



# OFFICIAL GAZETTE

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	International Business Companies (Amendment) Bill, 2021. (Bill No. 33 of 2021)	164.00
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**TRUST BILL, 2021***(Bill No. 31 of 2021)***OBJECTS AND REASONS**

The International Trusts Act was one of the first piece of legislation enacted in 1994 to kick-start the offshore industry in Seychelles, together with the International Business Companies Act and the International Trade Zone Act. A number of deficiencies has been highlighted by international standard setting bodies, namely FATF and the Global Forum for Transparency and Exchange on Information Tax Matters under the ambit of the OECD, that requires to be rectified. Therefore, the aim of the new law is to provide a stronger basis for growth of Seychelles as a value-added financial centre while remaining compliant with international standards and best practices. Some of the notable new provisions being proposed in order to achieve these objectives are hereby mentioned.

2. Adding express provisions relating to trust “protectors”. A trust settlor (founder) may (but is not required to) appoint a protector to oversee operation of the Trust. While a protector should not control a trust, the protector can be given veto power on certain trust decisions, such as the power to approve or direct the addition or removal of a trustee or beneficiary.

3. Improving the provisions that provide for varieties of trusts, including trusts with beneficiaries, trusts for charitable purposes (without beneficiaries), trusts for non-charitable purposes (without beneficiaries) and hybrid trusts (i.e. a purpose trust which also has beneficiaries). Note that all these trusts are already provided for under the 1994 Act, but the new Trusts Act covers them more clearly and comprehensively.

4. Adding express provision for “enforcers” of trusts for non-charitable purposes (i.e. which trust will usually not have any beneficiaries).

5. Adding express provisions for settlor's reserved powers. This is provided for under the trust laws of all the major small island state financial centres including Jersey, Guernsey, Cayman Islands, Bermuda, British

Virgin Islands, etc. This means that the settlor (being the person who transfers his or her assets to establish a new trust) may retain certain powers in respect of the trust such as the power to add or remove beneficiaries or to add or remove trustees.

6. Removal of the existing 100-year limit on the duration of non-charitable trusts and allowing a trust, unless its terms provide otherwise, to continue in existence for an unlimited period (until final distribution of all trust property in accordance with the terms of the trust). This has been adopted in leading offshore trust jurisdictions, such as Jersey, Guernsey and Bermuda.

7. In order to reduce the risks of unavailability of accounting records, it is proposed to require all trustees to keep accounting records relating to each trust under their administration at either their registered office in Seychelles (in the case of a private trust company) or at their principal place of business in Seychelles (in the case of a licensed trustee).

8. In line with FATF's Recommendation 25 (including the recommendations made in the Seychelles' Mutual Evaluation Report), to introduce new obligation on trustees to disclose their status as a trustee to a financial institution or a designated non-financial business or profession when forming a business relationship or carrying out an occasional transaction in an amount equal to or above to the amount prescribed under Third Schedule of the Anti-Money Laundering and Countering the Financing of Terrorism Act.

9. In line with OECD and FATF standards, it is proposed to introduce an obligation on trustees to preserve for at least 7 years, the Trust Register pertaining to each trust, containing details of the trust's trustees, beneficiary or class of beneficiaries, settlors, protectors, etc. When a trustee ceases business, such records shall be provided to the FSA or to any other person approves by the FSA. This will ensure the availability of such information in Seychelles.

10. In line with FATF Recommendations, to expand the content of the Trusts Register to include the identity of regulated agents and service providers of the trust including, but not limited to, investment advisors, investment managers, accountants and tax advisors of the trust.

11. As a change to the 1994 Act, the new Trusts Act will require all Seychelles trusts to be in writing. This will add legal certainty and avoid potential confusion and litigation on oral trusts (which are permitted under the 1994 Act along with implied “constructive” trusts).

12. The new Trusts Act will permit non-resident or resident settlors. A settlor is the person who transfers his or her assets to establish a new trust (i.e. to a trustee to hold for the benefit of the beneficiaries).

13. Improvement and clarification of the provisions relating to court jurisdiction and conflict of laws, including addressing the current inappropriate definition of international trust which is problematic as regards foreign law trusts.

14. To provide that Seychelles law recognize (at least to some extent) foreign trusts. Non-recognition would undermine Seychelles' ability to become a successful trust jurisdiction. Trusts will typically be used for holding assets outside Seychelles. So, while the norm will be for Seychelles trustees to form Seychelles law trusts, there will always be niche situations where a foreign law trust is preferred (by a foreign client).

15. The Bill seeks to achieve the above objectives.

**Dated this 23rd day of July, 2021.**

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

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## **TRUST BILL, 2021**

*(Bill No. 31 of 2021)*



## **A BILL FOR**

**AN ACT to provide for the creation, registration, administration and regulation of trusts including the Seychelles trusts and foreign trusts and for matters connected therewith or incidental thereto.**

**ENACTED** by the President and the National Assembly.

### **PART I PRELIMINARY**

#### **Short title and commencement**

**1.** This Act may be cited as the Trusts Act, 2021 and shall come into operation on such date as the Minister may, by notice in the *Gazette*, appoint.

## Interpretation

2. In this Act, unless the context otherwise requires —

“accounting records” in relation to a trust, means documents relating to —

- (a) the trust's assets and liabilities;
- (b) all receipts and expenditure of the trust; and
- (c) all sales, purchases and other transactions to which the trust is a party;

“approved trustee” in relation to —

- (a) a trust, other than a connected trust, means a licensed trustee; or
- (b) a connected trust means a private trust company or a licensed trustee.

*Explanation* — For the purposes of this definition, where —

- (i) the settlor of a trust (the first trust) is a connected person with respect to the settlor of another trust (the second trust), the first trust is connected to the second trust and both trusts are connected trusts;
- (ii) each trust in a group of two or more trusts are connected to each other, all the trusts in the group are connected trusts;

“assessable income” means the assessable income as defined in section 2 of the Business Tax Act;

“Authority” means the Financial Services Authority established under the Financial Services Authority Act;

“beneficiary” means a person entitled to benefit under a trust or in whose favour a discretion to distribute property held on trust may be exercised;

“beneficial owner” in relation to property of a trust —

- (a) means a person who ultimately owns the property whether, directly or indirectly, alone or jointly with another person; and
- (b) does not include a nominee who holds the property on behalf of another person;

“breach of trust” means a breach of any duty imposed on a trustee by this Act or by the terms of the trust;

“charitable purpose” means a purpose defined in section 17;

“charitable trust” means a trust created for one or more charitable purposes;

“corporate trustee” means a trustee which is a corporation;

“corporation” means a company or other body corporate incorporated in Seychelles or any other jurisdiction;

“Court” means the Supreme Court of Seychelles;

“enforcer” shall be construed in accordance with Chapter 9 of Part II;

“foreign law” means the laws of any jurisdiction outside Seychelles;

“foreign trust” means a trust whose proper law is the law of a jurisdiction other than Seychelles;

“former trust” means a trust established under the repealed Act;

“incapacitated adult” means an individual, other than a minor, who has no capacity to contract under the law of Seychelles or under the law of the person's domicile;

“interest of a beneficiary” means the beneficiary's interest under a trust and references to the beneficiary's interest have a corresponding meaning;

“licensed trustee” means a company licensed to provide trustee services under the International Corporate Service Providers Act;

“Minister” means the Minister responsible for Finance;

“minor” means an individual under the age of eighteen;

“non-charitable purpose” means a purpose other than a charitable purpose;

“officer” in relation to a corporation, includes a director, manager or secretary;

“person” includes any individual, company or other body corporate;

“personal representative” means the executor or administrator for the time being of a deceased person and, in the context of a Seychelles trust, includes the principal heir;

“private trust company” means a private trust company as defined in the International Business Companies Act, 2016 (*Act 15 of 2016*);

“professional persons” means accountants, advocates, attorneys-at-law, bankers, brokers, custodians, investment advisors, investment managers, nominees, custodians, property agents, solicitors and other professional agents or persons;

“property” means property of any description wherever situated,

and in relation to rights and interests, includes the rights and interests whether vested, contingent, defeasible or future;

“protector” shall be construed in accordance with Chapter 8 of Part II;

“purpose trust” means a trust created for the fulfillment of one or more non-charitable purposes, whether or not it has any beneficiaries;

“Register” means the register of trusts to be kept by the Authority pursuant to section 13(1);

“registered trust” means a trust in respect of which a trustee appointment declaration has been registered under section 11(3);

“repealed Act” means the International Trusts Act (*Cap 275*);

“settlor” shall be construed in accordance with section 4;

“Seychelles trust” means a trust created or established under section 8;

“terms of the trust” means —

- (a) in the case of a Seychelles trust, the written terms of the trust and any other terms made applicable by this Act; and
- (b) in the case of a foreign trust, the written or oral terms of trust and any other terms made applicable by the proper law of the trust;

“trust” has the meaning as defined in section 3, and includes —

- (a) the trust property; and
- (b) the rights, powers, duties, interests, relationships and obligations under a trust;

“trustee appointment declaration” means a declaration by an approved trustee in accordance with section 11(2);

“trust property” means the property held in a trust.

### **Existence and recognition of a trust**

**3.(1)** Subject to section 8(2), a trust exists where a person known as a trustee, holds, or has vested in the person or is deemed to hold or have vested in the person, property —

- (a) for the benefit of one or more beneficiaries; or
- (b) for any charitable or non-charitable purpose which is not for the benefit only of the trustee; or
- (c) for both such benefit referred to in paragraph (a) and any such purpose referred to in paragraph (b).

(2) Subject to this Act, a trust shall be valid and enforceable under the laws of Seychelles.

### **The settlor**

**4.(1)** Subject to this Act, any person, known as a settlor, who has the legal capacity to contract may create a trust by providing trust property or by making a testamentary disposition on trust or to a trust.

(2) A settlor may also be a trustee, a beneficiary, a protector or an enforcer, but shall not be the sole beneficiary or trustee of a trust of which he or she is a settlor.

(3) Subsection (2) is not contravened, if a settlor is the sole beneficiary of a trust during the settlor's lifetime, provided that the terms of the trust provide for the trust to have one or more persons as beneficiary upon the settlor's death.

(4) A settlor shall be deemed to have had the capacity to create a trust if, at the time he or she transfers or otherwise vests trust property in a trust, he or she is not a minor, is of sound mind and not incapacitated under —

- (a) the laws of Seychelles; or
- (b) the laws of his or her domicile or nationality; or
- (c) the proper law governing the transfer or disposition.

### **Proper law of a trust**

**5.(1)** Subject to section 48, the proper law of a trust shall be the law of the jurisdiction —

- (a) expressed by the terms of the trust as the proper law;
- (b) if not so expressed, implied from the terms of the trust; or
- (c) if paragraph (a) and (b) do not apply, with which the trust at the time it was created had the closest connection.

(2) For the purpose of subsection (1)(c), in ascertaining, the law with which a trust had the closest connection, reference shall be made in particular to —

- (a) the place of management and control of the trust;
- (b) the *location* of the property of the trust;
- (c) the place of residence or business of the trustee;
- (d) the places where the objects of the trust are to be fulfilled.

### **Jurisdiction of Court**

**6.** The Court has jurisdiction where —

- (a) the trust is a Seychelles trust;
- (b) a trustee of a foreign trust is resident in Seychelles;
- (c) management of trust property of a foreign trust is carried on in Seychelles or from Seychelles;



- (d) trust property of a foreign trust is situated in Seychelles; or
- (e) a beneficiary of a trust is resident in Seychelles.

## **PART II**

### **PROVISIONS APPLICABLE TO SEYCHELLES TRUSTS**

#### *Chapter 1 - Trust establishment and registration*

#### **Application of Part II**

7. This Part shall apply only to a Seychelles trust, except for sections 10, 11, 12 and 13 which shall apply to a Seychelles trust and a foreign trust.

#### **Trust to be in writing**

8.(1) Subject to subsection (2) and the other provisions of this Act, a Seychelles trust is created by a settlor providing trust property *inter vivos* or by will, to one or more trustees as contemplated in section 3.

(2) A Seychelles trust shall be of no effect, unless created or established in writing by —

- (a) a declaration of trust executed by the original trustees of the trust in which the trustees acknowledge that they hold the trust property in accordance with the terms of the trust; or
- (b) a trust deed executed by the settlor and the original trustees of the trust by which the trust property is transferred to the trustees and they acknowledge that they shall hold the trust property in accordance with the terms of the trust.

#### **Seychelles trusts**

9. Subject to this Act, the proper law of a Seychelles trust is the laws of Seychelles.

#### **Trust property, operation and restriction**

10.(1) Subject to subsection (2) and section 14(2) —

- (a) any property within or outside Seychelles may be held by or vested in the trust;
  - (b) subject to the terms of the trust, a trustee may accept from any person property to be added to the trust property.
- (2) A trust shall not —
- (a) carry on any activity which is unlawful, immoral or contrary to any public policy of Seychelles;
  - (b) own or otherwise hold an interest in —
    - (i) immovable property in Seychelles; or
    - (ii) shares or other interests in any company or other entity which owns or has any interest in immovable property in Seychelles.

### **Registration of trustee appointment declaration**

**11.(1)** An approved trustee, on appointment as trustee of a trust, shall —

- (a) make a trustee appointment declaration; and
- (b) apply for registration of the trustee appointment declaration by submitting to the Authority the trustee appointment declaration and the registration fee specified to in the First Schedule.

(2) The trustee appointment declaration under subsection (1) shall be in writing and state —

- (a) the name of the trust;
- (b) the date of formation of the trust;
- (c) the name and address of each approved trustee of the trust;
- (d) that the property of the trust does not include any —

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- (i) immovable property in Seychelles; or
    - (ii) shares or other interests in any company or other entity which owns or has any interest in immovable property in Seychelles;
  - (e) that the instrument creating the trust is in writing; and
  - (f) the proper law of the trust.
- (3) On receipt of a trustee appointment declaration accompanied by the registration fee, the Authority shall —
- (a) register the trustee appointment declaration in the Register;
  - (b) allocate a reference number to the trust; and
  - (c) issue, to the approved trustee who submitted the trustee appointment declaration, a letter stating —
    - (i) the name of the trust;
    - (ii) the reference number of the trust;
    - (iii) the date of registration of the trustee appointment declaration.
- (4) Upon registration of a trustee appointment declaration, the trust shall be a registered trust and a letter issued by the Authority under subsection (3)(c) shall be *prima facie* evidence of compliance by the approved trustee of the trust with all the requirements of this Act in respect of registration of a trustee appointment declaration.
- (5) An approved trustee who provides in a trustee appointment declaration any false or misleading information commits an offence and shall on conviction be liable to a fine not exceeding US\$25,000.
- (6) Failure to register a trustee appointment declaration under this section shall not invalidate the trust, but it shall not be entitled to the exemptions under section 88.

**Notice of appointment or termination of a trustee**

**12.(1)** If, subsequent to registration of a trust under section 11(3), a new approved trustee is appointed to a registered trust, the new trustee shall within 21 days file a written notice thereof with the Authority in the approved form accompanied with the applicable fee set out in the First Schedule.

(2) Where an approved trustee of a registered trust ceases to be a trustee of the trust, the trustee shall within 21 days file a written notice thereof with the Authority in the approved form accompanied with the applicable fee set out in the First Schedule.

(3) At any time after a trustee appointment declaration is registered, and the trust is terminated or otherwise ceases to exist, the last approved trustee of the trust shall within 21 days file a written notice thereof with the Authority in the approved form accompanied with the applicable fee set out in the First Schedule.

(4) Where an approved trustee is required to file a notice under subsection (3) as a result of a trust terminating or otherwise ceasing to exist, the trustee shall not be required to file a notice under subsection (2).

(5) A trustee who contravenes subsection (1), (2) or (3) shall be liable to a penalty fee not exceeding US\$5,000.

**Register of trusts**

**13.(1)** The Authority shall keep a Register of all registered trusts, which shall state in respect of each trust —

- (a) the name of the trust;
- (b) the reference number of the trust allocated under section 11(3);
- (c) the name and address of each approved trustee of the trust;
- (d) the date of registration of the trustee appointment declaration relating to the trust (in the case of a trust

initially registered under the repealed Act, the date of registration of the declaration under section 75(1)(a) of the repealed Act);

- (e) the date of any notice of termination of trust filed pursuant to section 12(3);
- (f) the date of any order of a Court that the trust is set aside or otherwise ended.

(2) The Register shall be in such form as the Authority may determine and shall, together with the documents referred to in subsection (3), be open to inspection by any person during ordinary office hours on payment of the fee set out in the First Schedule.

(3) No document filed with or otherwise kept by the Authority in relation to a trust shall be open to inspection, except the Register and the trustee appointment declaration filed under section 11(1).

(4) Any person, on payment of the fee set out in the First Schedule, may request the Authority for a Certificate of Official Search under the official seal of the Authority in respect of any trust, which shall contain the information set out in subsection (1)(a) to (e).

### **Validity of a Seychelles trust**

**14.(1)** Subject to subsections (2), (3) and (4), a Seychelles trust shall be valid and enforceable in accordance with its terms.

(2) A Seychelles trust shall be invalid and unenforceable to the extent that —

- (a) it purports to do anything which is contrary to the law of Seychelles;
- (b) it purports to confer any right or power or impose any obligation the exercise or carrying out of which is contrary to the law of Seychelles;

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- (c) it purports to apply to immovable property situated in Seychelles in contravention of section 10(2)(b);
  - (d) it is created for a purpose in relation to which there is no beneficiary identifiable or ascertainable, unless —
    - (i) it is a charitable trust; or
    - (ii) it is a purpose trust and if the terms of the trust provide for —
      - (A) the appointment of an enforcer in relation to the trust's non-charitable purposes; and
      - (B) the appointment of a new enforcer at any time when there is none; or
  - (e) the Court declares that —
    - (i) the trust was established by duress, fraud, mistake, undue influence or misrepresentation or in breach of fiduciary duty;
    - (ii) the trust is immoral or contrary to public policy;
    - (iii) the terms of the trust are so uncertain that the performance is rendered impossible; or
    - (iv) the settlor was, at the time of its creation, incapable of creating the trust.
- (3) Where a trust is created for two or more purposes of which some are lawful and others are unlawful —
- (a) if those purposes cannot be separated, the trust shall be invalid;
  - (b) where the purposes can be separated, the Court may declare that the trust is valid as to each purpose that is lawful.

(4) Where a trust is partially invalid, the Court may declare what property is trust property and what property is not trust property.

(5) Where subsection (2)(c) applies, any person in whom the title to such immovable property is vested shall not be, and shall not be deemed to be, a trustee of such immovable property.

(6) Any property to which a trust is wholly or partially invalid shall, subject to any order of the Court, be held by the trustees on trust for the settlor absolutely or, if he or she is dead, for his or her personal representative.

(7) An application may be made to the Court under this section by any person referred to in section 71(1).

### **Duration of a Seychelles trust**

**15.(1)** Unless its terms provide otherwise, a trust may continue in existence for an indefinite period.

(2) No rule against perpetuities or excessive accumulations shall apply to a trust or to any advancement, appointment, distribution or application of assets from a trust.

(3) Except where the terms of a trust provide to the contrary, any advancement, appointment, distribution or application of assets from that trust to another trust shall be valid even if the other trust may continue after the date by which the first trust may terminate.

### **Powers reserved by settlor**

**16.(1)** A trust is not invalidated by the reservation or grant by the settlor (whether to the settlor or to any other person) of all or any of the following powers or interests —

- (a) a power to revoke, vary or amend the terms of a trust or any trusts or powers arising wholly or partly under it;
- (b) a power to direct or approve the advancement, appointment,

distribution or application of income or capital of the trust property;

- (c) a power to act as, or to direct the appointment or removal of, a director or officer of any corporation wholly or partly owned by the trust;
- (d) a power to direct the trustee in connection with the purchase, retention, sale, management, lending, pledging or charging of the trust property or the exercise of any powers or rights arising from such property;
- (e) a power to appoint or remove any trustee, enforcer, protector or beneficiary;
- (f) a power to appoint or remove a professional person acting in relation to the affairs of the trust or holding any trust property;
- (g) a power to change the proper law of the trust or the forum for the administration of the trust;
- (h) a power to restrict the exercise of any powers or discretions of trustee by requiring that such power shall only be exercisable with the consent of the settlor or any other person specified in the terms of the trust;
- (i) a beneficial interest in the trust property.

(2) The reservation, grant or exercise of a power or interest referred to in subsection (1) does not —

- (a) constitute the holder of the power or interest a trustee; or
- (b) subject to the terms of the trust, impose any fiduciary duty on the holder.

(3) A trustee who acts in compliance with the exercise of any power referred to in subsection (1) does not, by reason only of such compliance, act in breach of trust.



