional penalty of US\$25 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$10,000”;

Amendment of section 389

- (i) Section 389 (1) of the principal Act is amended by repealing paragraph (b).

Repeal of SIXTH SCHEDULE

- (j) SIXTH SCHEDULE of the principal Act is hereby repealed.

Amendment of International Business Companies (Amendment) Act, 2021

3. Section 60(2) (*Commencement of certain provisions of this Act*) of the International Business Companies (Amendment) Act, 2021 is hereby amended with effect from the date of commencement of the International Business Companies (Amendment) Act, 2021, by repealing the words “except paragraph (iii)” and substituting therefor the words “except subsection (1C) (iii)”; and

Retrospective provision

4. Where a company has been incorporated, continued or converted as a company under the International Business Companies Act, 2016 (Act 15 of 2016) before the commencement of this Act, keeps its accounting records outside Seychelles, it shall lodge its accounting records relating to transactions over the past 7 years at the company's registered office in Seychelles within 6 months from the date of commencement of the International Business Companies (Amendment) Act, 2021.

PART 3

AMENDMENTS TO THE FOUNDATIONS ACT (CAP.270)

5. The Foundations Act (Cap. 270) (hereinafter in this Part referred to as the principal Act) is hereby amended as follows —

- (a) Section 75 of the principal Act is hereby amended by repealing subsection (3B) and substituting therefor the following subsections —

“(3B) Where a Foundation —

- (a) keeps a copy of its accounting records at its registered office;
- (b) keeps its original accounting records in Seychelles at a place other than at its registered office,

the Foundation shall inform its registered agent in writing of the physical address of the place where the original accounting records are kept.

(3BA) Where there is a change in the place at which its original accounting records are kept, the Foundation shall, within 14 days of the change, notify in writing its registered agent of the physical address of the place at which its original accounting records are kept.”;

Substitution of section 113

- (b) Section 113 of the principal Act is hereby repealed and substituting therefor the following section —

“Power of court to make orders

113.(1) This section applies where the court, on an application by a person of standing or of its own motion, is satisfied, in respect of a foundation, that a person has failed to comply with —

- (a) a requirement of this Act or of the charter or regulations of the foundation; or
- (b) an obligation imposed on a person by this Act or by the charter or regulations of the foundation.

(2) For the purposes of subsection (1), “a person of standing”, in respect of a foundation means —

- (a) the foundation;
- (b) a founder of the foundation;
- (c) a person, other than a founder of the foundation, who has endowed the foundation;

- (d) if any rights a founder of a foundation had in respect of the foundation and its assets have been assigned to some other person, that other person;
- (e) a person appointed under the regulations of the foundation;
- (f) a beneficiary of the foundation;
- (g) a councillor of the foundation;
- (h) a creditor of the foundation;
- (i) a supervisory person;
- (j) the foundation's registered agent;
- (k) the Registrar; or
- (l) the Attorney General.

(3) The court may make an order in respect of a foundation —

- (a) that a person shall comply with the requirement or obligation which that person has failed to comply with; or
- (b) otherwise facilitating compliance with the requirement or obligation which that person has failed to comply with.

(4) The court shall not make an order under subsection (3) unless it is satisfied that —

- (a) the same shall assist the foundation in the just and proper administration of its assets or the attainment of its objects; or

- (b) it is otherwise just and desirable that it should do so.

(5) Where the court makes an order under subsection (3)(b), its order shall have the same effect as if it were an action taken by the person required to comply with the requirement or obligation.

(6) An order made by the court under this section in respect of a foundation may, without limitation, provide for —

- (a) the action that the foundation or other person is required to take;
- (b) the appointment or removal of a person appointed under the charter or regulations of the foundation;
- (c) a person to make good a breach;
- (d) the foundation or other person to cease acting in such manner as may be specified by the court;
- (e) payment or distribution of an amount of money or other asset; or
- (f) directions by the court.

(7) If the court is satisfied that a foundation, acting through its council, has failed to carry out its objects or any of them, the court may, by order, require the foundation to do so.

