



FINANCIAL SERVICES AUTHORITY

WHITE PAPER

INDUSTRY CONSULTATION

**POLICY CHANGES TO THE INTERNATIONAL BUSINESS COMPANIES ACT,
2016**

9th November, 2023

White Papers communicate a decided Government policy or approach on a particular issue. They are chiefly intended as statements of Government policy.

The Financial Services Authority (FSA) is proposing the certain policy changes to the International Business Companies Act, 2016. This document is being used for consultation with stakeholders before finalization and any comments on the proposed changes must be sent to the FSA by **Monday 4th December, 2023**.

1. Introduction

The Seychelles enacted the new International Business Companies (“IBC”) Act in 2016 which replaced the former International Business Companies Act of 1994. In view of the ever-changing international standards in relation to exchange of information in tax matters and especially, following the subsequent review of Seychelles by the Global Forum of the OECD, a number of amendments are being proposed to the IBC Act, 2016 in an effort to improve the availability of information in Seychelles and hence, improving the standing of Seychelles’ vis-à-vis such international standards.

Therefore, this paper will focus on the proposed changes to be made to the IBC Act to be discussed with the industry before legislative amendments are undertaken.

2. Main reasons for changes

In July, 2023, the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) under the ambit of the Organization for Economic Corporation & Development (OECD) published the 2023 Exchange of Information on Request Supplementary Peer Review Report (Second Round) assessing Seychelles’ compliance with the international standard on transparency and exchange of information on request (EOIR). Following the review, the overall rating for Seychelles continues to be rated overall at “Partially Compliant” since the 2020 Second Round Review Report which lead to the EU adding Seychelles on its list of non-cooperative jurisdictions on 17th October 2023. A copy of the report is accessible on the OECD’s website at the following link: https://read.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-seychelles-2023-second-round-supplementary-report_ddc3d41d-en#page1

The report contains a number of recommendations on how to improve the Seychelles’ legal framework and the practical implementation of the standards. The main issues being the availability of legal ownership information, beneficial ownership information and accounting information.

3. Proposed new policy changes

The proposed new policy changes are as follows:

3.1. Section 2 – Reference to new Trusts Act

It is proposed to amend paragraph (g) of the definition of “resident person” to refer to trusts under the new Trusts Act.

3.2. Section 5 – Reference to Trustee Services

It is proposed to amend subsection 2(c) to refer to trustee services as amended under the International Corporate Service Providers Act.

3.3. Section 92(1) – Review of terminology

For contextual clarity, it is proposed to replace the term “pledge” with “pledgee” in view that, in practice, it is the pledgee who is entitled to request for the remedies prescribed under subsection (1).

3.4. Section 104 – Disclosure of nominators of nominees

In accordance with the Global Forum Standard, in cases where a member/shareholder of a company is holding shares on behalf of another person (i.e. nominator), the nominator is regarded be the real legal owner of the company, and information on the nominator must be available to be exchanged under the standard. Currently, under the IBC Act, information on the identity of nominators may not be available as the nominees are recorded in the register of members as any other shareholders, without any indication of their nominee status. Therefore, the proposal is for the amendment of the content of the register of members to reflect the details of the nominator where the member/shareholder is a nominee. This will enable the authorities, from the outset, to clearly identify the real legal owner of the IBC in line with the international standards.

A nominee is a person who has been instructed to act on behalf of another person (the nominator) in a certain capacity regarding a company (e.g. a person who holds legal title over shares of a company on behalf of another person (the nominator)).

This requirement is also part of the FATF standard (refer to paragraph 36 of the FATF’s “Guidance on Transparency and Beneficial Ownership” relating to Recommendation 24) which requires countries to take measures to prevent the misuse of nominee shares and nominee directors and in such cases, it is recommended to require nominee shareholders and directors to disclose the identity of their nominators to the company and to any relevant registry, and for this information to be included in the relevant register.

It is to be noted that currently, details of certain nominators are captured in the Register of Beneficial Owners required to be kept under the Beneficial Ownership Act. However, requiring all nominee members to identify themselves in the register of members will ensure a comprehensive register of members (independently of the register of beneficial owners).

It is proposed that existing companies will be provided a timeframe of 12 months to comply with this new requirement.