**Charitable purposes**

**17.(1)** Notwithstanding any other law of Seychelles or a foreign law, the following purposes of a trust shall be deemed to be charitable —

- (a) the relief of poverty;
- (b) the advancement of education;
- (c) the advancement of religion;
- (d) the advancement of health or the saving of lives;
- (e) the advancement of the arts, culture, heritage or science;
- (f) the advancement of amateur sport;
- (g) the advancement of animal welfare;
- (h) the protection of the environment;
- (i) the advancement of human rights and fundamental freedoms; or
- (j) any other charitable purpose beneficial to the public.

(2) A purpose referred to in subsection (1) shall be charitable, notwithstanding that —

- (a) the purpose may only benefit a section of the public or members of the public;
- (b) the trust may also benefit privately one or more persons or objects within a class of persons or objects;
- (c) the trust is liable to be modified or terminated whether by the exercise of the power of appointment or disposition of assets;
- (d) the trustee of the trust has power to defer the distribution of the property under the trust for a period not exceeding the duration of the trust;

- (e) the trust may be of a discretionary nature; or
- (f) the objects are pursued within or outside of Seychelles.

## ***Chapter 2 - Beneficiaries***

### **Beneficiaries of a trust**

**18.(1)** A beneficiary shall be —

- (a) identifiable by name; or
- (b) ascertainable by reference to —
  - (i) a class, or
  - (ii) a relationship to some person whether or not living at the time of the creation of the trust or at the time which under the terms of the trust is the time by reference to which members of a class are to be determined.

(2) The terms of a trust may provide for the addition or removal of a person as beneficiary or for the exclusion of a beneficiary from benefit.

(3) The terms of a trust may impose upon a beneficiary an obligation as a condition for benefit.

(4) The interest of a beneficiary under a trust constitutes movable property.

(5) Subject to the terms of the trust, a beneficiary may sell, pledge, charge, transfer or otherwise deal with his or her interest in any manner.

(6) Subject to section 4(3), a settlor or trustee of a trust may also be a beneficiary of the trust, but not the sole beneficiary.

### **Entitlement of beneficiary to information**

**19.(1)** Subject to the terms of the trust, a beneficiary is entitled, on a written request to the trustee of the trust, to inspect or obtain —

- (a) a copy of the instrument creating the trust, any amendment thereto and any deed supplemental to the instrument creating the trust; and
- (b) a copy of the annual audited financial statements of the trust, if any, or, in the absence of annual audited financial statements, a summary of the financial position of the trust, with reference to the assets, liabilities, income and costs of the trust.

(2) Subject to the terms of the trust, on receipt of a written request to inspect or obtain documents under subsection (1), a trustee shall comply with such request within a reasonable time.

(3) Where a trustee does not make documents available for inspection under subsection (1) within a reasonable time, the beneficiary may apply to the Court for relief.

(4) The Court may, subject to the terms of the trust, make an order in relation to inspection by, or delivery of the documents to the beneficiary.

(5) Where the terms of the trust provide that a beneficiary shall not have the right to inspect or receive copy of any of the documents referred to in subsection (1), a trustee who does not comply with a written request under subsection (1) shall not have contravened subsection (2).

### **Disclaimer of interest**

**20.(1)** A beneficiary may, irrespective of the terms of a trust, disclaim in writing, either permanently or for such period as he or she may specify, the whole or any part of his or her interest under the trust.

(2) Subsection (1) applies irrespective of whether the beneficiary has received any benefit from the interest or not.

(3) Subject to the terms of the trust, if a disclaimer under subsection (1) so provides it may be revoked in accordance with its terms.

### ***Chapter 3 - Appointment, resignation and discharge of trustees***

#### **Number and type of trustees**

**21.(1)** Every trust shall have an approved trustee, and subject to this Act and the International Corporate Service Providers Act, may have one or more co-trustees who may be persons resident outside Seychelles.

(2) A trust shall not be invalidated on grounds of having fewer trustees than required by this Act or the terms of the trust.

(3) If the number of trustees falls below the minimum number required under subsection (1) or, if greater, by the terms of the trust, the required number of new trustees shall be appointed as soon as practically possible.

(4) If there are fewer trustees than are required under subsection (1) or, if greater, by the terms of the trust, the existing trustees may only act for the purpose of preserving the trust property.

#### **Appointment of new or additional trustee**

**22.(1)** Subsection (2) applies, if —

- (a) the terms of a trust do not provide for the appointment of new or additional trustee;
- (b) any such terms providing for any such appointment have lapsed or failed;
- (c) the person who has the power to make any such appointment is not capable of exercising the power; or
- (d) there is no other power to make the appointment.

(2) Without prejudice to the Court's power to appoint a new or additional trustee pursuant to an application made under section 71, a new or additional trustee may be appointed by —

- (a) the trustees for the time being;
- (b) the last remaining trustee; or
- (c) the personal representative or liquidator of the last remaining trustee.

(3) A trustee having power to appoint a new trustee who fails to exercise such power may be removed from office by the Court.

(4) Subject to the terms of the trust, a trustee appointed under this section shall have the same powers, discretions and duties and may act as if the trustee had been originally appointed a trustee.

(5) On the appointment of a new or additional trustee all requisite for vesting the trust property in the trustees for the time being of the trust shall be done.

### **Prohibition of renunciation after acceptance**

**23.(1)** No person shall be obliged to accept an appointment as a trustee and a person who knowingly does any act or thing in relation to the trust property consistent with the status of a trustee of that property shall be deemed to have accepted appointment as a trustee.

(2) A person who has not accepted and is not deemed to have accepted an appointment as trustee may disclaim such appointment within a reasonable period after becoming aware of it, by notice in writing to the settlor or trustees.

(3) If the settlor is deceased or otherwise unavailable and there are no trustees or persons to whom subsection (2) applies, may apply to the Court for relief from the person's appointment and the Court may make such order as it thinks fit.

### **Resignation or renewal of trustee**

**24.(1)** Subject to subsection (3), a trustee, not being a sole trustee, may resign from office by notice in writing delivered to the co-trustees.

(2) A resignation under subsection (1) shall take effect on the delivery of notice in accordance with subsection (1).

(3) If two or more trustees purport to resign simultaneously, the effect of which would mean that there would be no trustee, the resignations shall have no effect.

(4) A trustee shall cease to be a trustee of the trust immediately upon —

- (a) the trustee's removal from office by the Court; or
- (b) the trustee's resignation becoming effective; or
- (c) the coming into effect of a provision in the terms of a trust under which the trustee is removed from office or otherwise ceases to hold office.

(5) A person who ceases to be a trustee under this section shall execute all documents necessary for the vesting of the trust property in the new or continuing trustees.

#### ***Chapter 4 - Duties and general powers of trustees***

##### **Duties of trustees**

**25.**(1) A trustee shall in the execution of its duties and in the exercise of its powers and discretion —

- (a) act —
  - (i) with due diligence;
  - (ii) prudently;
  - (iii) to the best of the trustee's ability and skill; and
- (b) observe the utmost good faith.

(2) Subject to this Act, a trustee shall carry out its functions as trustee and administer the trust —

- 
- (a) in accordance with the terms of the trust; and
  - (b) in the interest of the beneficiaries or in the fulfillment of the purpose of the trust as the case may be.
- (3) Subject to the terms of the trust, a trustee shall —
- (a) so far as is reasonable preserve the value of the trust property;
  - (b) so far as is reasonable enhance the value of the trust property.
- (4) Except with the approval of the Court or as permitted by this Act or expressly provided by the terms of the trust, a trustee shall not —
- (i) directly or indirectly profit from the trustee's trusteeship;
  - (ii) cause or permit any other person to profit directly or in directly from such trusteeship; or
  - (iii) on the trustee's own account enter into any transaction with the trustees or relating to the trust property which may result in such profit.
- (5) A trustee shall keep trust property separate from its personal property and separately identifiable from any other property of which he or she is a trustee.
- (6) The trustee of a trust shall disclose its status as a trustee to a financial institution or a designated non-financial business or profession when forming a business relationship or carrying out an occasional transaction in an amount equal to or above to the amount prescribed under the Third Schedule of the Anti-Money Laundering and Countering the Financing of Terrorist Act, 2020 (*Act 5 of 2020*).
- (7) For the purposes of subsection (6), the terms “financial institution” and “designated non-financial business or profession” shall have the same meaning as defined under the Anti-Money Laundering and Countering the Financing of Terrorist Act, 2020 (*Act 5 of 2020*).

(8) A trustee who contravenes subsection (6) commits an offence and shall on conviction be liable to a penalty fee of US\$500 and to an additional penalty fee of US\$25 for each day or part thereof during which the contravention continues.

### **Duty to keep accounting records**

**26.(1)** A trustee shall, in relation to each trust of which it is trustee, keep or cause to be kept reliable accounting records that —

- (a) are sufficient to show and explain the trust's transactions;
- (b) enable the financial position of the trust to be determined with reasonable accuracy at any time; and
- (c) allow for financial statements of the trust to be prepared.

(2) For the purposes of subsection (1), accounting records shall be kept, depicting the true and fair view of the trust's financial position and explaining its transactions.

(3) The trustee shall, in respect of each trust (including a terminated trust) to which it was or is acting as trustee, preserve accounting records for at least 7 years from the completion of the transaction or operation to which it relates.

(4) Where a licensed trustee ceases to hold a licence under the International Corporate Service Providers Act (*Cap* 275), the licensed trustee shall handover all the records referred to in subsection (3) to the Authority or any other person approved by the Authority.

(5) All records to be handed over under subsection (4) shall be preferably in the digital form or in such form as agreed upon between the Authority and the licensed trustee.

(6) A trustee who contravenes subsection (1) or subsection (3) shall be liable to a penalty fee not exceeding US\$10,000.



**Location of accounting records**

**27.(1)** Where the approved trustee of a trust is —

(a) a licensed trustee, the trustee shall —

- (i) prepare an annual financial summary to be kept at the licensed trustee's principal place of business in Seychelles within 6 months from the end of the trust's financial year; and
- (ii) on a bi-annual basis, keep its accounting records at the licensed trustee's principal place of business in Seychelles.

(b) a private trust company, the trustee shall —

- (i) prepare an annual financial summary to be kept at the private trust company's registered office in Seychelles within 6 months from the end of the trust's financial year; and
- (ii) on a bi-annual basis, keep its accounting records at the private trust company's registered office in Seychelles.

(2) It shall be sufficient compliance with subsection (1), if a copy of the accounting records or financial summary is kept in electronic form at the approved trustee's principal place or business or registered office in Seychelles.

(3) Where an approved trustee keeps a copy of its accounting records at its principal place of business or registered office in Seychelles, the approved trustee shall keep a written record of the physical address of the place where the original accounting records are kept, and of any change thereto.

(4) The financial year of a trust shall be the calendar year, unless it is determined otherwise by the trustee.

(5) The Authority may issue written guidelines regarding the implementation of the obligations relating to accounting records.

(6) A trustee who contravenes this section shall be liable to a penalty fee not exceeding US\$10,000.

(7) The trustee of a former trust shall comply with the requirements of this section within a period of 6 months from the commencement of this Act.

### **Duty to keep trust register**

**28.(1)** A trustee, in relation to each trust of which it is the trustee, shall keep a register to be known as the trust register specifying the information referred to in subsection (2) in respect of each —

- (a) trustee;
- (b) beneficiary or class of beneficiaries;
- (c) settlor;
- (d) protector (if any);
- (e) enforcer (if any); and
- (f) regulated agent and service provider of the trust including, but not limited to, investment advisors, investment managers, accountants and tax advisors of the trust.

(2) The trust register shall specify with respect to each person referred to in subsection (1) —

- (a) the person's full name and address;
- (b) the person's nationality or place of incorporation, as the case may be;
- (c) the date on which the person was appointed or otherwise became 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;

- (d) the date on which the person ceased to be 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.

(3) Where the approved trustee of a trust is —

- (a) a licensed trustee, the register under subsection (1) shall be kept at the licensed trustee's principal place of business in Seychelles; or
- (b) a private trust company, the register under subsection (1) shall be kept at the private trust company's registered office in Seychelles.

(4) Subject to the terms of the trust, the trust register shall, during business hours, be open to inspection by any trustee, protector, enforcer, settlor or beneficiary of the trust, and shall be open for inspection for a period of not less than two hours on each business day.

(5) The trust register may be in such form as the approved trustee of the trust approves, but if it is in magnetic, electronic or other data storage form, the approved trustee shall be able to produce legible evidence of its content.

(6) The trust register is *prima facie* evidence of any matters directed or permitted by this Act to be contained therein.

(7) An approved trustee shall, in respect of each trust (including a terminated trust) to which it was or is a trustee, preserve the trust register specified under subsection (1) for at least 7 years from the date —

- (a) it ceases to be the trustee of the trust; or
- (b) the trust fails, lapses or terminates.

(8) Where an approved trustee ceases to hold a licence under the International Corporate Service Providers Act (*Cap 275*), the approved trustee shall handover all the records referred to in subsection (7) to the Authority or any other person approved by the Authority.

(9) All records to be handed over under subsection (8) shall be preferably in the digital form or in such form as agreed upon between the Authority and the approved trustee.

(10) A trustee who fails to comply with subsection (1), (2), (3), (4) or (5) shall be liable to a penalty fee of US\$500 and an additional penalty fee of US\$50 for each day or part thereof during which the contravention continues.

(11) A trustee who fails to comply with subsection (7) or (8) shall be liable to a penalty fee not exceeding US\$10,000.

(12) A trustee in a former trust shall be required to comply with the requirements of subsection (1)(f) within a period of 90 days from the commencement of this Act.

### **Furnishing of records**

**29.(1)** Where a trustee of a trust is requested pursuant to a written law of Seychelles to furnish all or any of the trust's records or copies thereof, including a request by —

- (a) the Authority under the Financial Services Authority Act or under the under the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020 (*Act 5 of 2020*);
- (b) the Seychelles Revenue Commission; or
- (c) the Financial Intelligence Unit under the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020 (*Act 5 of 2020*),

the trustee shall furnish the records or copies thereof to the requesting party within the time period specified in the request.

(2) For the purposes of this section, where a record is not in the English or French language, the party requesting the record may request a translation of the records in the English or French language.

(3) A trustee who fails to comply with this section shall be liable to a penalty not exceeding US\$5,000.

### **Duty of co-trustees to act together**

**30.**(1) Subject to the terms of the trust, where there is more than one trustee all the trustees shall join in administering the trust.

(2) Subject to subsection (3), where there is more than one trustee no power or discretion given to the trustees shall be exercised unless all the trustees agree on its exercise.

(3) The terms of a trust may empower trustees to act by a majority and a trustee who dissents from a decision of the majority may require the trustee's dissent to be recorded in writing.

### **Impartiality of trustee**

**31.** Subject to the terms of the trust, where there is more than one beneficiary, or more than one purpose, or at least one beneficiary and at least one purpose, a trustee shall be impartial and shall not execute the trust for the advantage of one at the expense of another.

### **Power of trustee**

**32.**(1) Subject to the terms of the trust and the trustee's duties under this Act, a trustee shall in relation to the trust property have the same powers as the beneficial owner of such property.

(2) A trustee shall exercise the trustee's powers only in the interests of the beneficiaries and in accordance with the terms of the trust.

(3) The terms of a trust may require a trustee to obtain the consent of other persons before exercising a power or discretion.

(4) A person who consents as provided in subsection (3) shall not by virtue of so doing be deemed to be a trustee.

**Delegation by trustee**

**33.**(1) Subject to the terms of the trust, a trustee may delegate the execution or exercise of any of its trusts or powers (both administrative and dispositive) and the delegatee may further delegate any such trusts or powers.

(2) Except where the terms of the trust specifically provide to the contrary, a trustee —

- (a) may delegate management of the trust property to a competent and qualified investment manager;
- (b) may employ professional persons to act in relation to any affairs of the trust or to hold any of the trust property; and
- (c) may consult professional persons in relation to any of the affairs of the trust.

(3) Where a trustee in good faith and without negligence makes such delegation, appointment or consultation under this section, the trustee shall not be liable for any loss to the trust arising from such delegation, appointment or consultation.

(4) A trustee may authorise a person referred to in subsection (2) to retain any commission or other distribution usually payable in relation to any such transaction.

**Remuneration and expenses of trustee**

**34.**(1) A trustee shall be entitled for such remuneration as may be specified in the terms of the trust, for its services.

(2) Where the terms of a trust are silent as to the remuneration, a trustee shall be entitled to reasonable remuneration for services that it provides.

(3) A trustee may reimburse himself or herself out of the trust, all expenses and liabilities reasonably incurred by him or her in connection with the trust.

**Power to appropriate**

**35.** Subject to the terms of the trust, a trustee may, without the consent of any beneficiary, appropriate trust property in or towards satisfaction of the interest of a beneficiary in such manner as the trustee thinks fit.

**Corporate trustee acting by resolution**

**36.** A corporate trustee may —

- (a) act in connection with a trust by a resolution of such corporate trustee or of its board of directors or other governing body; or
- (b) by such a resolution appoint one or more of its officers or employees to act on its behalf in connection with the trust.

**Trustee disclosures**

**37.(1)** Subject to section 29 and an order of the Court, the terms of a trust may —

- (a) confer upon any person a right to request the disclosure of information or a document concerning the trust;
- (b) determine the extent of the right of any person to information or a document concerning the trust; or
- (c) impose a duty upon a trustee to disclose information or a document concerning the trust to any person.

**(2)** Subject to the terms of the trust and to any order of the Court —

- (a) a beneficiary under the trust not being a charity;
- (b) a charity which is referred to by name in the terms of the trust as a beneficiary under the trust; or
- (c) an enforcer,

may request disclosure by the trustee of documents which relate to or form part of the accounts of the trust.

(3) Subject to section 29 and any order of the Court, a trustee may refuse to comply with —

- (a) a request for disclosure of information or a document concerning the trust under subsection (1)(a) or any document which relates to or forms part of the accounts of the trust under subsection (2); or
- (b) any other request for disclosure of information or a document concerning the trust,

where the trustee in the exercise of its discretion is satisfied that it is in the interests of one or more of the beneficiaries, or the beneficiaries as a whole, to refuse the request.

(4) Notwithstanding subsections (1), (2) and (3), subject to the terms of the trust and to any order of the Court, a trustee shall not be required to disclose to any person information or a document which —

- (a) discloses the trustee's deliberations as to the manner in which the trustee has exercised a power or discretion or performed a duty conferred or imposed upon the trustee;
- (b) discloses the reason for any particular exercise of a power or discretion or performance of a duty referred to in paragraph (a), or the material upon which such reason shall or might have been based; or
- (c) relates to the exercise or proposed exercise of a power or discretion, or the performance or proposed performance of a duty, referred to in paragraph (a).

(5) Notwithstanding the terms of the trust, on the application of the trustee, an enforcer, a beneficiary or, with leave of the court any other person, the court may make such order as it thinks fit determining the extent to which any person may request or receive information or a document concerning the trust, whether generally or in any particular instance.



## ***Chapter 5 - Liability of trustee***

### **Liability for breach of trust**

**38.(1)** Subject to this Act and to the terms of the trust, a trustee shall be liable for a breach of trust committed by the trustee or in which the trustee has concurred.

(2) A trustee who is liable for a breach of trust shall be liable for —

- (a) the loss or depreciation in value of the trust property resulting from such breach; and
- (b) the profit, if any, which would have accrued to the trust property if there had been no such breach.

(3) Where there are two or more breaches of trust, a trustee shall not set off a gain from one breach of trust against a loss resulting from another breach of trust.

(4) A trustee who resigns in order to facilitate a breach of trust shall be liable for that breach as if it had not resigned.

(5) A trustee shall not be liable for a breach of trust committed prior to the trustee's appointment.

(6) A trustee shall not be liable for a breach of trust committed by a co-trustee unless —

- (a) the trustee becomes aware or ought reasonably to have become aware of the commission of such breach or of the intention of its co-trustee to commit a breach of trust; and
- (b) the trustee actively conceals such breach or such intention or fails within a reasonable time to take proper steps to protect or restore the trust property or prevent such breach.

(7) Where two or more trustees are liable in respect of a breach of trust, they shall be liable jointly and severally.

(8) A trustee who becomes aware of a breach of trust to which subsection (5) relates shall take reasonable steps to have such breach remedied.

(9) Nothing in the terms of a trust shall relieve, release or exonerate a trustee from liability for breach of trust arising from the trustee's own actual fraud, dishonesty or willful misconduct.