(8) Any order made by the court under this section —

- (a) may be made on such terms; and
- (b) may impose such conditions,

as the court thinks fit.”;

Retrospective provision

6. Where a Foundation registered under the Foundations Act (Cap. 270) before the commencement of this Act, keeps its accounting records outside Seychelles, it shall lodge its accounting records relating to transactions over the past 7 years at the Foundation's registered office in Seychelles within 6 months from the date of commencement of the Foundations (Amendment) Act, 2021.

PART 4
AMENDMENTS TO THE LIMITED PARTNERSHIPS ACT
(CAP.281)

7. The Limited Partnerships Act (Cap. 281) (hereinafter in this Part referred to as the principal Act) is hereby amended as follows —

Amendment of section 11A

(a) Section 11A of the principal Act is amended —

- (i) in subsection (3), in paragraph (b), by repealing the words “the company's” and substituting therefor the words “the limited partnership's”;
- (ii) by repealing subsection (4A) and substituting therefor the following subsections —

“(4A) Where a limited partnership —

- (a) keeps a copy of its accounting records at its registered office;
- (b) keeps its original accounting records in Seychelles at a place other than at its registered office,

the limited partnership shall inform its registered agent in writing of the physical address of the place where the original accounting records are kept.

(4B) Where there is a change in the place at which its original accounting records are kept, a limited partnership shall, within 14 days of the change, notify in writing its registered agent of the physical address of the place at which its original accounting records are kept.”;

Retrospective provision

8. Where a limited partnership registered under the Limited Partnerships Act (Cap. 281) before the commencement of this Act keeps its accounting records outside Seychelles, it shall lodge its accounting records relating to transactions over the past 7 years at the limited partnership's registered office in Seychelles within 6 months from the date of commencement of the Limited Partnerships (Amendment) Act, 2021.

PART 5

AMENDMENTS TO THE TRUSTS ACT, 2021 (ACT 34 OF 2021)

9. The Trusts Act, 2021 (Act 34 of 2021) (hereinafter in this Part referred to as the principal Act) is hereby amended as follows —

Amendment of section 11

- (a) section 11 of the principal Act (*hereinafter referred to as the “principal Act”*) is amended in subsection (6), by repealing the word “section 88” and substituting thereof the words “section 87(3)”;

Amendment of section 27

- (b) section 27 of the principal Act is amended by repealing subsection (3) and substituting therefor the following subsections —

“(3) Where an approved trustee —

- (a) keeps a copy of the accounting records at its principal place of business or registered office in Seychelles;

- (b) keeps the original accounting records in Seychelles at a place other than at its principal place of business or registered office,

the approved trustee shall keep a written record of the physical address of the place where the original accounting records are kept.

(3A) Where there is a change in the place at which the original accounting records are kept, an approved trustee shall, within 14 days of the change, keep a written record of the physical address of the place at which the original accounting records are kept.”;

Amendment of section 28

- (c) section 28 of the principal Act is amended —

- (i) in subsection (1), by repealing paragraphs (a), (b), (c) and (d) and re-numbering the paragraphs (e) and (f) as paragraphs (a) and (b) respectively;

- (ii) in subsection (2), —

- (A) in paragraph (c), by repealing the words “a trustee, beneficiary, settlor, protector, enforcer, agent or service provider to the trust as the case may be, and in the case of a natural person identified under subsection (1), the date upon which such a person began exercising control over the trust” and substituting therefor the words “an enforcer, agent or service provider to the trust, as the case may be”;

- (B) in paragraph (d), by repealing the words “a trustee, beneficiary, settlor, protector, enforcer, agent or service provider to the trust as the case may be, and in the case of a natural person

identified under subsection (1), the date upon which the person ceased to exercise control over the trust” and substituting therefor the words “an enforcer, agent or service provider to the trust, as the case may be”;

Retrospective provision

10. Where a trustee of a trust registered (including every former trust deemed to have been re-registered as a registered trust) under the Trusts Act, 2021 (Act 34 of 2021) before the commencement of this Act, keeps the accounting records relating to the trust outside Seychelles, the trustee shall, within 6 months from the commencement of the Trusts Act, 2021, lodge, in respect of that trust, the accounting records relating to transactions of the trust over the past 7 years

- (a) at the licensed trustee's principal place of business in Seychelles, in the case where the approved trustee of the trust is a licensed trustee; or
- (b) at the private trust company's registered office in Seychelles, in the case where the approved trustee of the trust is a private trust company.