3.5. Section 106(1) – Register of members of listed companies

Under the current legislation, all listed companies are provided the option of seeking approval from the Registrar for keeping their register of members at a location in Seychelles other than at the office of its registered agent. It is being proposed to reword this provision to clarify that a listed company which wishes to keep its register at another location in Seychelles must apply in writing to the Registrar for approval.

3.6. Section 151(1) – Inspection of register of directors

Under the current legislation, an inspection of the register of directors must be undertaken by a director or member themselves. It is proposed that this subsection be amended to also permit the inspection to be done by a duly appointed attorney acting on behalf of a director or a member of a company.

3.7. New Section 163A – Change in particulars of the address of the registered office

In view of the changes in street names in Victoria in 2021, IBCs wishing to amend their Memorandum and Articles of Association to reflect the correct street names have to pay a fee of USD 50. Given that this change is not within the control of the companies, it would be unfair to impose a fee on those wanting to undertake this amendment to their Memorandum and Articles of Association. Therefore, it is proposed to introduce a new section detailing the means by which a company may register such change in its address with the Registrar and no fee shall be applicable.

3.8. New Section 169B – Transfer of records

In order to ensure the proper transfer of records between registered agents, it is proposed to require former registered agents to transfer company records to the new registered agent following the appointment of a new registered agent. The records must be transferred within 30 days. This is to ensure a smooth handover of records from the former to the new registered agent and the complete records of the company being available with one person.

3.9. Section 187(1) – Review of terminology

For contextual clarity, it is proposed to replace the term “charge” with “chargee” in view that, in practice, it is the chargee who is entitled to request for the remedies prescribed under subsection (1).

3.10. Section 192(9) – Conversion of ordinary company into IBC

To include a new subsection to require the Ordinary Company Registrar (ROC) to publish a notice of striking off in the Gazette upon the striking of a domestic company off the register following its conversion into an IBC.

3.11. Section 194(8) – Conversion of IBC into ordinary company

To include a new subsection to require the Registrar to publish a notice of striking off in the Gazette upon the striking of an IBC off the register following its conversion into a domestic company.

3.12. Section 204(5) – Effect of merger and consolidation

To include a new subsection to require the Registrar to publish a notice of striking off in the Gazette following a merger or consolidation of companies.

3.13. Section 214(1)(b) – Review of terminology

To reword the provision for the application for continuation to be signed by or on behalf of the intended registered agent of the company (similar to section 9(1)(b)), in the place of each subscriber as, in view that in practice, it is the registered agent who makes the application on behalf of the company.

3.14. Section 272 – Striking off

- (a) To include, as a ground for striking-off, failure of a company to have directors, as no other practical sanctions apply for the enforceability of this requirement except for a fine, which requires going to Court. The goal is to encourage compliance with section 134 (1).

- (b) To improve the wording of subsection (1)(b)(iva).
- (c) To reduce the timeframe that a company is to be struck-off the register in cases where the company has failed to pay its annual fee. Such companies will be struck-off right after the due date (i.e. 180 days) for payment of the annual fee and the Registrar will be required to publish a notice of the striking-off. However, similar to the process for foundations under Foundations Act, the Registrar will publish the list of struck off companies in the Gazette on a monthly basis (rather than daily) including the actual date that the company was struck off the Register.

3.15. Section 275 – “Automatic dissolution” of struck off companies

The legal effect of striking off (section 274 of the IBC Act) is that an IBC, its directors and members are prohibited from carrying on the company’s business or act in any way with respect to the affairs of the company, including issue new shares or transfer existing shares. However, struck-off companies still maintain their legal personality during their struck-off period (under the current law they can remain struck off for 1 year) and hence, while section 274 restricts them from dealing with the affairs of the company, they should still be complying with the requirements of the IBC Act and any other legislations. Moreover, given that most IBCs operate outside Seychelles, it is difficult to ensure compliance with section 274. Business partners of the IBC may not be aware that the IBC has been struck-off and undertake business activities with the IBC. The risk of changes in ownership (legal or beneficial) in the IBC can only be identified well after it has been completed, henceforth, affecting the accuracy of ownership information available in Seychelles.