### **Beneficiary may relieve or indemnify trustee**

**39.(1)** A beneficiary may —

- (a) relieve a trustee of liability to the beneficiary for a breach of trust;
  - (b) indemnify a trustee against liability for a breach of trust.
- (2) Subsection (1) shall not apply, unless the beneficiary —
- (a) has capacity to contract;
  - (b) has full knowledge of all material facts; and
  - (c) is not improperly induced by the trustee to take action under subsection (1).

### **Trustee acting in respect of more than one trust**

**40.(1)** A trustee of a particular trust who acts for more than one trust shall not, in the absence of fraud, be affected by notice of any instrument, matter, fact or thing in relation to any other trust, had the trustee obtained notice by reason of the trustee's acting or having acted for the purposes of the other trust.

(2) A trustee of a trust shall disclose to its co-trustee any interest which it has as a trustee of another trust, if any transaction in relation to the first mentioned trust is to be entered into with the trustee of such other trust.

### **Liability of trustee to third parties**

**41.(1)** Where a trustee is a party to any transaction or matter affecting the trust —

- (a) if the other party knows that the trustee is acting as trustee, any claim by the other party shall be against the trustee as trustee of the trust and shall extend only to the trust property;
- (b) if the other party does not know that the trustee is acting as trustee, any claim by the other party may be made against the trustee personally:

(2) In a case to which paragraph (b) applies, the trustee shall, without prejudice to its personal liability, have a right of recourse to the trust property by way of indemnity.

(3) Subsection (1) or (2) shall not affect any liability the trustee may have for breach of trust.

### **Constructive trustee**

**42.(1)** Subject to subsection (2) and section 8(2), where a person makes or receives a profit, gain or advantage from a breach of trust the person shall be deemed to be a trustee (in this section referred to as a “constructive trustee”) of that profit, gain, or advantage.

(2) Subsection (1) shall not apply to a *bona fide* purchaser of property for value and without notice of a breach of trust.

(3) Subject to any order of the Court to the contrary, a constructive trustee shall deliver the property of which it is a constructive trustee to the person entitled to it.

### **Position of outgoing trustee**

**43.(1)** Subject to subsection (2), when a trustee resigns, retires or is removed, it shall duly surrender the trust property in its possession or under its control.

(2) A trustee who resigns, retires or is removed may require to be provided with reasonable security for liabilities whether existing, future, contingent or otherwise before surrendering trust property.

(3) If the provision for security to which subsection (2) refers is extended or renewed by a contract, or other arrangement, to which the trustee who resigns, retires or is removed is not a party, and —

- (a) the contract or other arrangement expressly provides that the trustee may in its own right enforce a term of the contract or other arrangement; or
- (b) a term of the contract or other arrangement purports to confer a benefit on the trustee,

and in either case the contract or other arrangement expressly identifies the trustee, the trustee may enforce that term in its own right.

(4) A trustee who resigns, retires or is removed and has complied with subsection (1) shall be released from liability to any beneficiary, trustee or person interested under the trust for any act or omission in relation to the trust property or the trustee's duty as a trustee except for liability —

- (a) arising from any breach of trust to which such trustee (or in the case of a corporate trustee any of its officers or employees) was a party or to which the trustee was privy;
- (b) in respect of actions to recover from such trustee (or in the case of a corporate trustee any of its officers or employees) trust property or the proceeds of trust property in the possession of such trustee, officers or employees; or
- (c) arising from the trustee's fraud, dishonesty or willful misconduct.

## ***Chapter 6 - Variation of trusts, certain powers and class interests***

### **Variation of terms of a trust**

**44.** Without prejudice to the power of the Court to vary the terms of a trust, a trust may be varied in any manner provided by its terms.

**Power of accumulation and advancement**

**45.(1)** Subject to section 15, the terms of a trust may direct or authorise the accumulation for any period of all or part of the income of the trust.

(2) Subject to subsection (3), income of the trust which is not accumulated under subsection (1) shall be distributed.

(3) Subject to the terms of the trust and subject to any prior interests or charges in relation to the trust property, where a beneficiary is a minor and whether or not the beneficiary's interest —

- (a) is a vested interest; or
  - (b) is an interest which will become vested —
    - (i) on attaining the age of majority,
    - (ii) at any specific age, or
    - (iii) upon the happening of any event,
- the trustee may —

- (A) accumulate the income attributable to the interest of such beneficiary pending the attainment of the age of majority or such specific age or the happening of such event;
- (B) apply such income or part of it to or for the maintenance, education or other benefit of such beneficiary;
- (C) advance or appropriate to or for the benefit of any such beneficiary such interest or part of such interest.

(4) A written receipt by a parent or lawful guardian of a beneficiary who is a minor shall be a sufficient discharge to the trustee for a distribution made under subsection (3).

(5) Subject to the terms of the trust and subject to any prior interests or charges affecting the trust property, the trustee may advance or apply for the benefit of a beneficiary part of the trust property prior to the date of the happening of the event upon the happening of which the beneficiary becomes entitled absolutely thereto.

(6) Any part of the trust property advanced or applied under subsection (5) shall be brought into account in determining from time to time the interest of the beneficiary in the trust property.

(7) No part of the trust property advanced or applied under subsection (5) shall exceed the presumptive, contingent or vested share of the beneficiary in the trust property.

### **Power of trustee to appoint or assign**

**46.** The terms of a trust may confer on the trustee or any other person power to appoint or assign all or any part of the trust property or any interest in the trust property to, or to trustees for the benefit of, any person, whether or not such person was a beneficiary of the trust immediately prior to such appointment or assignment.

### **Power of revocation**

**47.(1)** A trust and any exercise of a power under a trust may be expressed to be —

- (a) revocable whether wholly or partly; or
- (b) capable of variation.

(2) No revocation or variation under subsection (1) shall prejudice anything lawfully done by a trustee in relation to a trust before the trustee receives notice of such revocation or variation.

(3) Subject to the terms of the trust, where the trust is revoked the trustee shall hold the trust property on trust for the settlor absolutely.

(4) Where a trust is partly revoked, subsection (3) shall apply to the property which is the subject of such revocation.

(5) In subsection (3) “settlor” means the particular person who provided the property which is the subject of revocation.

### **Power to provide for change of proper law**

**48.** The terms of a trust may provide for the proper law of the trust to be changed to the law of another jurisdiction.

### **Class interests**

**49.(1)** Subject to the terms of a trust, the following rules shall apply where a trust or an interest under a trust is in favour of a class of persons —

- (a) a class ceases when it is no longer possible for any other person to become a member of the class;
- (b) where any class interest relates to income and for any period there is no member of the class in existence the income shall be accumulated and, subject to section 15, shall be retained until there is a member of the class in existence or the class closes.

(2) In this section “class interest” means a trust or an interest which is in favour of a class of persons.

## ***Chapter 7 - Failure, lapse and termination of trusts***

### **Failure or lapse of interest**

**50.(1)** Subject to the terms of a trust and subject to any order of the Court, where —

- (a) an interest lapses;
- (b) a trust terminates;
- (c) other than in the case of a trust for a charitable or non-charitable purpose, there is no beneficiary and no person may become a beneficiary in accordance with the terms of the trust; or

- (d) property is vested in a person which is not for his or her sole benefit and the trusts upon which it is to hold the property are not declared or communicated to the person,

the interest or property affected by such lapse, termination, lack of beneficiary or lack of declaration or communication of trusts shall be held by the trustee or the person referred to in sub-paragraph (d), in trust for the settlor absolutely or if he or she is dead for his or her personal representative.

(2) An application to the Court under this section may be made by any person referred to in section 71(1).

(3) In subsection (1) “settlor” means the particular person who provided the interest or property affected as mentioned in that subsection.

### **Termination of a trust**

**51.(1)** On the termination of a trust, the trust property shall be distributed by the trustee within a reasonable time in accordance with the terms of the trust to the beneficiaries entitled thereto.

(2) Notwithstanding subsection (1), the trustee may require to be provided with reasonable security for liabilities whether existing, future, contingent or otherwise before distributing trust property.

(3) Without prejudice to the powers of the Court under subsection (4) and notwithstanding the terms of the trust, where all the beneficiaries are in existence and have been ascertained and none are incapacitated adults or minors who may require the trustee to terminate the trust and distribute the trust property among them.

(4) The Court may —

- (a) require the trustee to distribute the trust property;
- (b) direct the trustee not to distribute the trust property; or
- (c) make such other order as it thinks fit.



(5) In this section, “liabilities” includes contingent liabilities.

(6) An application to the Court under this section may be made by any person referred to in section 71(1).

### ***Chapter 8 - Protector***

#### **Appointment of protector**

**52.**(1) The terms of a trust may provide for the appointment of a person as a protector of the trust.

(2) A protector of a trust may be a settler or an enforcer of the trust, but not a trustee of the trust.

(3) A protector of a trust may be a beneficiary of the trust, but not a sole beneficiary.

#### **Powers of a protector**

**53.**(1) Subject to the terms of the trust, powers vested in the protector may include —

- (a) the power to remove, or appoint new trustee or additional trustee;
- (b) power to add or exclude a beneficiary;
- (c) power to approve or change the proper law of the trust;
- (d) power to approve proposed trust distributions;
- (e) power to approve proposed trust investments;
- (f) power to appoint replacement protectors;
- (g) power to approve the termination of the trust upon distribution of all of the trust's property; and
- (h) such further powers as are conferred on the protector by the terms of the trust or the provisions of this Act.

(2) Subsection (1)(b) shall not apply to —

- (a) charitable trust; and
- (b) a purpose trust where the terms of the trust do not provide for the trust to have beneficiaries.

### **Remuneration and expense of protector**

**54.**(1) Unless authorised by —

- (a) the terms of the trust;
- (b) consent in writing of all of the beneficiaries; or
- (c) an order of the Court,

a protector shall not be entitled to remuneration for his or her services.

(2) Subject to the terms of the trust, a protector shall be reimbursed by the trustee from the trust property all expenses and liabilities reasonably incurred in connection with the trust.

### **Entitlement of protector to documents**

**55.**(1) A protector of a trust shall be entitled, on a written request to the trustee of the trust, to —

- (a) a copy of the instrument creating the trust, any amendment thereto and any additional deed supplemental to the instrument creating the trust; and
- (b) access to and copies of the accounting records of the trust.

(2) A protector shall not disclose information or document referred to in subsection (1) to a beneficiary, if any, or to any third party unless such beneficiary or other party is entitled under the terms of the trust.

### **Duty of co-protectors to act together**

**56.**(1) Subject to the terms of the trust, where there is more than one

protector, all the protectors shall join in the performance of their duties and powers in relation to the trust.

(2) Subject to subsection (3), where there is more than one protector no power or discretion given to the protectors shall be exercised unless all the protectors agree on its exercise.

(3) The terms of a trust may empower protectors to act by a majority and a protector who dissents from a decision of the majority of the protectors shall record his or her dissent in writing.

### **Liability of a protector**

**57.** A protector or a person acting as an officer, employee or agent of the protector or performing any duty on behalf of the protector shall not be liable for damages done or omitted to be done in the discharge of the duties of the protector under this Act or under the terms of the trust, unless it is proved that the act or omission constituted or arose from the person's own fraud, dishonesty or willful misconduct.

### **Cessation of appointment of protector**

**58.(1)** Subject to the terms of the trust and subsection (3), a protector may resign from his or her office by giving reasonable notice in writing delivered to the trustee.

(2) Subject to the terms of the trust and subsection (3), a resignation under subsection (1) shall take effect —

- (a) upon delivery of the notice to the trustee; or
- (b) on such date or contingent event as may be specified in the notice.

(3) A resignation given in order to facilitate a breach of this Act or any duty imposed on the enforcer under the terms of the trust shall be of no effect.

(4) A protector shall cease to be a protector of a trust immediately upon —

- (a) the protector's resignation becoming effective;
- (b) the protector's removal from office by the Court;
- (c) the coming into effect of a provision in the terms of the trust under which the protector is removed from office or otherwise ceases to hold office; or
- (d) the protector's appointment as a trustee of the trust.

### ***Chapter 9 - Enforcer***

#### **Enforcer**

**59.**(1) The terms of the trust in the case of a purpose trust shall provide for —

- (a) the appointment of one or more persons as an enforcer in relation to the trust's non-charitable purposes; and
- (b) the appointment of one or more persons as enforcer at any time when there is none.

(2) A charitable trust can have an enforcer, in which case the terms of the trust shall provide for the appointment of one or more persons as enforcer in relation to the trust's charitable purposes.

(3) An enforcer of a trust can also be a settlor, a beneficiary or a protector of the trust, but the appointment of a person as enforcer of the trust shall not have effect if the person is also a trustee of the trust.

(4) A trustee of a purpose trust shall, at any time when there is no enforcer in relation to those purposes, take such steps as maybe necessary to secure the appointment of an enforcer in accordance with the terms of the trust.

#### **Duties of enforcer**

**60.**(1) Subject to the terms of a trust, it shall be the duty of an enforcer of a purpose trust to enforce the trust in relation to its non-charitable purposes.

(2) In the case of a charitable trust which has an enforcer, it shall be the duty of the enforcer to enforce the trust in relation to its charitable purposes.

(3) Except with the approval of the Court or as permitted by this Act or expressly provided by the terms of the trust, an enforcer shall not —

- (i) directly or indirectly profit from the enforcer's appointment;
- (ii) cause or permit any other person to profit directly or indirectly from the enforcer's appointment; or
- (iii) on the enforcer's own account enter into any transaction with the trustees or relating to the trust property which may result in such profit.

### **Remuneration and expense of enforcer**

**61.**(1) An enforcer shall not be entitled to remuneration for his or her services, unless authorised by —

- (a) the terms of the trust;
- (b) a consent in writing of all of the beneficiaries; or
- (c) an order of the Court.

(2) Subject to the terms of the trust, an enforcer shall be reimbursed by the trustee from the trust property all expenses and liabilities reasonably incurred in connection with the trust.

### **Entitlement of enforcer to documents**

**62.**(1) An enforcer of a trust shall be entitled, on a written request to the trustee of the trust, to —

- (a) a copy of the instrument creating the trust, any amendment thereto and any deed supplemental to the instrument creating the trust; and
- (b) access to and copies of the accounting records of the trust.

(2) An enforcer shall not disclose any information or document referred to in subsection (1) to a beneficiary, or to any other person unless such

beneficiary or other person is entitled to receive such information or document under the terms of the trust or any written law.

### **Duty of co-enforcers to act together**

**63.**(1) Subject to the terms of the trust, where there is more than one enforcer all the enforcers shall join in enforcing the trust.

(2) Subject to subsection (3), where there is more than one enforcer no power or discretion given to the enforcers shall be exercised unless all the enforcers agree on its exercise.

(3) The terms of a trust may empower enforcers to act by a majority and an enforcer who dissents from a decision of the majority of the enforcers may require his or her dissent to be recorded in writing.

### **Liability of enforcer**

**64.** An enforcer or a person acting as an officer, employee or agent of the enforcer or performing any duty on behalf of the enforcer shall not be liable in damages for anything done or omitted to be done in the discharge or of the duties of the enforcer under this Act or under the terms of the trust, unless it is proved that the act or omission constituted or arose from the person's own fraud, dishonesty or willful misconduct.

### **Cessation of appointment of enforcer**

**65.**(1) Subject to the terms of the trust and subsection (3), an enforcer may resign from office by notice in writing delivered to the trustee.

(2) Subject to the terms of the trust and subsection (3), a resignation under subsection (1) shall take effect —

- (a) on delivery of the notice to the trustee; or
- (b) on such date or contingent event as may be specified in the notice.

(3) A resignation given in order to facilitate a breach of this Act or any duty imposed on the enforcer under the terms of the trust shall be of no effect.

(4) An enforcer shall cease to be an enforcer of a trust immediately upon —

- (a) his or her resignation becoming effective;
- (b) his or her removal from office by the Court;
- (c) the coming into effect of a provision in the terms of the trust under which the enforcer is removed from office or otherwise ceases to hold office; or
- (d) his or her appointment as a trustee of the trust.

### ***Chapter 10 - Trust protection provisions***

#### **Application of Laws of Seychelles to a Seychelles trust**

**66.**(1) In this section —

“foreign” refers to any jurisdiction outside Seychelles;

“heirship rights” means rights, claims or interests in, against or to property of a person arising or accruing in consequence of his or her death, other than rights, claims or interests created by will or other voluntary disposition by such person or resulting from an express limitation in the disposition of property;

“personal relationship” includes the situation where there exists, or has in the past existed, any of the following relationships between a person and the settlor —

- (a) any relationship by blood, marriage or adoption (whether or not the marriage or adoption is recognised by law);
- (b) any arrangement between the person and settlor such as to give rise in any jurisdiction to any rights, obligations or responsibilities analogous to parent and child or husband and wife; or

- (c) any relationship between the person or the settlor and a third person who has a personal relationship;

“trust” includes a former trust.

- (2) Subject to subsection (4), any question in respect of —

- (a) the validity or interpretation of a trust;
- (b) the validity or effect of any transfer or other disposition of property to a trust;
- (c) the capacity of a settlor;
- (d) the administration of the trust, whether the administration be conducted in Seychelles or elsewhere, including questions as to the powers, obligations, liabilities and rights of trustees and their appointment or removal; or
- (e) the existence and extent of powers, conferred or retained, including powers of variation or revocation of the trust and powers of appointment and the validity of any exercise of such powers,

shall be determined in accordance with the law of Seychelles and no rule of foreign law shall apply.

- (3) Without prejudice to the generality of subsection (2), any question mentioned therein shall be determined without consideration of whether or not —

- (a) any foreign law prohibits or does not recognise the concept of a trust; or
- (b) the trust or disposition avoids or defeats rights, claims, or interests conferred by any foreign law upon any person by reason of a personal relationship to the settlor or by way of heirship rights, or contravenes any rule of foreign law or any



foreign judicial or administrative order or action intended to recognize, protect, enforce or give effect to any such rights, claims or interests.

(4) No foreign judgment with respect to a trust shall be enforceable to the extent that it is inconsistent with this section.

### **Protection of trust property**

**67.(1)** In this section —

“creditor” means a person to whom an obligation is owed;

“disposition” means any disposition, or series thereof, effected and includes, any transaction, gift, grant or transfer of property of any nature whatsoever;

“intent to defraud” means an intention of a transferor willfully to defeat an obligation owed to a creditor;

“obligation” means an obligation or liability (which shall include a contingent liability) which existed on or prior to the date of a relevant disposition and of which the transferor had actual notice;

“relevant disposition” means a disposition to which subsection (3) applies;

“transferor” means the person who as owner of property makes a relevant disposition or causes it to be made;

“transferee” means the person to whom a relevant disposition is made and shall include a successor in title;

“trust” includes reference to the trustee of the trust, in his or her capacity as trustee;

“undervalue”, in relation to a disposition of property, means —

(a) the provision of no consideration for the disposition; or

- (b) a consideration for the disposition the value of which is significantly less than the value of the property.

(2) Subject to subsection (3), a disposition of property to a trust shall not be void, voidable or otherwise liable to be set aside, or subject to any implied condition, by reason of —

- (a) bankruptcy or liquidation of the settlor; or
- (b) any action, proceeding or other claim by a creditor of the settlor.

(3) If the Court, in respect of a claim by a creditor is satisfied beyond reasonable doubt that the disposition of property to the trust was made —

- (a) with an intent to defraud and at an undervalue; or
- (b) the transferor was insolvent or became insolvent as a result of the disposition,

the Court shall declare the disposition void and set aside to the extent necessary to satisfy the obligation of the claimant creditor together with such costs as the Court may direct.

(4) The burden of proof for an intent to defraud for the purposes of subsection (3) shall be upon the creditor seeking to set aside the disposition.

(5) No action or proceedings shall be commenced under this section unless initiated within two years of the date of the relevant disposition.

(6) If the Court sets aside a disposition under subsection (3) —

- (a) where the Court is satisfied that the transferee has acted in bad faith —
  - (i) the transferee shall have a first and paramount charge over the property, the subject of the disposition, of an amount equal to the entire costs properly incurred by

the transferee in the defence of the action or proceedings to set aside (and not merely such costs as might otherwise be allowed by the Court); and

(ii) the relevant disposition shall be set aside subject to the proper fees, costs, pre-existing rights, claims and interests of the transferee, (and of any predecessor transferee which has not acted in bad faith); and

(b) unless the Court is satisfied that a beneficiary of a trust has acted in bad faith the disposition shall only be set aside subject to the right of such beneficiary to retain any distribution made consequent upon the prior exercise of a trust, power or discretion vested in the trustee of such trust or any other person, and otherwise properly exercised.

(7) The burden of proof that a transferee or beneficiary has acted in bad faith for the purposes of subsection (6) shall be upon the person making the allegation.

