



PORTCULLIS NEWS

MCI (P) 019/06/2018

14 February 2019

SEYCHELLES UPDATE – IBC ACT AMENDMENTS

This update summarizes recent amendments to the International Business Companies Act 2016 (the **Act**), which is the Seychelles legislation providing for international business companies (**IBCs**). The Act has been amended by the International Business Companies (Amendment) Act 2018, Act 12 of 2018 (the **30.11.2018 Amendments**) effective 30 November 2018 and by the International Business Companies (Amendment) Act 2018, Act 15 of 2018 (the **1.1.2019 Amendments**) effective 1 January 2019 (together the **Amendments**).

SUMMARY OF AMENDMENTS TO THE INTERNATIONAL BUSINESS COMPANIES ACT 2016

1. Continuation of no public access to Registers of Directors filed with the Registrar

1.1 Section 152 of the Act (read with sections 352 and 390) has been amended to provide indefinitely for no public access to IBC Registers of Directors filed with the Registrar. Prior to the 30.11.2018 Amendments coming into force, no public access to filed Registers of Directors was only guaranteed until 30 November 2018.

1.2 The penalties for breach of the obligation to file a copy Register of Directors have been reduced to US\$250 (from \$500) and a daily penalty of \$25 (instead of \$50) for each day or part thereof during which the contravention continues.

2. Deemed dissolution date extended from 5 to 7 years after striking off

Section 275 of the Act has been amended to provide that an IBC struck off the Register is deemed to be dissolved after being struck off continuously for seven (instead of five) years.

3. Registrar to have wider powers to restore struck off companies

Section 276(1) of the Act was amended to extend the Registrar's power to restore a company struck off the Register to all struck off companies except for those struck off under section 272(1)(a)(iii) or (iv) of the Act, being companies struck off for involvement in fraud or for jeopardizing the reputation of Seychelles as a financial centre. These wider restoration powers of the Registrar avoid the extra time and cost of an application to the Supreme Court of Seychelles for a restoration order.



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4. Increasing restoration order application period from 10 to 12 years

Section 276(2)(a) of the Act was amended to permit an application to the Supreme Court of Seychelles for an order to restore to the Register a struck off or dissolved company to be made within twelve years (instead of ten years) of the date of the striking-off notice published in the *Gazette*.

5. IBCs become Seychelles tax resident but continue to pay no Seychelles tax on foreign sourced income

5.1 The ban on IBCs carrying on business in Seychelles has been removed. An IBC is now tax resident in Seychelles and no longer tax exempt. If an IBC carries on business in Seychelles it must pay Seychelles business tax. Significantly however, if an IBC only earns foreign sourced income, it is **not** liable for Seychelles tax on any of its income or profits. Seychelles has a **territorial tax system** such that a Seychelles tax resident is liable for Seychelles tax on Seychelles sourced income but not on foreign sourced income.

5.2 While the 1.1.2019 Amendments were prompted to ensure that Seychelles meets the standards set by the Base Erosion and Profit Shifting Standards initiative of the Organisation of Economic Co-operation and Development, they strengthen Seychelles IBC attractiveness and have no adverse fiscal impact on IBCs that only earn foreign sourced income. Despite the removal of the former section 361 tax exemptions, an IBC that solely derives its income outside Seychelles is **not** liable for Seychelles tax on its foreign income. Under Seychelles' territorial tax system, a tax resident is liable for Seychelles tax on Seychelles sourced income but not on foreign sourced income. Seychelles does not tax capital gains.

5.3 IBCs continue to be exempt from Seychelles stamp duty on instruments relating to: (i) the formation of a company; (ii) transfers of property to or by a company; (iii) transactions in respect of the shares, debt obligations or other securities of a company; (iv) the creation, variation or discharge of a charge or other security interests over any property of a company; and (v) other transactions relating to the business or assets of a company (section 362 of the Act), except that no stamp duty exemption applies to an instrument directly or indirectly relating to Seychelles immovable property (real estate).



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5.4 The former prohibition against IBCs carrying on business in Seychelles has been removed (but see paragraph 5.6 below for business restrictions). However, if an IBC earns assessable income (income sourced from Seychelles) it is legally required to:

(a) within one month of deriving the first assessable income (income sourced from Seychelles), notify the Registrar in writing that it is deriving assessable income and the nature of the activities giving rise to such assessable income;

(b) within one year of deriving the first assessable income, submit to the Registrar an Annual Return accompanied by the documents to be annexed to the Annual Return as required under the Companies Act 1972, including annual audited financial statements;

(c) pay Seychelles tax on its assessable income.