Consequently, in order to mitigate such risks, it is proposed that the 1 year striking-off period be removed and the adoption of an immediate dissolution approach. Therefore, once a company is struck-off it shall also be automatically dissolved.

3.16. Section 276 – Restoration of companies by Registrar

In view that a company will now be dissolved as soon as it is struck off the Register, consequential amendment is being proposed to subsection (1C) to remove paragraph (a).

A further proposal is replace subsection (7) with a special rule in order to automatically dissolve existing struck-off companies that are yet to be dissolved. Existing struck-off companies will be dissolved on the date of commencement of the Amendment Act.

3.17. Section 277 – Restoration of companies by Court

In view that a company will now be dissolved as soon as it is struck off the Register, consequential amendment is being proposed to subsection (2) to remove paragraph (a).

3.18. Section 286 – Review of phrase

For ease of comprehension and clarity, it is proposed that subsection (b) be restructured to ensure a clear delivery of the intention of this provision.

3.19. Section 294 – Review of phrase

It is proposed to grant power to the Registrar to stop a voluntary winding up in cases where the liquidation will prejudice any other person with a legitimate interest in the company or to avoid any actions being taken against the company.

3.20. Section 347 – Inspection of documents filed

In view of the confidentiality provisions under section 11 of the Beneficial Ownership Act (“BO Act”), a register of beneficial owners filed with the Registrar under section 349 of the IBC Act, should not be accessed by unauthorised persons for inspection. As such, it is proposed that subsection (1)(b) explicitly exclude the register of beneficial owners as a qualifying document, thereby, effectively preventing its inspection by the general public. In any event, it is also relevant to consider section 16 of the BO Act which provides that *“Notwithstanding any other law, this Act shall prevail over the confidentiality provisions or restrictions on the disclosure of information contained in any other law”*. Therefore, the BO Act prevails over any provisions pertaining to disclosure or confidentiality of beneficial ownership information in other laws.

3.21. Section 347 – Optional registration of specified registers

It is proposed to require a company that has elected to file, with the Registrar, a copy of its register members, charges or beneficial owners, to file any changes in the register within 30 days of such changes occurring.

3.22. Section 351 – Certificate of good standing

Currently, a company that has initiated voluntary or compulsory liquidation cannot be issued with a certificate of good standing in view of subsection (1)(c). However, subsection 2(c) seems to allow such companies to obtain a certificate of good standing even if the company has filed a notice of commencement of winding up, causing a contradiction. Hence, it is proposed to remove this conflict and amend the section in line with international best practice whereby a company will be deemed in good standing if its name is on the Register and has paid all fees and penalties. Therefore, it is proposed to delete subsection (1)(c). Note that, with this new proposal, a company may still continue to pay its renewal fees during the liquidation process until the dissolution is completed, thus qualified for a certificate of good standing, but the certificate itself will specify that the company has filed a notice of commencement of winding up.

3.23. Section 352(1)(h) – Certificate of official search

For reasons of practicality and clarity, it is suggested that this provision be improved accordingly by replacing it with a new provision (i.e. “the status of a company”). This will allow the Registrar to properly specify the actual status of the company on the certificate of official search. For instance, the Registrar will administratively make use of the following statuses: “In Good Standing”, “Not in Good Standing”, “In Good Standing (in liquidation)”, “Struck-Off and Dissolved (including the date of Striking-Off and Dissolution)”.

3.24. Repeal of Section 392 – Repeal of Cap 100A

The section is a duplication of section 381 and contains an error in the wording of the name of the repealed IBC Act 1994. Therefore, it is proposed that this section be repealed.

3.25. Second Schedule, Part II (ff) – Fees

It is proposed to introduce a filing fee of US\$10 for any changes filed to the Registrar in relation to the filed register of members, charges or beneficial owners.

3.26. Second Schedule, Part II(ga) – Fee

Consequent to the proposed new section 163A, it is proposed to include a new provision stating that no fee will apply when a company files a notice of change in the particulars of the address of the principal place of business of the registered agent (but there is no change in the physical location of its principal place of business). For example, when there is a change in the street name.

3.27. Transitional provision

All existing IBCs will have 12 months to identify their nominees and to update the register of members accordingly.