### **Spendthrift or protective trust**

**68.(1)** The terms of a trust may make the interest of a beneficiary liable to termination.

(2) Without prejudice to subsection (1), the terms of a trust may make the interest of a beneficiary in the income or capital of the trust property subject to —

- (a) a restriction on alienation or disposal; or
- (b) diminution or termination in the event of the beneficiary becoming bankrupt or any of his or her property becoming liable to sequestration for the benefit of his or her creditors.

## **PART III POWERS OF COURT**

### **Application of Part III**

**69.** This Part shall apply in relation to a Seychelles trust and, to the extent that the context admits, shall apply to a foreign trust.

### **Application for directions**

**70.** A trustee may apply to the Court for direction in respect of the manner in which the trustee may act in connection with any matter relating to the trust and the Court may make such order, as it thinks fit.

### **Application and certain powers of Court**

**71.(1)** An application to the Court for an order or declaration under subsection (2) may be made by the Authority or by the trustee, the settlor, the enforcer, a protector or a beneficiary or, with leave of the Court, by any other person.

(2) The Court may —

(a) make an order concerning —

- (i) the execution or the administration of a trust;
- (ii) the trustee of a trust, including an order relating to the exercise of any power, discretion or duty of the trustee, the appointment or removal of a trustee, the remuneration of a trustee, the submission of accounts, the conduct of the trustee and distribution of property;
- (iii) a beneficiary or a person having a connection with the trust;
- (iv) the appointment or removal of an enforcer in relation to a non-charitable purpose of the trust; or
- (v) the appointment or removal of a protector;

(b) make a declaration as to the validity or the enforceability of a trust;

(c) rescind or vary any order or declaration made under this Act, or make any new order or declaration.

(3) Where the Court makes an order for the appointment of a trustee, it may impose such conditions, including the vesting of the trust property, as it may consider necessary.

(4) Subject to any order of the Court, a trustee appointed under this section shall have the same powers, discretions and duties and may act as if the trustee had been originally appointed.

### **Variation of terms of a Seychelles trust by Court and approval of transactions**

**72.(1)** Subject to subsection (2), the Court may, by order approve on behalf of —

- (a) a minor or incapacitated adult having, directly or indirectly, an interest, whether vested or contingent, under the trust;
- (b) any person, whether ascertained or not, who may become entitled, directly or indirectly, to an interest under the trust at a future date or on a contingent event of any specified description;
- (c) any person unborn; or
- (d) any person in respect of an interest that may arise by reason of a discretionary power given to a person on the failure or determination of an existing interest that has not failed or determined,

any arrangement, by whomsoever proposed and whether or not there is any other person beneficially interested who is capable of assenting thereto, varying or revoking all or any of the terms of a Seychelles trust or enlarging the powers of the trustee of managing or administering any of the trust property.

(2) The Court shall not approve an arrangement on behalf of any person referred to in subsection (1)(a), (b) or (c) unless the arrangement thereof appears to be for the benefit of that person.

(3) Where in the management or administration of a Seychelles trust, any sale, lease, pledge, charge, surrender, release or other disposition, or any

purchase, investment, acquisition, expenditure or other transaction is in the opinion of the Court expedient and the same may not be effected by reason of the absence of any power vested in the trustee by the terms of the trust or by proper law, the Court may confer upon the trustee generally or in any particular circumstances a power for such purpose on such terms and conditions as the Court thinks fit and may direct in any manner and from the property any cost authorised to be expended and the cost of any transaction to be paid or borne.

(4) An application to the Court under this section may be made by any person referred to in section 71 (1).

### **Charitable trusts or purpose trusts**

**73.(1)** Where trust property of a Seychelles trust is held for a charitable purpose or non-charitable purpose and any of the circumstances referred to in subsection (2) apply, the Court may, on the application of a trustee, the Authority, an enforcer or a protector, declare that the property or the remainder of the property, shall be held for such other charitable purpose or non-charitable purpose, as the Court considers to be consistent with the original intention of the settlor.

(2) The circumstances referred to in subsection (1) are that —

- (a) the purpose has, as far as is reasonably possible, been fulfilled, has ceased to exist or is no longer applicable;
- (b) the purpose cannot be carried out having regard to the directions given by the settlor or the spirit of the gift;
- (c) the purpose provides a use for only part of the trust property;
- (d) the property, and any other property applicable for a similar purpose, may more effectively be applied to a common purpose, with regard to the spirit of the gift;
- (e) the purpose was laid down by reference to an area that is no longer a unit for that purpose, or by reference to a class of persons or to an area that is no longer appropriate, with regard to the spirit of the gift or the practicality of administering the gift;

- (f) the purpose has been adequately provided for by other means;
- (g) in the case of a trust for charitable purposes, the purpose has ceased for whatever reason to be charitable; or
- (h) the purpose has ceased to provide a suitable and effective method of managing the property, with regard to the spirit of the gift.

(3) Where trust property of a Seychelles trust is held for a charitable purpose or non-charitable purpose the Court may, on the application of a trustee, the Authority, an enforcer or a protector, approve any arrangement that varies or revokes the purposes of the trust or enlarges or modifies the powers of management or administration of the trustees, if it is satisfied that the arrangement is —

- (i) suitable and expedient; and
- (ii) consistent with the original intention of the settlor and the spirit of the gift.

(4) The Court shall not approve an arrangement under subsection (3) unless it is satisfied that any person with a material interest in the trust has had an opportunity to be heard.

### **Power to relieve trustee from personal liability**

**74.(1)** The Court may relieve a trustee either wholly or partly from personal liability for a breach of trust where it appears to the Court that —

- (a) the trustee is or may be personally liable for the breach of trust;
- (b) the trustee has acted honestly and reasonably;
- (c) the trustee ought fairly to be excused —
  - (i) for the breach of trust, or

- (ii) for omitting to obtain the directions of the Court in the matter in which such breach arose.

(2) Subsection (1) shall apply whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Act.

### **Execution of instruments by order of Court**

**75.** Where a trustee commits a breach of trust at the instigation or at the request or with the consent of a beneficiary, the Court may by order impound all or part of the interest of the beneficiary by way of indemnity to the trustee or any person claiming through the trustee.

### **Power to indemnify beneficiary for breach of trust**

**76.(1)** Where any person neglects or refuses to comply with an order of the Court, directing the person to execute or make, any conveyance, assignment, document, instrument or endorsement, the Court may, on such terms and conditions, order that the conveyance, assignment, document, instrument or endorsement, be executed or made by such other person as the Court nominates for the purpose at the cost of the person in default, or otherwise as the Court directs.

(2) A conveyance, assignment, document, instrument or endorsement executed or made by such other person as the Court may nominate under subsection (1) shall be valid and be for all purposes available whether or not it had been executed or made by the person originally directed to execute or make it.

### **Payment of costs**

**77.** The Court may order the costs and expenses and incidental to an application to the Court under this Act to be paid out of the trust property or to be paid in such manner by such persons as the Court may direct.

### **Interpretation and general provisions relating to sections 79 and 80**

**78.(1)** In sections 79 and 80 —



- (a) references to a transfer or other disposition of property to a trust, do not include a testamentary disposition;
- (b) “power” includes a discretion as to the way in which an obligation is performed.
- (c) “mistake” includes —
  - (i) a mistake as to the effect of, any consequences of, or any of the advantages to be gained by, a transfer or other disposition of property to a trust, or the exercise of a power over or in relation to a trust or trust property;
  - (ii) a mistake as to a fact existing either before or at the time of, a transfer or other disposition of property to a trust, or the exercise of a power over or in relation to a trust or trust property; or
  - (iii) a mistake of law including a law of a foreign jurisdiction.

(2) Without prejudice to section 71 and subject to subsection (4), the Court may, consequential upon a declaration made under section 79 or 80, make such order or orders as it thinks fit.

(3) No order may be made under subsection (2) which would prejudice any bona fide purchaser for value of any trust property without notice of the matters which render the transfer or other disposition of property to a trust, or the exercise of any power over or in relation to a trust or trust property, voidable.

(4) Nothing in section 79 or 80 shall prejudice —

- (a) any application for a declaration by the Court that a transfer or other disposition of property to a trust, or the exercise of any power in relation to a trust is void or voidable on grounds other than those specified in 79 or 80; or
- (b) any personal remedy which may be available against a trustee or any other person.

**Power to set aside a transfer or disposition of property to a trust due to mistake**

**79.(1)** In this section, “person exercising a power” means a person who exercises a power to transfer or make other disposition of property to a trust on behalf of a settlor.

(2) The Court may on the application of a settlor or any of his or her personal representatives or successors in title, and in the circumstances set out in subsection (3), declare that a transfer or other disposition of property to a trust —

- (a) by a settlor acting in person (whether alone or with any other settlor); or
- (b) through a person exercising a power,

is voidable and has such effect, if any, as the Court may determine.

(3) The circumstances referred to in subsection (2) are where the settlor or person exercising a power —

- (a) made a mistake in relation to the transfer or other disposition of property to a trust; and
- (b) would not have made the transfer or other disposition but for that mistake,

and the mistake is serious as to render it just for the Court to make a declaration under this section.

**Power to set aside the exercise of powers in relation to a trust or trust property due to mistake**

**80.(1)** In this section, “person exercising a power” means a person who, otherwise than in the capacity of trustee, exercises a power over, or in relation to a trust, or trust property.

(2) The Court may on the application of any person specified in subsection (4), and in the circumstances set out in subsection (3), declare that

the exercise of a power by a trustee or a person exercising a power in relation to a trust or trust property is voidable and —

- (a) has such effect as the Court may determine; or
- (b) is of no effect from the time of its exercise.

(3) The circumstances referred to in subsection (2) are where the trustee or person exercising a power —

- (a) made a mistake in relation to the exercise of its power; and
- (b) would not have exercised the power, or would not have exercised the power in the way it was exercised, but for that mistake,

and the mistake is serious as to render it just for the Court to make a declaration under this section.

(4) An application under subsection (2) may be made by —

- (a) the trustee who exercised the power concerned, or the person exercising a power (as the case may be);
- (b) any other trustee;
- (c) a beneficiary, protector or enforcer; or
- (d) any other person with leave of the Court.

## PART IV FOREIGN TRUSTS

### Provisions relating to foreign trusts

**81.**(1) This section shall apply to a foreign trust.

(2) Subject to subsections (3) and (5), a foreign trust shall be regarded as being governed by and shall be interpreted in accordance with its proper law.

(3) A foreign trust shall not be enforceable in Seychelles —

(a) to the extent that it purports —

- (i) to do anything which is contrary to the law of Seychelles;
- (ii) to confer any right or power or impose any obligation the exercise or carrying out of which is contrary to the law of Seychelles;
- (iii) to hold, directly or indirectly, immovable property in contravention of section 10(2)(b)(i) or (ii) in Seychelles; or

(b) to the extent that the Court declares that the trust or any activity carried on is immoral or contrary to public policy.

(4) Where subsection (3)(a)(iii) applies, any person in whom the title to such immovable property is vested shall not be a trustee of such immovable property.

(5) Sections 26 to 29 shall apply in the case of a foreign trust with a trustee in Seychelles.

## **PART V**

### **PROVISIONS OF GENERAL APPLICATION**

#### **Application of Part V**

**82.** This Part shall apply to a Seychelles trust and, to the extent that the context admits, shall apply to a foreign trust.

#### **Nature of interest of trustee in trust property**

**83.(1)** Subject to subsection (2) —

- (a) legal title to trust property shall be in the name of the trustee or in the name of another person on behalf of the trustee;

- (b) the interest of a trustee in trust property is limited to that which is necessary for the proper administration of the trust; and
- (c) trust property shall constitute a separate fund and shall not form part of the trustee's own property.

(2) Where a trustee is also a beneficiary of the same trust, subsection (1)(c) shall not apply to the trustee's interest in the trust property as a beneficiary.

### **Following of trust property**

**84.** Without prejudice to the liability of a trustee for breach of trust, trust property which has been alienated or converted in breach of trust or the property into which it has been converted may be followed and recovered from of a *bona fide* purchaser for value without notice of a breach of trust or a person (other than the trustee) deriving title through such a person.

### **Limitation of interest of trustee in trust property**

**85.(1)** Subject to subsection (2) —

- (a) the interest of a trustee in the trust property is limited to that which is necessary for the proper performance of the trust; and
- (b) such property shall not be deemed to form part of the trustee's assets.

(2) Where a trustee is also a beneficiary of the same trust, subsection (1) shall not apply to the trustee's interest in the trust property as a beneficiary.

(3) Without prejudice to the liability of a trustee for breach of trust, trust property which has been alienated or converted in breach of trust or the property into which it has been converted may be followed and recovered unless it is in the hands of a *bona fide* purchaser for value without notice of a breach of trust or a person (other than the trustee) deriving title through such a person.

(4) Where a trustee becomes insolvent or upon distraint, execution or any similar process of a written law being made, taken or used against any property of the trustee, the creditors of the trustee shall have no right or claim against the trust property except to the extent that the trustee itself has a claim against the trust or has a beneficial interest in the trust.

### **Protection of persons dealing with trustee**

**86.(1)** A *bona fide* purchaser for value without actual notice of any breach of trust —

- (a) may deal with a trustee in relation to trust property as if the trustee was the beneficial owner of the trust property; and
- (b) shall not be affected by the trusts on which such property is held.

(2) No person paying or advancing money to a trustee shall be concerned to the use of the money, or that no more than is necessary is raised, or otherwise as to the propriety of the transaction or the application of the money.

### **Limitation of actions or prescription**

**87.(1)** Notwithstanding any other written law, no period of limitation or prescription shall apply to an action brought against a trustee in respect of any fraud to which the trustee was a party or to which the trustee was privy.

(2) Where subsection (1) does not apply, the period within which an action founded on breach of trust or to recover from trust property from the trustee may be brought against a trustee by a beneficiary, a protector or an enforcer is —

- (a) three years from the delivery of the final accounts of the trust to the beneficiary, protector or the enforcer; or
- (b) three years from the date on which the beneficiary, protector or the enforcer first has knowledge of the occurrence of a breach of trust,

whichever period shall first begin to run.

(3) Where the beneficiary is a minor the period referred to in subsection (2) shall not begin to run until the day on which the beneficiary ceases to be a minor.

(4) Where subsection (1) does not apply —

- (a) the period within which an action founded on breach of trust may be brought against a trustee by an enforcer or protector is three years from —
  - (i) the date of delivery of the final accounts to the enforcer or protector; or
  - (ii) the date on which the enforcer or protector first has knowledge of the breach of trust,

whichever is earlier; and

- (b) the period within which an action founded on breach of trust may be brought against a former trustee by a current trustee is three years from the date on which the former trustee ceased to be a trustee of the trust.

(5) This section does not apply to a foreign trust whose proper law is the law of a jurisdiction to which the Hague Convention on the Law Applicable to Trusts and on their Recognition concluded on 1 July 1985, for the time being extends.

### **Fiscal matters**

**88.**(1) Notwithstanding any other provisions of this Act, where a trust derives assessable income in Seychelles, its trustees shall —

- (a) within one month of deriving the first assessable income, notify the Authority in writing that the trust is deriving assessable income and the nature of the activities giving rise to this assessable income; and

- (b) within one year of deriving the first assessable income, submit to the Authority an annual return, in a form prescribed by the Authority and accompanied by the annual financial statements complying with the requirements of sections 142 and 144 and the Sixth Schedule of the Companies Act.

(2) The Authority shall send a copy of the notice in subsection (1)(a) to the Seychelles Revenue Commission.

(3) Subject to subsection (4) and notwithstanding anything in the Stamp Duty Act, all instruments relating to —

- (a) the formation of a trust;
- (b) transfers of property to or by a trust (acting by its trustees);
- (c) transactions in respect of beneficiaries' interests in a trust;
- (d) the creation, variation or discharge of a charge or other security interests over any property of a trust; and
- (e) other transactions relating to the business or assets of a trust (acting by its trustees),

are exempt from the payment of stamp duty.

(4) Subsection (3) does not apply to an instrument relating to —

- (a) the transfer to or by a trust (acting by its trustees) of an interest in immovable property in Seychelles; or
- (b) the transfer to or by a trust (acting by its trustees) of shares or other interests in a company or other legal person which owns or has any interest in immovable property in Seychelles.

(5) A trustee who fails to comply with subsection (1) shall be liable to a penalty fee not exceeding US\$5,000.



## **PART VI MISCELLANEOUS**

### **Immunity**

**89.** No action, prosecution or other proceedings shall be brought against the Authority or an employee or agent of the Authority, in respect of an act done or omitted to be done in good faith by such person in the performance of functions under this Act.

### **Compliance inspections**

**90.(1)** Any person authorised by the Authority in writing may, for the purpose of monitoring and assessing compliance with this Act, during normal business hours and after giving a notice to the approved trustee of a trust —

- (a) access the principal place of business in Seychelles of the approved trustee;
- (b) inspect the documents required by this Act to be kept in relation to the trust, including, the register to be kept by the approved trustee under section 28(1);
- (c) during or after inspection request explanations pertaining to the trust from the directors or managerial staff of the approved trustee.

(2) Any person who impedes, prevents or obstructs any person acting under the authority of subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding SCR 300,000.

### **Limitation of actions or prescription**

**91.(1)** Subject to subsection (2), the Authority and each officer, employee and agent of the Authority, shall not disclose to a third party any information acquired in the performance of the functions of the Authority.

(2) Subsection (1) shall not apply to any disclosure —

- (a) pursuant to an order of the Court;

- (b) required under this Act or any other written law of Seychelles;
- (c) having the prior written consent of the approved trustee of the relevant trust; or
- (d) where the information disclosed is in statistical form or is otherwise disclosed in such a manner that does not enable the identity of any trust or other person, to which the information relates, to be ascertained.

(3) A person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding SCR 300,000.

**Punishment for contravening any provision for which no fine is provided**

**92.** Any person who contravenes any provisions of this Act, for which no fine is provided for in this Act, commits an offence and shall on conviction be liable to a fine not exceeding SCR500,000.

**Power of Authority to refuse to take action in certain cases**

**93.(1)** The Authority may refuse to take any action required under this Act for which a fee is prescribed until such fee is paid.

(2) Before imposing any penalty fee under this Act by the Authority, the person concerned shall be given an opportunity of being heard.

(3) The Authority may, for good cause and reason to be recorded in writing, waive all or any part of any penalty fee imposed under this Act.

**Act to prevail over other laws**

**94.** Where there is any inconsistency between this Act and the Civil Code of Seychelles Act or the Commercial Code of Seychelles Act, this Act shall prevail.

## Regulations

**95.** The Minister may make regulations for carrying out and giving effect to the provisions of this Act and may by regulations amend the Schedule.

## PART VII REPEALS, SAVINGS AND TRANSITIONAL PROVISIONS

### Repeal, savings and transitional provisions of International Trust Act 1994

**96.**(1) The International Trusts Act (*Cap 276*) is hereby repealed.

(2) Notwithstanding the repeal under subsection (1) —

- (a) any statutory instruments made under the repealed Act, shall to the extent that they are not inconsistent with this Act, shall continue to have effect until they are amended or repealed under the provisions of this Act;
- (b) all suits, prosecutions, appeals or other legal proceedings instituted in any Court or tribunal under the repealed Act and pending before such Court or tribunal prior to the commencement of this Act shall, with effect from such commencement, be deemed to have been instituted under this Act and may be continued accordingly;
- (c) all decrees, orders and judgments made by a court under the repealed Act and remaining unsatisfied prior to the commencement of this Act, shall be enforced under the repealed Act as if this Act has not been enacted;
- (d) anything done or any action taken under the repealed Act shall be deemed to have been done or taken under this Act.

(3) The repeal under subsection (1) shall not affect the legality or validity of —

- (a) anything done in relation to a trust existing before the commencement of this Act; or

- (b) any trust arising from a document or deposition executed or taken effect before the commencement of this Act.

### **Re-registration of former trusts**

**97.(1)** For the purposes of this section,

- (a) a “former trust” means a trust —
  - (i) in respect of which a declaration has been registered under section 75 of the repealed Act; and
  - (ii) subsisting as such on the commencement of this Act;
- (b) “repealed Act” means the International Trusts Act (*Cap 276*) repealed by section 96.

(2) A former trust shall be deemed to be re-registered as a registered trust under this Act with effect from the date of the commencement of this Act, and the Authority shall as soon as is practicable —

- (a) allot a reference number to the trust; and
- (b) enter in the Register the name and other particulars referred to in section 13(1).

(3) The reference number allotted to a trust under subsection (2) may be the number previously allotted to the trust under the repealed Act.

(4) The approved trustee of a former trust shall be deemed to be re-registered under subsection (2), and may request from the Authority, a letter confirming the re-registration and the Authority shall issue at no cost, a letter to that effect.