5.5 Business Tax Act 2009 (**BTA**) has recently been amended by the Business Tax (Amendment) Act 2018, Act 14 of 2018 (**BTA Amendment Act 2018**). The following provisions of the BTA as amended by the BTA Amendment Act 2018 can be noted:

(a) “assessable income” only includes income derived from sources in Seychelles (sections 2 and 11 of the BTA);

(b) “non-taxable business income” means income not sourced in Seychelles and not included in the assessable income of a business (section 2 of the BTA);

(c) An amount derived by a resident person (including an IBC) in carrying on business is derived from sources in Seychelles if derived from activities conducted, goods situated or rights used in Seychelles, regardless of the residence of the parties participating in the transactions and regardless of the place where the agreements are executed (section 5(1) of the BTA);

(d) The remittance of an amount to a person outside Seychelles, out of non-taxable business income (see (b) above) is not subject to Seychelles tax (section 5(4)(a) of the BTA); and

(e) Whereas section 8(1) of the BTA provides for business tax (withholding tax) on certain payments by a resident person (including dividends, interest and royalties) to non-resident persons, section 8(4) of the BTA provides that subsection (1) shall not apply if dividends, interest, royalties or other payments are made by a resident person from income that is not sourced in Seychelles.

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5.6 While an IBC may carry on business in Seychelles and earn Seychelles-sourced income (subject to the above-mentioned reporting and taxpaying obligations), pursuant to section 5(2) of the Act an IBC continues to be prohibited from:

- (a) carrying on banking business as defined in the Financial Institutions Act 2004 in or outside Seychelles;
- (b) carrying on insurance business as defined in the Insurance Act 2008 in Seychelles or, unless it is licensed or otherwise legally able to do so under the laws of the country in which it carries on such business, outside Seychelles;
- (c) carrying on business providing international corporate services, international trustee services or foundation services as defined in the International Corporate Service Providers Act 2003 except:
 - (i) to the extent permitted under the International Corporate Service Providers Act 2003; and
 - (ii) in the case of carrying on such business outside Seychelles, if the company is licensed or otherwise legally able to do so under the laws of each country outside Seychelles in which it carries on such business;
- (d) carrying on securities business as defined in the Securities Act 2007 in Seychelles or, unless it is licensed or otherwise legally able to do so under the laws of the country in which it carries on such business, outside Seychelles;
- (e) carrying on business as a mutual fund as defined in the Mutual Fund and Hedge Fund Act 2008 unless it is licensed or otherwise legally able to do so under the Mutual Fund and Hedge Fund Act 2008 or under the laws of a recognized jurisdiction as defined in the Mutual Fund and Hedge Fund Act 2008; or
- (f) carrying on gambling business as defined in the Seychelles Gambling Act 2014, including interactive gambling business, in or outside Seychelles unless it is licensed or otherwise legally able to do so under the laws of the country in which it carries on such business.



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COMMUNIQUE NO. 1 OF 2019

Keeping of Accounting Records by International Business Companies

As part of its mandate to ensure compliance with the International Business Companies Act 2016 as amended (“IBC Act”), the Seychelles Registrar of International Business Companies “Registrar”) has informed licensees that it will be commencing a testing program in relation with section 174 of the IBC Act, which relates to keeping of accounting information. This is to ensure that such records are accessible by competent Authorities upon request.

This is in line with recent recommendations made by the OECD to monitor the practical implementation of measures to ensure that accounting information in respect to relevant entities are available in all cases upon request by relevant competent Authorities. It is expected that a random sample of International Business Companies shall be requested to make available, within a specified timeframe, their accounting records at the Registered Office (being the principal place of business of the Registered Agent) to ascertain compliance with section 174 of the IBC Act.

A random sample will be selected and the requested records are to be provided within a prescribed time frame.

We take this opportunity to remind companies that they have an obligation to maintain records pursuant to s.174 of the Act. “Records” include:-

- (a) Accounting Records;
- (b) Minutes and resolutions of members kept pursuant to section 125;
- (c) minutes and resolutions of directors kept pursuant to section 156;
- (d) annual returns made pursuant to section 171;
- (e) register of members;
- (f) register of directors;
- (g) register of beneficial owners; and
- (h) register of charges (if any).

Should you require any assistance with bookkeeping or preparation of Financial or Management Accounts, please do not hesitate to contact your Relationship Manager.



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