(5) The letter of re-registration referred to in subsection (5) shall state —

- (a) the name and unique registration number of the trust;
- (b) that the former trust was re-registered under this Act on the commencement of this Act; and
- (c) the date of registration under section 75 of the repealed Act.

(6) Except as otherwise provided, the provisions of this Act shall apply to a trust that is deemed to be registered under this section as it such trust is registered under this Act.

## SCHEDULE

### (Sections 11, 12 and 13)

#### FEEs

1	2	3
Sl. No.	Provisions of the Act and purpose	Amount (in US\$)
1.	<i>section 11(1)(b)</i> Trustee appointment declaration registration fee (one off)	\$200
2.	<i>section 12(1)</i> Filing of a notice of appointment of a Seychelles trustee	\$50
3.	<i>section 12(2)</i> Filing of a notice of cessation of a Seychelles trustee	\$50
4.	<i>section 12(3)</i> Filing of a notice of termination of a registered trust	\$50
5.	<i>section 13(2)</i> An inspection of the Register (per trust)	\$50
6.	<i>section 13(2)</i> Obtaining a copy of any document available on inspection (per page)	\$1
7.	<i>section 13(4)</i> Request of official search	\$75
8.	Filing of any document (as required or permitted under this Act) relating to a registered trust, other than as set out above in this Schedule	\$75

**LIMITED PARTNERSHIP (AMENDMENT) BILL, 2021***(Bill No. 32 of 2021)***OBJECTS AND REASONS**

The Limited Partnerships Act allows for the registration of limited partnerships with the FSA. A Limited Partnership must carry on its business outside the Seychelles but must have its registered office in Seychelles for the service of process and delivery of all notices and communications. However, the Limited Partnership may carry on business in Seychelles as long as the business fulfils the objectives of the Limited Partnership, which shall be offshore activities.

2. Following the subsequent review of Seychelles by the Global Forum of the Organization for Economic Corporation & Development (“OECD”), a number of amendments are being proposed to the Limited Partnerships Act, in an effort to improve the availability of information in Seychelles and hence, improving the standing of Seychelles' vis-à-vis such international standards. Additional amendments are also being proposed in view of the recently enacted new Beneficial Ownership Act. To give effect to these matters, some of the notable amendment of this Bill are hereby mentioned.

3. Amendment to section 6 to introduce new requirements to require the registered office of a limited partnership to be the same address as the principal place of business in Seychelles of its registered agent.

4. To introduce a new section 6A to require every limited partnership to have a registered agent in Seychelles. The registered agent shall be a person licensed to provide international corporate services under the International Corporate Service Providers Act.

5. New section 11A. One main issue being faced by the Seychelles authorities in the implementation of the exchange of information mechanism for tax matters is the availability of accounting information for international business companies (“IBCs”). Therefore, in order to reduce the risk of unavailability of accounting records, it is proposed to require all limited partnerships to keep their accounting records at their registered office (i.e. with the registered agent) in Seychelles.

6. A new section 26 is being proposed in order to place the obligation to keep register of mortgages, register of limited partnership interests and accounting records at the business premise of the registered agent in Seychelles.

**Dated this 23rd day of July, 2021.**

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

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**LIMITED PARTNERSHIP (AMENDMENT) BILL, 2021**

*(Bill No. 32 of 2021)*

**ARRANGEMENT OF SECTIONS**

**Sections**

1. Short title
2. Amendment of section 6 of Cap 281
3. Insertion of new section 6A
4. Amendment of section 9
5. Amendment of section 10
6. Amendment of section 11
7. Amendment of section 11A
8. Amendment of section 24
9. Insertion of new section 26
10. Compliance of certain provisions





**LIMITED PARTNERSHIP (AMENDMENT) BILL, 2021**

*(Bill No. 32 of 2021)*



**A BILL  
FOR**

**AN ACT to amend the Limited Partnership Act (*Cap 281*).**

**ENACTED** by the President and the National Assembly.

**Short title**

**1.** This Act may be cited as the Limited Partnership (Amendment) Act, 2021.

### **Amendment of section 6 of Cap 281**

2. Section 6 of the Limited Partnership Act (*hereinafter referred to as the “principal Act”*) is amended by inserting after subsection (2), the following subsection —

“(3) The registered office of a limited partnership shall be the same address as the principal place of business in Seychelles of its registered agent.”.

### **Insertion of new section 6A**

3. The principal Act is amended by inserting after section 6, the following section —

#### **Requirement of registered agent**

“6A.(1) Every limited partnership shall at all times have a registered agent in Seychelles.

(2) The registered agent of limited partnership shall be a person licensed to provide international corporate services under the International Corporate Service Providers Act (*Cap 275*).

(3) If default is made in complying with the requirement of subsection (1), the limited partnership shall be liable to a penalty of one hundred US dollars and additional penalty of twenty-five US dollars for each day that such default continues, and the penalty shall be a debt due to the Registrar.”.

### **Amendment of section 9**

4. Section 9(1) of the principal Act is amended by inserting after paragraph (e), the following paragraph —

“(f) the name and address of the registered agent of the limited partnership.”.

### **Amendment of section 10**

5. Section 10(4) of the principal Act is amended by repealing the words “of twenty-five US dollars for each day that such default continues”, and substituting therefor the words “not exceeding five thousand US dollars”.

**Amendment of section 11**

6. Section 11(4) of the principal Act is amended by repealing the words “of twenty-five US dollars for each day that such default continues”, and substituting therefor the words “not exceeding ten thousand US dollars”.

**Amendment of section 11A**

7. Section 11A of the principal Act is amended —

- (a) in subsection (1)(c), by repealing the words “accounts”, and substituting therefor the words “financial statements”;
- (b) in section 11A, by repealing subsection (3) and substituting therefor the following —

“(3) A limited partnership shall —

- (a) prepare an annual financial summary to be kept at its registered office in Seychelles within 6 months from the end of the limited partnership's financial year; and
- (b) on a bi-annual basis, keep its accounting records at its registered office in Seychelles.

(3A) The financial year of a limited partnership shall be the calendar year, unless it is changed by the general partner and notified to the limited partnership's registered agent within 14 days.

(3B) The Registrar may issue written guidelines regarding the implementation of the obligations relating to accounting records.”;

- (c) by repealing subsection (4) and substituting therefor the following subsections —

“(4) It shall be sufficient compliance with subsections (3) if a copy of the accounting records and financial summary

is kept in electronic form at the limited partnership's registered office in Seychelles.

(4A) Where a limited partnership keeps a copy of its accounting records at its registered office in Seychelles, the limited partnership shall keep with its registered agent a written record of the physical address of the place where the original accounting records are kept, and of any change thereto.”;

- (d) in subsection (6), by repealing the words “of twenty-five US dollars for each day that such default continues”, and substituting therefor the words “not exceeding ten thousand US dollars”.

#### **Amendment of section 24**

**8.** Section 24 of the principal Act is amended —

- (i) by inserting after sub-section (1), the following subsection —

“(1A) For the purposes of subsection (1), where a document is not in the English or French language, the Registrar may request a translation of the records in the English or French language from the general partner of the limited partnership or from the registered agent.”;

- (ii) inserting after the words “compliance inspection” the words “, or fails to comply with subsection (1A),”.

#### **Insertion of new section 26**

**9.** The principal Act is amended by inserting after section 25, the following section —

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

“**26.(1)** A registered agent shall, in respect of each limited partnership (including a deregistered limited partnership) to which it was or is acting as registered agent, preserve for at least 7 years —

- (a) the register of mortgages and the register of limited partnership interest, from the date of deregistration of the limited partnership; and
- (b) the accounting records of the limited partnership in the possession of the registered agent, from the date of completion of the transaction or operation to which they each relate.

(2) Where a registered agent ceases to hold a licence to provide international corporate services under the International Corporate Service Providers Act (*Cap 275*), that person shall handover all the records specified under subsection (1) to the Registrar or any other person approved by the Registrar.

(3) All records to be handed over under subsection (2) shall be preferably in the digital form or in such form as agreed upon between the Registrar and the registered agent.

(4) If the registered agent fails to comply with the requirements of this section, the registered agent shall be liable to a penalty not exceeding ten thousand US dollars.”.

### **Compliance of certain provisions**

**10.** Every limited partnership shall comply with the provisions of sections 6, 6A, 9 and 11A of the Limited Partnership Act (*Cap 281*), as amended by this Act, within a period of six months from the commencement of this Act.

## **INTERNATIONAL BUSINESS COMPANIES (AMENDMENT) BILL, 2021**

*(Bill No. 33 of 2021)*

### **OBJECTS AND REASONS**

In 2016, Seychelles enacted a new International Business Companies (“IBC”) Act which replaced the old International Business Companies Act of 1994. During the implementation of the International Business Companies Act, 2016 (“the Act”) over the couple of years, both the Financial Services Authority (“the FSA”) 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.

2. Also, a number of amendments are being proposed in line with Seychelles latest review by the Global Forum for Transparency and Exchange of Information in Tax Matter (under the ambit of the OECD) in 2020, whereby a number of recommendations were made (especially in relation to accounting records) and Seychelles overall rating was downgraded from Largely Compliant to Partially Compliant. It is important note that, a rating of Partially Compliant automatically moves Seychelles on the EU blacklist. Some of the notable amendments being proposed in order to achieve these changes are hereby mentioned.

3. To amend section 25(1) to extend the permitted company name endings to include: “Limited Liability Company” or “LLC” or “Company” or “Co” (note that the other permitted name endings provided for under the current law is “Limited” or “Ltd”, “Corporation” or “Co” “Incorporated” or “Inc”).

4. To amend section 26(a) to provide that an IBC's name cannot be identical to the name of a company registered under the Companies ordinance, 1972.

5. In section 29, to provide a provision that, if a name is re-reserved by the same person within 7 days after the expiry of a 30-day reservation period, the continued reservation fee shall apply.

6. In section 73(5), by repealing the words “fully paid” and substituting thereof the words “fully paid up”. This amendment to the section will provide that a company shall not redeem a share unless it is fully paid up, unless it is expressly authorized by its memorandum or articles to the contrary, in which case any redemption amount shall be paid on a pro rata basis proportionate to the amount paid up in respect of the share.

7. To repeal in section 107, subsection (1) and (4) the words “a company” and substituting the words “a company, in person or by attorney” and subsection (4) in paragraph (b) by repealing the words “provided to him” and substituting thereof the words “provided to him, within 90 days from the date of refusal”.

8. To amend section 127, to permit inspections of a company's minutes and resolutions of members by a duly appointed attorney on behalf of a member or director and to provide a period of 90 days to an aggrieved person to apply to the court following a refusal to inspect the documents.

9. To amend section 131 to remove the broad concept of “de facto” directors and replace with a narrower concept of deemed directors. That is, if at any time a company does not have a director, any person who manages, or who directs or supervises the management of, the business and affairs of the company is deemed to be a director of the company.

10. In accordance with global corporate law norms, to amend section 134 to introduce a requirement that a person shall not be appointed as a director of a company unless the person has consented in writing to being a director.

11. Whereas currently an IBC's Register of Directors must only contain a director's name, address, date of appointment and date of cessation, the amendments to section 150 will require the following additional information to be contained in the Register of Directors:

- (a) In the case of an individual, his date of birth and nationality;
- (b) In the case of a director that is a body corporate, its date of incorporation or registration and place of incorporation or registration;



- (c) In the case of an individual director, his address for service of documents and his usual residential address, if different to his address for service of documents; and
- (d) In the case of a director that is body corporate, its registered office.

12. To amend sections 162, 165 and 169 to enable a company to provide in its memorandum or articles for the type of resolution required in relation to changing the location of its registered office, appointing its registered agent and changing its registered agent. However, where the company's memorandum or articles does not state the type of resolution that is required, an ordinary resolution of members shall be sufficient.

13. To amend section 169 to allow where a company is required to change its registered agent by virtue of its registered agent's intention to resign, the company will not be required to provide a consent from the outgoing registered agent. However, the company must provide the Registrar with a copy of the outgoing registered agent's intention to resign before it effect the change.

14. To insert a new section 169A to address the issue of registered agent preserving company records. Currently, the obligation to keep register of members, directors, charges and accounting records is on the companies directly. These are required to be kept at the registered office of the company, which by default, is the business premise of the registered agent in Seychelles.

15. To amend section 175 to address the issue the authorities in Seychelles face with the implementation of the exchange of information mechanism for tax matters due to the unavailability of accounting information for IBCs. Currently, the law allows IBCs to keep accounting records outside Seychelles on the condition that they should promptly be made available to Seychelles' authorities upon request.

16. To amend section 275 in order to reduce the number of years that a company remain struck-off on the Register (before it is automatically dissolved), from 7 years to 3 years.

17. To amend section 276 to extend the Registrar's power to restore a dissolved company (rather than a Court restoration order being required)

except if the company has been struck off under section 272(1)(a) (ii), (iii) or (iv) (i.e. for carrying on business in contravention of section 5(2) of the Act, or for being used for fraudulent purposes, or which jeopardize the reputation of Seychelles as a financial centre).

18. To amend section 277 in order to reduce the risks associated with struck-off companies retaining their legal status for 12 years, it is proposed to reduce the number of years that a dissolved company may be restored by the Court from 5 years to 3 years as automatically dissolved companies and in order to ensure that struck-off companies restored by the Court remedy any previous contravention to record keeping obligations, it is proposed that the Court must only restore the company if it is satisfied that the company is in compliance with its obligations relating to accounting records, register of members, register of directors and register of beneficial owners.

19. To amend section 285 in order to extend the timeframe for filing of a resolution of members for the voluntarily winding up of a company from 21 days to 40 days.

20. To amend section 344 in order to introduce provisions to empower the Registrar to appoint Deputy Registrars and Assistant Registrars.

21. To amend sections 104, 106, 125, 126, 150, 152, 156, 157, 171, 173, 174, 175, 179 and 354 to change the current low daily penalties to a penalty not exceeding US\$5,000.

22. To amend the Part II of the Second Schedule in relation to incorporation and annual fees.

23. Amendment 60 provides specific commencement dates for some sections.

24. The Bill seeks to achieve the above objectives.

**Dated this 23rd day of July, 2021.**

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

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**INTERNATIONAL BUSINESS COMPANIES (AMENDMENT)  
BILL, 2021**

*(Bill No. 33 of 2021)*

**ARRANGEMENT OF SECTIONS**

**Sections**

1. Short title
2. Amendment of section 2 of Act 15 of 2016
3. Amendment of section 9
4. Amendment of section 12
5. Amendment of section 13
6. Amendment of section 20
7. Amendment of section 23
8. Amendment of section 25
9. Amendment of section 26
10. Amendment of section 29
11. Amendment of section 41
12. Amendment of section 55
13. Amendment of section 73
14. Amendment of section 74
15. Amendment of section 104
16. Amendment of section 106
17. Amendment of section 107
18. Amendment of section 125
19. Amendment of section 126
20. Amendment of section 127
21. Substitution of section 131
22. Substitution of section 132
23. Insertion of new section 132A
24. Amendment of section 134
25. Amendment of section 143
26. Amendment of section 150
27. Amendment of section 152
28. Amendment of section 156
29. Amendment of section 157
30. Amendment of section 162
31. Amendment of section 164

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32. Substitution of section 165
  33. Amendment of section 167
  34. Amendment of section 169
  35. Insertion of new section 169A
  36. Amendment of section 171
  37. Amendment of section 173
  38. Amendment of section 174
  39. Amendment of section 175
  40. Amendment of section 179
  41. Amendment of section 217
  42. Amendment of section 272
  43. Amendment of section 275
  44. Amendment of section 276
  45. Amendment of section 277
  46. Amendment of section 283
  47. Amendment of section 284
  48. Amendment of section 285
  49. Amendment of section 286
  50. Amendment of section 287
  51. Amendment of section 336
  52. Amendment of section 344
  53. Amendment of section 345
  54. Amendment of section 351
  55. Insertion of new sections 352A and 352B
  56. Amendment of section 354
  57. Amendment of section 377
  58. Amendment of Second Schedule
  59. Amendment of Sixth Schedule
  60. Commencement of certain provisions of this Act

**INTERNATIONAL BUSINESS COMPANIES (AMENDMENT)  
BILL, 2021**

*(Bill No. 33 of 2021)*



**A BILL  
FOR**

**AN ACT** to amend the International Business Companies Act, 2016 (*Act 15 of 2016*).

**ENACTED** by the President and the National Assembly.

**Short title**

**1.** This Act may be cited as the International Business Companies (Amendment) Act, 2021.

**Amendment of section 2 of Act 15 of 2016**

**2.** Section 2 of the International Business Companies Act, 2016 (*hereinafter referred to as the “principal Act”*) is amended —

- (i) by inserting, in alphabetical order, the following definitions —
  - ““private trust company” means a company —
  - (a) whose memorandum states that it is a private trust company; and
  - (b) which shall not carry on any business other than providing of the connected trust services as defined in the International Corporate Service Providers Act;”;
- (ii) in the definition of “ordinary company”, by inserting after the words “Companies Act”, the words “and includes a relevant company as defined in the Companies (Special Licences) Act (*Cap 253*)”;
- (iii) by repealing the definition of “tax treaty”.

**Amendment of section 9**

**3.** Section 9(1)(b) of the principal Act is amended, by repealing the words “each subscriber to the memorandum and articles”, and substituting therefor the words “the proposed registered agent of the company”.

**Amendment of section 12**

**4.** Section 12 of the principal Act is amended —

- (i) in subsection (3), by repealing the words “amount of the annual fee shall increase by ten percent”, and substituting therefor the words “company shall be liable to a penalty fee equal to ten percent of the annual fee if the payment is made within 90 days of the date when it becomes due”.
- (ii) by repealing subsection (4), and substituting therefor the following subsection —

“(4) Where the annual fee referred to in subsection (1) is not paid by the date set out in that subsection, the company shall be liable to a penalty fee equal to fifty percent of the annual fee if the payment is made after 90 days of the date when it becomes due.”.

### **Amendment of section 13**

5. Section 13 of the principal Act is amended, by inserting after subsection (2), the following subsection —

“(3) Subject to subsection (2), each subscriber to the memorandum shall become a member of the company.”.

### **Amendment of section 20**

6. Section 20 of the principal Act is amended, by inserting after subsection (3), the following subsection —

“(4) Subject to subsection (3), each subscriber to the articles shall become a member of the company.”.

### **Amendment of section 23**

7. Section 23(1) of the principal Act is amended, by repealing the words “resolution approving the amendment to its memorandum or articles”, and substituting therefor the words “amendment resolution”.

### **Amendment of section 25**

8. Section 25 of the principal Act is amended —

(i) in subsection (1) —

(A) in paragraph (a), by inserting after the word “Corporation”, the words “, “Limited Liability Company”, “Company” ”;

(B) in paragraph (b), by inserting after the word “Corp”, the words “, “LLC”, “Co” ”;

(ii) by inserting after subsection (2), the following subsection —

“(2A) The name of a private trust company shall end with the words “Private Trust Company” or with the abbreviation “PTC”. ”;

(iii) in subsection (4), by inserting after the word “Inc”, the word “, “LLC”, “PTC” ”.

### **Amendment of section 26**

9. Section 26(a) of the principal Act is amended, by inserting after the words “registered under this Act”, the words “or the Companies Act (*Cap 40*)”.

### **Amendment of section 29**

10. Section 29(3) of the principal Act is amended, by repealing the words “under this Act”, and substituting therefor the words “under this Act, provided that the request to continue reserving the name is made by the same person within 7 days after the expiry of the 30 day period referred to in subsection (1) or each other 30 days period thereafter”.

### **Amendment of section 41**

11. The principal Act is amended, by repealing section 41, and substituting therefor the following section —

#### **Authentication or attestation**

“41.(1) A document requiring authentication or attestation by a company may be signed by —

- (a) a director of the company;
- (b) a secretary of the company;
- (c) an agent of the company authorised to act generally on its behalf; or



- (d) an agent of the company specifically authorised to authenticate or attest documents on its behalf.

(2) An authentication or attestation under subsection (1) need not be under its common seal.”.

### **Amendment of Section 55**

**12.** The principal Act is amended, by repealing section 55 and substituting therefore the following section —

“**55.** A company may issue shares at a discount.”.

### **Amendment of section 73**

**13.** Section 73 of the principal Act is amended, by repealing the words “fully paid”, and substituting therefor the words “fully paid up, and if it is expressly authorised by its memorandum or articles to the contrary, in which case any redemption amount shall be paid on a pro rata basis proportionate to the amount paid up in respect of the share”.

### **Amendment of section 74**

**14.** Section 74(2)(b) of the principal Act is amended, by repealing the word “rateably”, and substituting therefor the words “pro rata”.

### **Amendment of section 104**

**15.** Section 104 of the principal Act is amended —

- (i) in subsection (5), by repealing the words “of US\$500 and an additional penalty fee of US\$50 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$10,000”;
- (ii) in subsection (6), by repealing the words “of US\$500 and an additional penalty fee of US\$50 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$10,000”.

**Amendment of section 106****16.** Section 106 of the principal Act is amended —

- (i) in subsection (6), by repealing the words “of US\$500 and an additional penalty fee of US\$50 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$10,000”;
- (ii) in subsection (7), by repealing the words “of US\$500 and an additional penalty fee of US\$50 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$10,000”.

**Amendment of section 107****17.** Section 107 of the principal Act is amended —

- (i) in subsection (1), by repealing the words “a company”, and substituting therefor the words “a company, in person or by attorney,”;
- (ii) in subsection (4), by repealing the words “a company”, and substituting therefor the words “a company, in person or by attorney,”;
- (iii) in subsection (4), in paragraph (b), by repealing the words “provided to him”, and substituting therefor the words “provided to him, within 90 days from the date of refusal”.

**Amendment of section 125****18.** Section 125 of the principal Act is amended —

- (i) in subsection (3), by repealing the words “of US\$25 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$5,000”;

- (ii) in subsection (4), by repealing the words “of US\$25 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$5,000”.

### **Amendment of section 126**

**19.** Section 126 of the principal Act is amended —

- (i) in subsection (4), by repealing the words “of US\$25 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$5,000”;
- (ii) in subsection (5), by repealing the words “of US\$25 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$5,000”.

### **Amendment of section 127**

**20.** Section 127 of the principal Act is amended —

- (i) in subsection (1), by inserting after the words “a company”, the words “in person or by attorney”;
- (ii) in subsection (2), by inserting after the words “a company”, the words “in person or by attorney”;
- (iii) in subsection (5), by inserting after the words “the aggrieved person may”, the words “within 90 days from the date of refusal”.

### **Substitution of section 131**

**21.** The principal Act is amended, by repealing section 131, and substituting therefor the following section —

#### **Deemed directors**

“**131.** If at any time a company does not have a director, any person who manages, or who directs or supervises the

management of the business and affairs of the company is deemed to be a director of the company for the purposes of this Act.”.

### **Substitution of sections 132**

**22.** The principal Act is amended, by repealing section 132, and substituting therefor the following section —

#### **Committee of directors**

**“132.(1)** Subject to the memorandum and articles of the company and to subsection (2), the directors may —

- (a) designate one or more committees of directors, each consisting of one or more directors; and
- (b) delegate to the committee one or more of their powers, including the power to affix the common seal of the company.

(2) Notwithstanding anything in the memorandum or articles of the company, the directors shall not delegate to a committee of directors any power to —

- (a) amend the memorandum or articles, including to change the registered agent or registered office of the company;
- (b) designate committees of directors;
- (c) delegate powers to a committee of directors;
- (d) appoint or remove directors;
- (e) appoint or remove an agent;
- (f) approve a plan or merger, consolidation or arrangement;

- (g) approve voluntary winding up of the company under Sub-Part II or Sub-Part III of Part XVII; or
- (h) approve distribution by the company, including to make a determination under section 70(1) or 71(1) that the company will, immediately after a proposed distribution, satisfy the solvency test.

(3) Subsection (2)(b) and (c) shall not prevent a committee of directors, where authorised by the directors, from appointing a sub-committee and delegating powers exercisable by the committee to the sub-committee.

(4) The directors who delegate any power under subsection (1) shall be responsible for the exercise of the power by the committee as if the power had been exercised by the directors, unless the directors prove that the exercise of power by the committee was outside the scope of the delegated authority.”.

### **Insertion of new section 132A**

**23.** The principal Act is amended, by inserting after section 132, the following section —

#### **Agents**

“**132A.**(1) The directors may appoint any person, including a person who is a director, to be an agent of the company.

(2) Subject to the memorandum or articles of the company, an agent of the company has such powers and authority of the directors, including the power and authority to affix the common seal of the company, as are set forth in the articles or in the resolution of directors appointing the agent, except that no agent has any power or authority to —

- (a) amend the memorandum or articles,

including to change the company's registered agent or registered office;

- (b) designate committees of directors;
- (c) delegate powers to a committee of directors;
- (d) appoint or remove directors;
- (e) appoint or remove an agent;
- (f) approve a plan or merger, consolidation or arrangement;
- (g) approve voluntary winding up of the company under Sub-Part II or Sub-Part III of Part XVII;
- (h) approve distributions by the company, including to make a determination under section 70(1) or 71(1) that the company will, immediately after a proposed distribution, satisfy the solvency test;
- (i) fix emoluments of directors; or
- (j) authorise the company to continue as a company incorporated under the laws of a jurisdiction outside Seychelles.

(3) Where the directors appoint any person to be an agent of the company, they may authorise the agent to appoint one or more substitute or delegate to exercise some or all of the powers conferred on the agent by the company.

(4) The directors may remove an agent appointed under subsection (1) and may revoke or vary a power conferred on him or her under subsection (2).”.

**Amendment of section 134**

**24.** Section 134 of the principal Act is amended —

- (a) in subsection (3), by repealing the words “there solution”, and substituting therefor the words “the resolution”;
- (b) by inserting after subsection (6), the following subsections

“(7) A person shall not be appointed as a director or alternate director of a company, or nominated as a reserve director, unless the person has consented in writing to be a director or alternate director or to be nominated as a reserve director.

(8) Subsection (7) shall not apply to a director, alternate director or reserve director appointed or nominated prior to the commencement of the International Business Companies (Amendment) Act, 2020.”.

**Amendment of section 143**

**25.** Section 143(b) of the principal Act is amended, by repealing the words “section 132”, and substituting therefor the words “section 133”.

**Amendment of section 150**

**26.** Section 150 of the principal Act is amended —

- (i) in subsection (1) —
  - (A) in the chapeau, by repealing the words “A company”, and substituting therefor the words “Subject to subsection (1A), a company”;
  - (B) by inserting after paragraph (a), the following paragraphs —

“(aa) in the case of director, alternate director or

reserve director who is an individual, his date of birth and nationality;

(ab) in the case of a director, alternate director or reserve director that is a body corporate, its date of incorporation or registration and the place of incorporation or registration;”;

(ii) by inserting after subsection (1), the following subsection —

“(1A) For the purpose of subsection (1)(a), the address of a director, alternate director or reserve director shall —

(a) in the case of an individual —

(i) be his address for service of documents; and

(ii) be his usual place of residence if different from the address under subparagraph (i); and

(b) in the case of a body corporate, be its registered office.”;

(iii) by inserting after subsection (3), the following subsections —

“(3A) An entry relating to a former director, alternate director or reserve director of the company may be removed from the register after seven years from the date on which the person ceased to be a director, alternate director or reserve director.

(3B) Every company shall comply with the requirements of subsection (1)(aa) and (ab) and subsection (1A) within twelve months from the commencement of the International Business Companies (Amendment) Act, 2020.;



- (iv) in subsection (5), by repealing the words “of US\$500 and an additional penalty fee of US\$50 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$10,000”;
- (v) in subsection (6), by repealing the words “of US\$500 and an additional penalty fee of US\$50 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$10,000”.

### **Amendment of section 152**

**27.** Section 152 of the principal Act is amended —

- (i) in subsection (3), by repealing the words “of US\$250 and an additional penalty fee of US\$25 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$5,000”;
- (ii) in subsection (4), by repealing the words “of US\$250 and an additional penalty fee of US\$25 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$5,000”.

### **Amendment of section 156**

**28.** Section 156 of the principal Act is amended —

- (i) in subsection (3), by repealing the words “of US\$25 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$5,000”;
- (ii) in subsection (4), by repealing the words “of US\$25 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$5,000”.

**Amendment of section 157**

**29.** Section 157 of the principal Act is amended —

- (i) in subsection (4), by repealing the words “of US\$25 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$5,000”;
- (ii) in subsection (5), by repealing the words “of US\$25 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$5,000”.

**Amendment of section 162**

**30.** Section 162 of the principal Act is amended, by repealing subsection (1), and substituting therefor the following subsections —

“(1) Subject to section 23 and subsections (1A), (1B) and (2), a company may amend its memorandum to change the location of its registered office by resolution of members or resolution of directors as provided for in its memorandum or articles.

(1A) If the memorandum or articles of a company does not state the type of resolution that is required to amend its memorandum to change the location of its registered office, an ordinary resolution shall be sufficient.

(1B) An ordinary resolution shall be sufficient to amend the memorandum to change the location of its registered office, notwithstanding that the memorandum or articles of a company contains a provision prohibiting the change of the location of its registered office.”.

**Amendment of section 164**

**31.** Section 164(2) of the principal Act is amended, by repealing the

words, “Services Act”, and substituting therefor the words “Service Providers Act”.

### **Substitution of section 165**

**32.** The principal Act is amended, by repealing section 165, and substituting therefor the following section —

#### **Appointment of registered agent**

“**165.**(1) Subject to subsections (2), (3), (4) and (5), if at any time a company does not have a registered agent, it shall forthwith amend its memorandum to appoint a registered agent by resolution of members or resolution of directors as provided for in its memorandum or articles.

(2) If the memorandum or articles of a company does not state the type of resolution that is required to amend its memorandum to appoint a registered agent, an ordinary resolution shall be sufficient.

(3) An ordinary resolution shall be sufficient to amend the memorandum to appoint a registered agent, notwithstanding that the memorandum or articles of a company contains a provision prohibiting it from changing its registered agent.

(4) When a certified copy or extract of the resolution referred to in subsection (1) is filed with the Registrar in accordance with section 23, it shall be accompanied by a written consent signed by the registered agent stating his consent to act as registered agent.

(5) The appointment of the registered agent takes effect on the registration by the Registrar of the certified copy or extract of the resolution referred to in subsection (1) filed in accordance with section 23.”.

### **Amendment of section 167**

**33.** Section 167(4) of the principal Act is amended, by repealing the words “after that date the registered agent may”, and substituting therefor

the words “the registered agent may, within three months from the resignation date,”.

### **Amendment of section 169**

#### **34. Section 169 of the principal Act is amended —**

- (i) by repealing subsection (1), and substituting therefor the following subsections —

“(1) Subject to subsections (1A) and (2), a company may amend its memorandum to change its registered agent by resolution of members or resolution of directors as provided for in its memorandum or articles.

(1A) If the memorandum or articles of a company does not state the type of resolution that is required to amend its memorandum to change its registered agent, an ordinary resolution shall be sufficient.

(1B) An ordinary resolution shall be sufficient to amend its memorandum to change its registered agent, notwithstanding that the memorandum or articles of a company contains a provision prohibiting it from changing its registered agent.”;

- (ii) by inserting after subsection (3), the following subsection —

“(3A) Where a company changes its registered agent due to resignation of the registered agent under section 167 —

- (a) subsection (3) shall not apply; and
- (b) the company shall file with the Registrar a copy of the written notice received by it under section 167(2) along with the change of registered agent resolution in accordance with subsection (2).”.

**Insertion of new section 169A**

**35.** The principal Act is amended, by inserting after section 169, the following section —

**Preservation of records**

**“169A.(1)** A registered agent shall, in respect of each company (including a dissolved company or a company whose name has been struck off the Register or a company which has continued outside Seychelles) to which it was or is acting as registered agent, preserve for at least seven years —

- (a) 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;
- (b) 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.

(2) Where a registered agent ceases to hold a licence to provide international corporate services under the International Corporate Service Providers Act (*Cap 275*), that person shall handover all the records specified under subsection (1) to the Registrar or any other person authorised by the Registrar.

(3) All records handed over under subsection (2) shall be preferably in the digital form or in such form as agreed upon between the Registrar and the registered agent.

(4) If the registered agent fails to comply with the requirements of this section, the registered agent shall be liable to a penalty not exceeding US\$10,000”.

**Amendment of section 171**

**36.** Section 171 of the principal Act is amended —

- (i) by inserting after subsection (1), the following subsection —
- “(1A) An annual return, in the case of a former Act company, to be furnished —
- (a) for any year before 2018 shall contain either the information referred to in the Sixth Schedule or the information referred to in section 119 of the former Act; and
- (b) for the year 2018 and onwards shall contain the information referred to in the Sixth Schedule.”;
- (ii) in subsection (4), by repealing the words “of US\$500”, and substituting therefor the words “not exceeding US\$5,000”.

### **Amendment of section 173**

**37.** Section 173 of the principal Act is amended —

- (i) in subsection (2), —
- (A) in the chapeau, by inserting after the words “Where a company” the words “or a registered agent”;
- (B) in paragraph (a), by repealing the words “to meet a request for information under a tax treaty”;
- (C) by repealing paragraph (b) and substituting thereof the following —
- “(b) the Financial Services Authority under the Anti-Money Laundering and Countering the Financing of Terrorism Act; or”;
- (D) in the proviso, by inserting after the words “the company” the words “or the registered agent”;

(ii) by inserting after subsection (2), the following subsection —

“(2A) Where a record is not in the English or French language, the party requesting the record may request a translation of the records in the English or French language.

(iii) in subsection (3), —

(A) by repealing the words “subsection (2)” and substituting thereof the words “this section”;

(B) by repealing the words “of US\$500 and an additional penalty fee of US\$50 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$5,000”;

(iv) in subsection (4), —

(A) by repealing the words “subsection (2)” and substituting thereof the words “this section”;

(B) by repealing the words “of US\$500 and an additional penalty fee of US\$50 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$5,000”.

### **Amendment of section 174**

**38.** Section 174 of the principal Act is amended —

(i) in subsection (1)(c), by repealing the word “accounts”, and substituting therefor the words “financial statements”;

(ii) in subsection (3), by repealing the words “of US\$100 and an additional penalty fee of US\$25 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$10,000”;

- (iii) in subsection (4), by repealing the words “of US\$100 and an additional penalty fee 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 175**

#### **39. Section 175 of the principal Act is amended —**

- (i) by repealing subsection (1), and substituting therefor the following subsections —

“(1) For the purpose of this section, the term —

- (a) “large company” means a company which meets the annual turnover threshold specified for a “large business” under the Revenue Administration Act;
- (b) “holding company” means company with no trade or business operations of its own but holding interests in other companies or assets.

(1A) In the case of a company which is —

- (a) a holding company; and
- (b) not a large company,

the company shall keep, on a bi-annual basis, its accounting records at the company's registered office in Seychelles.

(1B) In the case of a company other than a company not specified under subsection (1A), the company shall —

- (a) prepare an annual financial summary to be kept at its registered office in Seychelles within 6



months from the end of the company's financial year; and

(b) on a bi-annual basis, keep its accounting records at its registered office in Seychelles.

(1C) The financial year of a company shall be the calendar year, unless it is changed by a resolution of directors and notified to the company's registered agent within 14 days of the passing of the resolution.

(1D) The Registrar may issue written guidelines regarding the implementation of the obligations relating to accounting records.”

(ii) by repealing subsection (2), and substituting therefor the following subsections —

“(2) It shall be sufficient compliance with subsection (1A) and (1B), if a copy of the accounting records and financial summary is kept at the company's registered office in electronic form.

(2A) Where a company keeps a copy of its accounting records at its registered office, the company shall inform its registered agent in writing of the physical address of the place where the original accounting records are kept.”;

(iii) in subsection (3), by repealing the word “company's accounting records” and substituting therefor the words “company's original accounting records”;

(iv) by repealing subsection (5), and substituting therefor the following subsections —

“(5) A company that contravenes this section shall be liable to a penalty fee not exceeding US\$10,000.

(6) A director who knowingly permits a contravention under this section shall be liable to a penalty fee not exceeding US\$10,000.”.

### **Amendment of section 179**

**40.** Section 179 of the principal Act is amended —

- (i) in subsection (3), by repealing the words “of US\$100 and an additional penalty fee of US\$25 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$5,000”;
- (ii) in subsection (4), by repealing the words “of US\$100 and an additional penalty fee of US\$25 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$5,000”.

### **Amendment of section 217**

**41.** Section 217 of the principal Act is amended —

- (i) in subsection (2) —
  - (A) by repealing paragraph (c), and substituting therefor the following paragraph —
    - “(c) the filings required under subsections (2A) and (3) have been made to the Registrar's satisfaction; and”;
  - (B) by repealing paragraph (d);
- (ii) by inserting after subsection (2), the following subsections —
  - “(2A) A company that continues as a foreign company shall file with the Registrar —
    - (a) a notice of the company's continuation outside Seychelles in the approved form;

- (b) a certified copy of the certificate of continuation or equivalent document issued in respect of the company by the appropriate authority of the foreign jurisdiction in which the company has been continued;
- (c) where applicable, the declaration under subsection (3) ; and
- (d) for the purposes of establishing compliance with subsection (2)(b), a written certificate or extract thereof certified by the company's registered agent addressed to the Registrar by a majority of the company's directors or a lawyer qualified and entitled to practice law in the jurisdiction outside Seychelles in which the company is to be continued, certifying that the laws of the foreign jurisdiction permit such continuation and that the company has complied with those laws.

(2B) If a company has commenced an application under this section to continue as a company outside Seychelles and confirmation thereof is required by a foreign registrar for the purposes of enabling the company to continue as a foreign company, the Registrar may issue a letter confirming that the company has commenced an application to continue as a company outside Seychelles, provided that such letter shall also state that the company's discontinuance in Seychelles will only be completed on filing with the Registrar the documents required under subsections (2) (2A) and (3), including a certified copy of the certificate of continuation or equivalent document issued in respect of the company by the foreign registrar.”;

(iii) by repealing subsection (4).

**Amendment of section 272**

**42.** Section 272 of the principal Act is amended —

- (i) in subsection (1)(a), by repealing in subparagraph (iii) the word “or” appearing at the end, and by inserting after subparagraph (iii), the following subparagraph —

“(iv) has failed to comply with section 5(2); or”;

- (ii) in subsection (3), by inserting after the words “unless the company”, the word “or any other person”.

**Amendment of section 275**

**43.** Section 275 of the principal Act is amended, by repealing the words “seven years, and substituting therefor the words “one years”.

**Amendment of section 276**

**44.** Section 276 of the principal Act is amended —

- (i) in subsection (1), by repealing the words “Subject to subsections (1A), (2), (3) and (4), where a company is not dissolved but its name has been struck off the Register”, and substituting therefor the words “Subject to subsections (1A), (1B), (1C), (1D), (2) (3) and (4), where the name of a company has been struck off the Register”;

- (ii) in subsection (1A), by repealing the words “section 272(1)(a)(ii) or (iii)”, and substituting therefor the words “section 272(1)(a)(ii), (iii) or (iv)”;

- (iii) by inserting after subsection (1A), the following subsections —

“(1B) The Registrar shall not restore the name of a company if the Registrar is not satisfied that the company is in compliance with its obligations —

- (a) under this Act relating to accounting records, register of members and register of director; and
- (b) under the Beneficial Ownership Act, 2020 (*Act 4 of 2020*) relating to register of beneficial owners.

(1C) An application to restore the name of a struck off or dissolved company to the Register under subsection (10) may be made to the Registrar —

- (a) within one year of the date of the striking off notice published in the Gazette under section 272(4); or
- (b) within five years of the date of dissolution under Sub-Part II, III or IV of Part XVII.

(1D) In the case of a company whose name was struck off the Register —

- (a) for failing to have members due to all its shares becoming void under the former Act; or
- (b) for any other reason and all its shares becoming void under the former Act,

the Registrar shall only restore the name of the company if he is satisfied that the new member is similar to a member registered in the register of members as an owner of the shares at the date prior to the shares becoming void:

Provided that the Registrar shall not restore a company if he is satisfied that there is no member registered in the register of members as an owner of the shares at the date prior to the shares becoming void.”;

(iv) by inserting after subsection (6), the following subsection —

“(7) Where a company —

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

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

### **Amendment of section 277**

**45.** Section 277 of the principal Act is amended —

(i) in subsection (2) —

- (A) in paragraph (a), by repealing the words “twelve years”, and substituting therefor the words “one year”;
- (B) in paragraph (b), by repealing the words “five years”, and substituting therefor the words “three years”;

(ii) in subsection (4), in the chapeau, by repealing the words “subsection (5)”, and substituting therefor the words “subsections (4A), (4B) and (5)”;

(iii) by inserting after subsection (4), the following subsection

“(4A) 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 —

- (a) under this Act relating to accounting records, register of members and register of director; and
- (b) under the Beneficial Ownership Act, 2020 (*Act 4 of 2020*) relating to register of beneficial owners.

(4B) In the case of a company whose name was struck off the Register —

- (a) for failing to have members due to all its shares becoming void under the former Act; or
- (b) for any other reason and all its shares becoming void under the former Act,

the Court shall only restore the name of the company if it is satisfied that the new member is similar to a member registered in the register of members as an owner of the shares at the date prior to the shares becoming void:

Provided that the Court shall not restore a company if it is satisfied that there is no member registered in the register of members as an owner of the shares at the date prior to the shares becoming void.”.

### **Amendment of section 283**

**46.** Section 283(1)(a) of the principal Act is amended, by repealing subparagraph (ii), and substituting therefor the following subparagraphs —

- “(ii) an ordinary resolution that it be wound up voluntarily, if so permitted by its memorandum or articles; or

- (iii) a unanimous resolution of members that it be wound up voluntarily, if so required by its memorandum or articles; or”.

### **Amendment of section 284**

**47.** Section 284 of the principal Act is amended —

- (i) in subsection (1), by repealing the words “an individual”, and substituting therefor the words “a person, who may be an individual or a body corporate”; and by repealing the words “the individual”, and substituting therefor the words “the person”;
- (ii) in subsection (2) —
  - (A) in the chapeau, by repealing the word “individuals”, and substituting therefor the word “persons”;
  - (B) in paragraph (a), by repealing the words “an individual” and substituting therefor the words “a person”;
  - (C) by inserting after paragraph (d), the following paragraph —

“(da) a body corporate which is insolvent or in the process of winding up or other dissolution;”;
  - (D) in paragraph (e), by repealing the words “an individual”, and substituting therefor the words “a person”;
  - (E) in paragraph (f), by repealing the words “an individual”, and substituting therefor the words “a person”;
  - (F) in paragraph (g), by repealing the words “an individual”, and substituting therefor the words “a



person”; and by repealing the word “and” appearing at the end;

- (G) by repealing paragraph (h), and substituting therefor the following paragraphs —

“(h) an individual who is a spouse, child, parent or other close family member of a person specified in paragraph (e), (f) or (g); and

(i) a body corporate —

(i) owned or controlled wholly or partly by a person specified in paragraph (e), (f), (g) or (h); or

(ii) that is a subsidiary or parent entity of a body corporate specified in paragraph (e), (f) or (g).”;

- (iii) by inserting after subsection (2), the following subsection —

“(3) A body corporate appointed as liquidator of a company under this section before the commencement of the International Business Companies (Amendment) Act, 2020 shall be deemed to have been appointed under this section as amended by the said Act.”.

### **Amendment of section 285**

**48.** Section 285 of the principal Act is amended, in the chapeau, by repealing the words “21 days”, and substituting therefor the words “40 days”.

### **Amendment of section 286**

**49.** Section 286 of the principal Act is amended —

- (i) in paragraph (a), by inserting after the word “published”, the words “in physical or electronic form”;

- (ii) in paragraph (b), by inserting after the word “published”, the words “in physical or electronic form”.

### **Amendment of section 287**

**50.** Section 287(1)(b) of the principal Act is amended, by inserting after the words “the company”, the word “may”.

### **Amendment of section 336**

**51.** Section 336(1)(a) of the principal Act is amended, by repealing the word “continued”, and substituting therefor the words “continued, or converted into a company”.

### **Amendment of section 344**

**52.** The principal Act is amended, by renumbering section 344 as subsection (1) of that section and by inserting after subsection (1) so renumbered, the following subsections —

“(2) The President may appoint one or more Deputy Registrars and one or more Assistant Registrars on such terms and conditions as the President may consider appropriate.

(3) The Registrar may delegate to the Deputy Registrar or to such other officer, his powers, duties and functions, on such terms and conditions as he deems fit.”.

### **Amendment of section 345**

**53.** Section 345 of the principal Act is amended, by repealing the word “continued”, and substituting therefor the words “continued, or converted into a company”.

### **Amendment of section 351**

**54.** Section 351(2) of the principal Act is amended —

- (i) in paragraph (a), by repealing the words “that have not yet become effective”;

- (ii) in paragraph (b), by repealing the words “that have not yet become effective”.

### **Insertion of new sections 352A and 352B**

**55.** The principal Act is amended, by inserting after section 352, the following sections —

#### **Duplicate certificates**

**“352A.** 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.

#### **Registered agent may request list of companies**

**352B.** A registered agent may, on payment of the fee specified in Part II of the Second Schedule, request the Registrar for a list of all companies on the Register of which it is a registered agent, containing the name, registration number and the due date of the annual fee for each company on the list and the Registrar may thereupon issue such list.”.

### **Amendment of section 354**

**56.** Section 354(3) of the principal Act is amended by repealing the words “US\$2,500”, and substituting therefor the words “US\$5,000”.

### **Amendment of section 377**

**57.** Section 377 of the principal Act is amended,

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

“(1A) Without prejudice to section 173, a notice given under subsection (1) may require the company to produce

all or any of its records as defined in section 173 or copies thereof kept at the company's registered office or in a jurisdiction outside Seychelles, including —

- (a) accounting records;
- (b) minutes and resolutions of members kept under section 125; and
- (c) minutes and resolutions of directors kept under section 156.”.

(1B) For the purposes of sub-section (1), where a document is not in the English or French language, the Registrar may request a translation of the records in the English or French language from the company or from the registered agent.”;

- (ii) in subsection (2), by inserting after the words “this section” the words “, or fails to comply with subsection (1A) or (1B),”.

### **Amendment of Second Schedule**

**58.** The Second Schedule of the principal Act is amended, in Part II —

- (i) in paragraph (e), by inserting at the end in column 2, relating to fee, the following —

“(No fee will apply under this paragraph for filing of a copy of register of directors of a company within 12 months prepared pursuant to section 150(1) as amended by the International Business Companies (Amendment) Act, 2020)”;

- (ii) in paragraph (g), by inserting at the end in column 2, relating to fee, the following note —

“Provided that the notice is filed within 12 months of a change of the registered agent's principal place of business.”;

- (iii) in paragraph (i), by inserting at the end in column 2, relating to fee, the following note —

“Provided that the notice is filed within 12 months of a change of change of name of registered agent.”;

- (iv) in paragraph (j), by repealing in column 2, relating to fee, the word “NIL”, and substituting therefor the words “US\$10”;
- (v) in paragraph (k), by repealing in column 2, relating to fee, the words “US\$25”, and substituting therefor the word “NIL”;
- (vi) in paragraph (p), in paragraph (p), by repealing the words “US\$100”, and substituting therefor the words “US\$130”;
- (vii) in paragraph (t), by repealing the words “US\$100”, and substituting therefor the words “US\$130”;
- (viii) by repealing paragraph (q), and substituting therefor the following paragraph —

<p>“(section 198)</p> <p>(q) For filing an application for conversion of a protected cell company into a non-cellular company</p>	<p>US\$200”;</p>
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- (ix) in paragraph (ee), by repealing in column 1, relating to description, the words “Per page”; and by repealing in column 2, relating to fee, the words “US\$1”, and substituting therefor the words “US\$25”;

- (x) by renumbering paragraph “(pp)” as paragraph “(ll)” and inserting after the paragraph (ll) so renumbered the following paragraphs —

<p><i>“(section 162)</i></p> <p>(mm) For filing a certified copy or extract of the resolution of change of the location of the registered office of a company whose registered agent has ceased to be eligible to act as a registered agent under the Act, provided that such resolution is filed within 6 months from the date the registered agent ceased to be eligible to act as registered agent.</p>	US\$5
<p><i>(section 165(3))</i></p> <p>(nn) For filing a notice of appointment of registered agent of a company whose registered agent has ceased to be eligible to act as a registered agent under the Act, provided that such notice is filed within 6 months from the date the registered agent ceased to be eligible to act as registered agent.</p>	US\$5
<p><i>(section 352A)</i></p> <p>(oo) For a duplicate certificate of incorporation, continuation, conversion, re-registration or dissolution.</p>	US\$200

<p>(section 352B)</p> <p>(pp) For a list of companies on the Register with the same registered agent.</p>	<p>US\$500”.</p>
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### **Amendment of Sixth Schedule**

**59.** The Sixth Schedule of the principal Act is amended —

- (i) by repealing in the first sentence the words “shall be in such form as the Registrar directs or approves and”;
- (ii) in paragraph 2, by repealing the words “in accordance with the requirements of the Act (together referred to as “minutes and resolutions””, which minutes and resolutions are kept”.

### **Commencement of certain provisions of this Act**

**60.(1)** Section 4, (amending section 12), shall be deemed to have come into operation on the date of the commencement of the International Business Companies Act, 2016 (*Act 15 of 2016*).

(2) Sections 43 (*amending section 275*), 44 (*amending section 276*) except paragraph (iii), and 45(i) (*amending section 277*) shall come into operation on 01 January, 2022.

(3) A company incorporated, continued or converted as a company under the International Business Companies Act, 2016 (*Act 15 of 2016*), before the commencement of this Act, shall comply with the provisions of section 175 of the International Business Companies Act, 2016, as amended by this Act, within 6 months from such commencement

## **TRUSTS ACT, 2021**

*(Act 34 of 2021)*

### **ARRANGEMENT OF SECTIONS**

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## TRUSTS ACT, 2021

*(Act 34 of 2021)*



*I assent*

A handwritten signature in black ink, appearing to read 'Wavel'.

Wavel Ramkalawan  
President

*5th August, 2021*

**AN ACT to provide for the creation, registration, administration and regulation of trusts including Seychelles trusts and foreign trusts and for matters connected therewith or incidental thereto.**

**ENACTED** by the President and the National Assembly.

### **PART I PRELIMINARY**

#### **Short title and commencement**

1. This Act may be cited as the Trusts Act, 2021.

## Interpretation

2. In this Act, unless the context otherwise requires —

“accounting records” in relation to a trust, means documents relating to —

- (a) the trust's assets and liabilities;
- (b) all receipts and expenditure of the trust; and
- (c) all sales, purchases and other transactions to which the trust is a party;

“approved trustee” in relation to —

- (a) a trust, other than a connected trust, means a licensed trustee;  
or
- (b) a connected trust means a private trust company or a licensed trustee.

*Explanation* — For the purposes of this definition, where —

- (i) the settlor of a trust (the first trust) is a connected person with respect to the settlor of another trust (the second trust), the first trust is connected to the second trust and both trusts are connected trusts;
- (ii) each trust in a group of two or more trusts are connected to each other, all the trusts in the group are connected trusts;

“assessable income” means the assessable income as defined in section 2 of the Business Tax Act;

“Authority” means the Financial Services Authority established under the Financial Services Authority Act;

“beneficiary” means a person entitled to benefit under a trust or in whose favour a discretion to distribute property held on trust may be exercised;

“beneficial owner” in relation to property of a trust —

- (a) means a person who ultimately owns the property whether, directly or indirectly, alone or jointly with another person; and
- (b) does not include a nominee who holds the property on behalf of another person;

“breach of trust” means a breach of any duty imposed on a trustee by this Act or by the terms of the trust;

“charitable purpose” means a purpose defined in section 17;

“charitable trust” means a trust created for one or more charitable purposes;

“corporate trustee” means a trustee which is a corporation;

“corporation” means a company or other body corporate incorporated in Seychelles or any other jurisdiction;

“Court” means the Supreme Court of Seychelles;

“enforcer” shall be construed in accordance with Chapter 9 of Part II;

“foreign law” means the laws of any jurisdiction outside Seychelles;

“foreign trust” means a trust whose proper law is the law of a jurisdiction other than Seychelles;

“former trust” means a trust established under the repealed Act;

“incapacitated adult” means an individual, other than a minor, who has no capacity to contract under the law of Seychelles or under the law of the person's domicile;

“interest of a beneficiary” means the beneficiary's interest under a trust and references to the beneficiary's interest have a corresponding meaning;

“licensed trustee” means a company licensed to provide trustee services under the International Corporate Service Providers Act;

“Minister” means the Minister responsible for Finance;

“minor” means an individual under the age of eighteen;

“non-charitable purpose” means a purpose other than a charitable purpose;

“officer” in relation to a corporation, includes a director, manager or secretary;

“person” includes any individual, company or other body corporate;

“personal representative” means the executor or administrator for the time being of a deceased person and, in the context of a Seychelles trust, includes the principal heir;

“private trust company” means a private trust company as defined in the International Business Companies Act, 2016 (*Act 15 of 2016*);

“professional persons” means accountants, advocates, attorneys-at-law, bankers, brokers, custodians, investment advisors, investment managers, nominees, custodians, property agents, solicitors and other professional agents or persons;

“property” means property of any description wherever situated, and in relation to rights and interests, includes the rights and interests whether vested, contingent, defeasible or future;

“protector” shall be construed in accordance with Chapter 8 of Part II;

“purpose trust” means a trust created for the fulfillment of one or more non-charitable purposes, whether or not it has any beneficiaries;

“Register” means the register of trusts to be kept by the Authority pursuant to section 13(1);

“registered trust” means a trust in respect of which a trustee appointment declaration has been registered under section 11(3);

“repealed Act” means the International Trusts Act (*Cap 275*);

“settlor” shall be construed in accordance with section 4;

“Seychelles trust” means a trust created or established under section 8;

“terms of the trust” means —

- (a) in the case of a Seychelles trust, the written terms of the trust and any other terms made applicable by this Act; and
- (b) in the case of a foreign trust, the written or oral terms of trust and any other terms made applicable by the proper law of the trust;

“trust” has the meaning as defined in section 3, and includes —

- (a) the trust property; and
- (b) the rights, powers, duties, interests, relationships and obligations under a trust;

“trustee appointment declaration” means a declaration by an approved trustee in accordance with section 11(2);

“trust property” means the property held in a trust.

### **Existence and recognition of a trust**

**3.(1)** Subject to section 8(2), a trust exists where a person known as a trustee, holds, or has vested in the person or is deemed to hold or have vested in the person, property —



- (a) for the benefit of one or more beneficiaries; or
- (b) for any charitable or non-charitable purpose which is not for the benefit only of the trustee; or
- (c) for both such benefit referred to in paragraph (a) and any such purpose referred to in paragraph (b).

(2) Subject to this Act, a trust shall be valid and enforceable under the laws of Seychelles.

### **The settlor**

4.(1) Subject to this Act, any person, known as a settlor, who has the legal capacity to contract, may create a trust by providing trust property or by making a testamentary disposition on trust or to a trust.

(2) A settlor may also be a trustee, a beneficiary, a protector or an enforcer, but shall not be the sole beneficiary or trustee of a trust of which he or she is a settlor.

(3) Subsection (2) is not contravened if a settlor is the sole beneficiary of a trust during the settlor's lifetime, provided that the terms of the trust provide for the trust to have one or more persons as beneficiary upon the settlor's death.

(4) A settlor shall be deemed to have had the capacity to create a trust if, at the time he or she transfers or otherwise vests trust property in a trust, he or she is not a minor, is of sound mind and not incapacitated under —

- (a) the laws of Seychelles; or
- (b) the laws of his or her domicile or nationality; or
- (c) the proper law governing the transfer or disposition.

### **Proper law of a trust**

5.(1) Subject to section 48, the proper law of a trust shall be the law of the jurisdiction —

- (a) expressed by the terms of the trust as the proper law;
- (b) if not so expressed, implied from the terms of the trust; or
- (c) if paragraph (a) and (b) do not apply, to which the trust at the time it was created had the closest connection.

(2) For the purpose of subsection (1)(c), in ascertaining the law with which a trust had the closest connection, reference shall be made in particular to —

- (a) the place of management and control of the trust;
- (b) the *location* of the property of the trust;
- (c) the place of residence or business of the trustee;
- (d) the places where the objects of the trust are to be fulfilled.

### **Jurisdiction of Court**

6. The Court has jurisdiction where —

- (a) the trust is a Seychelles trust;
- (b) a trustee of a foreign trust is resident in Seychelles;
- (c) management of trust property of a foreign trust is carried on in Seychelles or from Seychelles;
- (d) trust property of a foreign trust is situated in Seychelles; or
- (e) a beneficiary of a trust is resident in Seychelles.

## **PART II PROVISIONS APPLICABLE TO SEYCHELLES TRUSTS**

### ***Chapter 1 Trust establishment and registration***

#### **Application of Part II**

7. This Part shall apply only to a Seychelles trust, except for sections 10, 11, 12 and 13 which shall apply to a Seychelles trust and a foreign trust.

**Trust to be in writing**

**8.(1)** Subject to subsection (2) and the other provisions of this Act, a Seychelles trust is created by a settlor providing trust property *inter vivos* or by will, to one or more trustees as contemplated in section 3.

(2) A Seychelles trust shall be of no effect, unless created or established in writing by —

- (a) a declaration of trust executed by the original trustees of the trust in which the trustees acknowledge that they hold the trust property in accordance with the terms of the trust; or
- (b) a trust deed executed by the settlor and the original trustees of the trust by which the trust property is transferred to the trustees and they acknowledge that they shall hold the trust property in accordance with the terms of the trust.

**Seychelles trusts**

**9.** Subject to this Act, the proper law of a Seychelles trust is the laws of Seychelles.

**Trust property, operation and restriction**

**10.(1)** Subject to subsection (2) and section 14(2) —

- (a) any property within or outside Seychelles may be held by or vested in the trust;
- (b) subject to the terms of the trust, a trustee may accept from any person property to be added to the trust property.

(2) A trust shall not —

- (a) carry on any activity which is unlawful, immoral or contrary to any public policy of Seychelles;
- (b) own or otherwise hold an interest in —

- (i) immovable property in Seychelles; or
- (ii) shares or other interests in any company or other entity which owns or has any interest in immovable property in Seychelles.

### **Registration of trustee appointment declaration**

**11.(1)** An approved trustee, on appointment as trustee of a trust, shall —

- (a) make a trustee appointment declaration; and
- (b) apply for registration of the trustee appointment declaration by submitting to the Authority the trustee appointment declaration and the registration fee specified to in the First Schedule.

(2) The trustee appointment declaration under subsection (1) shall be in writing and state —

- (a) the name of the trust;
- (b) the date of formation of the trust;
- (c) the name and address of each approved trustee of the trust;
- (d) that the property of the trust does not include any —
  - (i) immovable property in Seychelles; or
  - (ii) shares or other interests in any company or other entity which owns or has any interest in immovable property in Seychelles;
- (e) that the instrument creating the trust is in writing; and
- (f) the proper law of the trust.

(3) On receipt of a trustee appointment declaration accompanied by the registration fee, the Authority shall —

- (a) register the trustee appointment declaration in the Register;
- (b) allocate a reference number to the trust; and
- (c) issue, to the approved trustee who submitted the trustee appointment declaration, a letter stating —
  - (i) the name of the trust;
  - (ii) the reference number of the trust;
  - (iii) the date of registration of the trustee appointment declaration.

(4) Upon registration of a trustee appointment declaration, the trust shall be a registered trust and a letter issued by the Authority under subsection (3)(c) shall be *prima facie* evidence of compliance by the approved trustee of the trust with all the requirements of this Act in respect of registration of a trustee appointment declaration.

(5) An approved trustee who provides in a trustee appointment declaration any false or misleading information commits an offence and shall on conviction be liable to a fine not exceeding US\$25,000.

(6) Failure to register a trustee appointment declaration under this section shall not invalidate the trust, but it shall not be entitled to the exemptions under section 88.

### **Notice of appointment or termination of a trustee**

**12.(1)** If, subsequent to registration of a trust under section 11(3), a new approved trustee is appointed to a registered trust, the new trustee shall within 21 days file a written notice thereof with the Authority in the approved form accompanied with the applicable fee set out in the First Schedule.

(2) Where an approved trustee of a registered trust ceases to be a trustee of the trust, the trustee shall within 21 days file a written notice thereof with the Authority in the approved form accompanied with the applicable fee set out in the First Schedule.

(3) At any time after a trustee appointment declaration is registered, and the trust is terminated or otherwise ceases to exist, the last approved trustee of the trust shall within 21 days file a written notice thereof with the Authority in the approved form accompanied with the applicable fee set out in the First Schedule.

(4) Where an approved trustee is required to file a notice under subsection (3) as a result of a trust terminating or otherwise ceasing to exist, the trustee shall not be required to file a notice under subsection (2).

(5) A trustee who contravenes subsection (1), (2) or (3) shall be liable to a penalty fee not exceeding US\$5,000.

### **Register of trusts**

**13.(1)** The Authority shall keep a Register of all registered trusts, which shall state in respect of each trust —

- (a) the name of the trust;
- (b) the reference number of the trust allocated under section 11(3);
- (c) the name and address of each approved trustee of the trust;
- (d) the date of registration of the trustee appointment declaration relating to the trust (in the case of a trust initially registered under the repealed Act, the date of registration of the declaration under section 75(1)(a) of the repealed Act);
- (e) the date of any notice of termination of trust filed pursuant to section 12(3);
- (f) the date of any order of a Court that the trust is set aside or otherwise ended.

(2) The Register shall be in such form as the Authority may determine and shall, together with the documents referred to in subsection (3), be open to inspection by any person during ordinary office hours on payment of the fee set out in the First Schedule.

(3) No document filed with or otherwise kept by the Authority in relation to a trust shall be open to inspection, except the Register and the trustee appointment declaration filed under section 11(1).

(4) Any person, on payment of the fee set out in the First Schedule, may request the Authority for a Certificate of Official Search under the official seal of the Authority in respect of any trust, which shall contain the information set out in subsection (1)(a) to (e).

### **Validity of a Seychelles trust**

**14.(1)** Subject to subsections (2), (3) and (4), a Seychelles trust shall be valid and enforceable in accordance with its terms.

(2) A Seychelles trust shall be invalid and unenforceable to the extent that —

- (a) it purports to do anything which is contrary to the law of Seychelles;
- (b) it purports to confer any right or power or impose any obligation the exercise or carrying out of which is contrary to the law of Seychelles;
- (c) it purports to apply to immovable property situated in Seychelles in contravention of section 10(2)(b);
- (d) it is created for a purpose in relation to which there is no beneficiary identifiable or ascertainable, unless —
  - (i) it is a charitable trust; or
  - (ii) it is a purpose trust and if the terms of the trust provide for —
    - (A) the appointment of an enforcer in relation to the trust's non-charitable purposes; and
    - (B) the appointment of a new enforcer at any time when there is none; or

(e) the Court declares that —

- (i) the trust was established by duress, fraud, mistake, undue influence or misrepresentation, or in breach of fiduciary duty;
- (ii) the trust is immoral or contrary to public policy;
- (iii) the terms of the trust are so uncertain that the performance is rendered impossible; or
- (iv) the settlor was, at the time of its creation, incapable of creating the trust.

(3) Where a trust is created for two or more purposes of which some are lawful and others are unlawful —

- (a) if those purposes cannot be separated, the trust shall be invalid;
- (b) where the purposes can be separated, the Court may declare that the trust is valid as to each purpose that is lawful.

(4) Where a trust is partially invalid, the Court may declare what property is trust property and what property is not trust property.

(5) Where subsection (2)(c) applies, any person in whom title to such immovable property is vested shall not be, and shall not be deemed to be, a trustee of such immovable property.

(6) Any property to which a trust is wholly or partially invalid shall, subject to any order of the Court, be held by the trustees on trust for the settlor absolutely or, if he or she is dead, for his or her personal representative.

(7) An application may be made to the Court under this section by any person referred to in section 71(1).

### **Duration of a Seychelles trust**

**15.(1)** Unless its terms provide otherwise, a trust may continue in existence for an indefinite period.



(2) No rule against perpetuities or excessive accumulations shall apply to a trust or to any advancement, appointment, distribution or application of assets from a trust.

(3) Except where the terms of a trust provide to the contrary, any advancement, appointment, distribution or application of assets from that trust to another trust shall be valid even if the other trust may continue after the date by which the first trust may terminate.

### **Powers reserved by settlor**

**16.(1)** A trust is not invalidated by the reservation or grant by the settlor (whether to the settlor or to any other person) of all or any of the following powers or interests —

- (a) a power to revoke, vary or amend the terms of a trust or any trusts or powers arising wholly or partly under it;
- (b) a power to direct or approve the advancement, appointment, distribution or application of income or capital of the trust property;
- (c) a power to act as, or to direct the appointment or removal of, a director or officer of any corporation wholly or partly owned by the trust;
- (d) a power to direct the trustee in connection with the purchase, retention, sale, management, lending, pledging or charging of the trust property or the exercise of any powers or rights arising from such property;
- (e) a power to appoint or remove any trustee, enforcer, protector or beneficiary;
- (f) a power to appoint or remove a professional person acting in relation to the affairs of the trust or holding any trust property;
- (g) a power to change the proper law of the trust or the forum for the administration of the trust;

- (h) a power to restrict the exercise of any powers or discretions of a trustee by requiring that such power shall only be exercisable with the consent of the settlor or any other person specified in the terms of the trust;
- (i) a beneficial interest in the trust property.

(2) The reservation, grant or exercise of a power or interest referred to in subsection (1) does not —

- (a) constitute the holder of the power or interest a trustee; or
- (b) subject to the terms of the trust, impose any fiduciary duty on the holder.

(3) A trustee who acts in compliance with the exercise of any power referred to in subsection (1) does not, by reason only of such compliance, act in breach of trust.

### **Charitable purposes**

**17.(1)** Notwithstanding any other law of Seychelles or a foreign law, the following purposes of a trust shall be deemed to be charitable —

- (a) the relief of poverty;
- (b) the advancement of education;
- (c) the advancement of religion;
- (d) the advancement of health or the saving of lives;
- (e) the advancement of the arts, culture, heritage or science;
- (f) the advancement of amateur sport;
- (g) the advancement of animal welfare;
- (h) the protection of the environment;

- (i) the advancement of human rights and fundamental freedoms;  
or
- (j) any other charitable purpose beneficial to the public.

(2) A purpose referred to in subsection (1) shall be charitable, notwithstanding that —

- (a) the purpose may only benefit a section of the public or members of the public;
- (b) the trust may also benefit privately one or more persons or objects within a class of persons or objects;
- (c) the trust is liable to be modified or terminated whether by the exercise of the power of appointment or disposition of assets;
- (d) the trustee of the trust has power to defer the distribution of the property under the trust for a period not exceeding the duration of the trust;
- (e) the trust may be of a discretionary nature; or
- (f) the objects are pursued within or outside of Seychelles.

## ***Chapter 2 - Beneficiaries***

### **Beneficiaries of a trust**

**18.(1)** A beneficiary shall be —

- (a) identifiable by name; or
- (b) ascertainable by reference to —
  - (i) a class, or
  - (ii) a relationship to some person whether or not living at the time of the creation of the trust or at the time which under the terms of the trust is the time by reference to which members of a class are to be determined.

(2) The terms of a trust may provide for the addition or removal of a person as beneficiary or for the exclusion of a beneficiary from benefit.

(3) The terms of a trust may impose upon a beneficiary an obligation as a condition for benefit.

(4) The interest of a beneficiary under a trust constitutes movable property.

(5) Subject to the terms of the trust, a beneficiary may sell, pledge, charge, transfer or otherwise deal with his or her interest in any manner.

(6) Subject to section 4(3), a settlor or trustee of a trust may also be a beneficiary of the trust, but not the sole beneficiary.

### **Entitlement of beneficiary to information**

**19.(1)** Subject to the terms of the trust, a beneficiary is entitled, on a written request to the trustee of the trust, to inspect or obtain —

- (a) a copy of the instrument creating the trust, any amendment thereto and any deed supplemental to the instrument creating the trust; and
- (b) a copy of the annual audited financial statements of the trust, if any, or, in the absence of annual audited financial statements, a summary of the financial position of the trust, with reference to the assets, liabilities, income and costs of the trust.

(2) Subject to the terms of the trust, on receipt of a written request to inspect or obtain documents under subsection (1), a trustee shall comply with such request within a reasonable time.

(3) Where a trustee does not make documents available for inspection under subsection (1) within a reasonable time, the beneficiary may apply to the Court for relief.

(4) The Court may, subject to the terms of the trust, make an order in relation to inspection by, or delivery of the documents to the beneficiary.

(5) Where the terms of the trust provide that a beneficiary shall not have the right to inspect or receive copy of any of the documents referred to in subsection (1), a trustee who does not comply with a written request under subsection (1) shall not have contravened subsection (2).

### **Disclaimer of interest**

**20.(1)** A beneficiary may, irrespective of the terms of a trust, disclaim in writing, either permanently or for such period as he or she may specify, the whole or any part of his or her interest under the trust.

(2) Subsection (1) applies irrespective of whether the beneficiary has received any benefit from the interest or not.

(3) Subject to the terms of the trust, if a disclaimer under subsection (1) so provides it may be revoked in accordance with its terms.

## ***Chapter 3 - Appointment, resignation and discharge of trustees***

### **Number and type of trustees**

**21.(1)** Every trust shall have an approved trustee, and subject to this Act and the International Corporate Service Providers Act, may have one or more co-trustees who may be persons resident outside Seychelles.

(2) A trust shall not be invalidated on grounds of having fewer trustees than required by this Act or the terms of the trust.

(3) If the number of trustees falls below the minimum number required under subsection (1) or, if greater, by the terms of the trust, the required number of new trustees shall be appointed as soon as practically possible.

(4) If there are fewer trustees than are required under subsection (1) or, if greater, by the terms of the trust, the existing trustees may only act for the purpose of preserving the trust property.

### **Appointment of new or additional trustee**

**22.(1)** Subsection (2) applies, if —

- (a) the terms of a trust do not provide for the appointment of new or additional trustee;
- (b) any such terms providing for any such appointment have lapsed or failed;
- (c) the person who has the power to make any such appointment is not capable of exercising the power; or
- (d) there is no other power to make the appointment.

(2) Without prejudice to the Court's power to appoint a new or additional trustee pursuant to an application made under section 71, a new or additional trustee may be appointed by —

- (a) the trustees for the time being;
- (b) the last remaining trustee; or
- (c) the personal representative or liquidator of the last remaining trustee.

(3) A trustee having power to appoint a new trustee who fails to exercise such power may be removed from office by the Court.

(4) Subject to the terms of the trust, a trustee appointed under this section shall have the same powers, discretions and duties and may act as if the trustee had been originally appointed a trustee.

(5) On the appointment of a new or additional trustee all requisite for vesting the trust property in the trustees for the time being of the trust shall be done.

### **Prohibition of renunciation after acceptance**

**23.(1)** No person shall be obliged to accept an appointment as a trustee and a person who knowingly does any act or thing in relation to the trust property consistent with the status of a trustee of that property shall be deemed to have accepted appointment as a trustee.

(2) A person who has not accepted and is not deemed to have accepted an appointment as trustee may disclaim such appointment within a reasonable period after becoming aware of it, by notice in writing to the settlor or trustees.

(3) If the settlor is deceased or otherwise unavailable and there are no trustees or persons to whom subsection (2) applies, may apply to the Court for relief from the person's appointment and the Court may make such order as it thinks fit.

### **Resignation or renewal of trustee**

**24.(1)** Subject to subsection (3), a trustee, not being a sole trustee, may resign from office by notice in writing delivered to the co-trustees.

(2) A resignation under subsection (1) shall take effect on the delivery of notice in accordance with subsection (1).

(3) If two or more trustees purport to resign simultaneously, the effect of which would mean that there would be no trustee, the resignations shall have no effect.

(4) A trustee shall cease to be a trustee of the trust immediately upon —

- (a) the trustee's removal from office by the Court; or
- (b) the trustee's resignation becoming effective; or
- (c) the coming into effect of a provision in the terms of a trust under which the trustee is removed from office or otherwise ceases to hold office.

(5) A person who ceases to be a trustee under this section shall execute all documents necessary for the vesting of the trust property in the new or continuing trustees.

## ***Chapter 4 - Duties and general powers of trustees***

### **Duties of trustees**

**25.(1)** A trustee shall in the execution of the trustee's duties and in the exercise of the trustee's powers and discretion —

(a) act —

(i) with due diligence;

(ii) prudently;

(iii) to the best of the trustee's ability and skill; and

(b) observe the utmost good faith.

(2) Subject to this Act, a trustee shall carry out its functions as trustee and administer the trust —

(a) in accordance with the terms of the trust; and

(b) in the interest of the beneficiaries or in the fulfillment of the purpose of the trust as the case may be.

(3) Subject to the terms of the trust, a trustee shall —

(a) so far as is reasonable, preserve the value of the trust property;

(b) so far as is reasonable, enhance the value of the trust property.

(4) Except with the approval of the Court or as permitted by this Act or expressly provided by the terms of the trust, a trustee shall not —

(i) directly or indirectly profit from the trustee's trusteeship;

(ii) cause or permit any other person to profit directly or in directly from such trusteeship; or

(iii) on the trustee's own account enter into any transaction with the trustees or relating to the trust property which may result in such profit.

(5) A trustee shall keep trust property separate from its personal property and separately identifiable from any other property of which he or she is a trustee.



(6) The trustee of a trust shall disclose the trustee's status as a trustee to a financial institution or a designated non-financial business or profession when forming a business relationship or carrying out an occasional transaction in an amount equal to or above to the amount prescribed under the Third Schedule of the Anti-Money Laundering and Countering the Financing of Terrorist Act, 2020 (*Act 5 of 2020*).

(7) For the purposes of subsection (6), the terms “financial institution” and “designated non-financial business or profession” shall have the same meaning as defined under the Anti-Money Laundering and Countering the Financing of Terrorist Act, 2020 (*Act 5 of 2020*).

(8) A trustee who contravenes subsection (6) commits an offence and shall on conviction be liable to a penalty fee of US\$500 and to an additional penalty fee of US\$25 for each day or part thereof during which the contravention continues.

### **Duty to keep accounting records**

**26.(1)** A trustee shall, in relation to each trust of which he, she or it is trustee, keep or cause to be kept reliable accounting records that —

- (a) are sufficient to show and explain the trust's transactions;
- (b) enable the financial position of the trust to be determined with reasonable accuracy at any time; and
- (c) allow for financial statements of the trust to be prepared.

(2) For the purposes of subsection (1), accounting records shall be kept, depicting the true and fair view of the trust's financial position and explaining its transactions.

(3) The trustee shall, in respect of each trust (including a terminated trust) to which it was or is acting as trustee, preserve accounting records for at least 7 years from the completion of the transaction or operation to which it relates.

(4) Where a licensed trustee ceases to hold a licence under the censed

International Corporate Service Providers Act (*Cap 275*), the licensed trustee shall handover all the records referred to in subsection (3) to the Authority or any other person approved by the Authority.

(5) All records to be handed over under subsection (4) shall be preferably in the digital form or in such form as agreed upon between the Authority and the licensed trustee.

(6) A trustee who contravenes subsection (1) or subsection (3) shall be liable to a penalty fee not exceeding US\$10,000.

### **Location of accounting records**

**27.(1)** Where the approved trustee of a trust is —

(a) a licensed trustee, the trustee shall —

- (i) prepare an annual financial summary to be kept at the licensed trustee's principal place of business in Seychelles within 6 months from the end of the trust's financial year; and
- (ii) where its accounting records are kept outside Seychelles, lodge, not less than on a bi-annual basis, the accounting records at the licensed trustee's principal place of business in Seychelles, provided that any accounting records, whether outside Seychelles or not, shall be presented to the Seychelles authorities on request.

(b) a private trust company, the trustee shall —

- (i) prepare an annual financial summary to be kept at the private trust company's registered office in Seychelles within 6 months from the end of the trust's financial year; and
- (ii) where its accounting records are kept outside Seychelles, lodge, not less than on a bi-annual basis,

the accounting records at the private trust company's registered office in Seychelles, provided that any accounting records, whether outside Seychelles or not, shall be presented to the Seychelles authorities on request.

(2) It shall be sufficient compliance with subsection (1), if a copy of the accounting records or financial summary is kept in electronic form at the approved trustee's principal place of business or registered office in Seychelles.

(3) Where an approved trustee keeps a copy of its accounting records at its principal place of business or registered office in Seychelles, the approved trustee shall keep a written record of the physical address of the place where the original accounting records are kept, and of any change thereto.

(4) The financial year of a trust shall be the calendar year, unless it is determined otherwise by the trustee.

(5) The Authority may issue written guidelines regarding the implementation of the obligations relating to accounting records.

(6) A trustee who contravenes this section shall be liable to a penalty fee not exceeding US\$10,000.

(7) The trustee of a former trust shall comply with the requirements of this section within a period of 6 months from the commencement of this Act.

### **Duty to keep trust register**

**28.(1)** A trustee, in relation to each trust of which he, she or it is the trustee, shall keep a register to be known as the trust register specifying the information referred to in subsection (2) in respect of each —

- (a) trustee;
- (b) beneficiary or class of beneficiaries;
- (c) settlor;

- (d) protector (if any);
- (e) enforcer (if any); and
- (f) regulated agent and service provider of the trust including, but not limited to, investment advisors, investment managers, accountants and tax advisors of the trust.

(2) The trust register shall specify with respect to each person referred to in subsection (1) —

- (a) the person's full name and address;
- (b) the person's nationality or place of incorporation, as the case may be;
- (c) the date on which the person was appointed or otherwise became 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;
- (d) the date on which the person ceased to be 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.

(3) Where the approved trustee of a trust is —

- (a) a licensed trustee, the register under subsection (1) shall be kept at the licensed trustee's principal place of business in Seychelles; or
- (b) a private trust company, the register under subsection (1) shall be kept at the private trust company's registered office in Seychelles.

(4) Subject to the terms of the trust, the trust register shall, during business hours, be open to inspection by any trustee, protector, enforcer, settlor or beneficiary of the trust, and shall be open for inspection for a period of not less than two hours on each business day.

(5) The trust register may be in such form as the approved trustee of the trust approves, but if it is in magnetic, electronic or other data storage form, the approved trustee shall be able to produce legible evidence of its content.

(6) The trust register is *prima facie* evidence of any matters directed or permitted by this Act to be contained therein.

(7) An approved trustee shall, in respect of each trust (including a terminated trust) to which it was or is a trustee, preserve the trust register specified under subsection (1) for at least 7 years from the date —

- (a) it ceases to be the trustee of the trust; or
- (b) the trust fails, lapses or terminates.

(8) Where an approved trustee ceases to hold a licence under the International Corporate Service Providers Act (*Cap 275*), the approved trustee shall hand over all the records referred to in subsection (7) to the Authority or any other person approved by the Authority.

(9) All records to be handed over under subsection (8) shall be preferably in the digital form or in such form as agreed upon between the Authority and the approved trustee.

(10) A trustee who fails to comply with subsection (1), (2), (3), (4) or (5) shall be liable to a penalty fee of US\$500 and an additional penalty fee of US\$50 for each day or part thereof during which the contravention continues.

(11) A trustee who fails to comply with subsection (7) or (8) shall be liable to a penalty fee not exceeding US\$10,000.

(12) A trustee in a former trust shall be required to comply with the requirements of subsection (1)(f) within a period of 90 days from the commencement of this Act.

**Furnishing of records**

**29.(1)** Where a trustee of a trust is requested pursuant to a written law of Seychelles to furnish all or any of the trust's records or copies thereof, including a request by —

- (a) the Authority under the Financial Services Authority Act or under the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020 (Act 5 of 2020);
- (b) the Seychelles Revenue Commission; or
- (c) the Financial Intelligence Unit under the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020 (*Act 5 of 2020*),

the trustee shall furnish the records or copies thereof to the requesting party within the time period specified in the request.

(2) For the purposes of this section, where a record is not in the English or French language, the party requesting the record may request a translation of the record in the English or French language.

(3) A trustee who fails to comply with this section shall be liable to a penalty not exceeding US\$5,000.

**Duty of co-trustees to act together**

**30.(1)** Subject to the terms of the trust, where there is more than one trustee all the trustees shall join in administering the trust.

(2) Subject to subsection (3), where there is more than one trustee no power or discretion given to the trustees shall be exercised unless all the trustees agree on its exercise.

(3) The terms of a trust may empower trustees to act by a majority and a trustee who dissents from a decision of the majority may require the trustee's dissent to be recorded in writing.

**Impartiality of trustee**

**31.** Subject to the terms of the trust, where there is more than one beneficiary, or more than one purpose, or at least one beneficiary and at least one purpose, a trustee shall be impartial and shall not execute the trust for the advantage of one at the expense of another.

**Power of trustee**

**32.(1)** Subject to the terms of the trust and the trustee's duties under this Act, a trustee shall in relation to the trust property have the same powers as the beneficial owner of such property.

(2) A trustee shall exercise the trustee's powers only in the interests of the beneficiaries and in accordance with the terms of the trust.

(3) The terms of a trust may require a trustee to obtain the consent of other persons before exercising a power or discretion.

(4) A person who consents as provided in subsection (3) shall not by virtue of so doing be deemed to be a trustee.

**Delegation by trustee**

**33.(1)** Subject to the terms of the trust, a trustee may delegate the execution or exercise of any of its trusts or powers (both administrative and dispositive) and the delegatee may further delegate any such trusts or powers.

(2) Except where the terms of the trust specifically provide to the contrary, a trustee —

- (a) may delegate management of the trust property to a competent and qualified investment manager;
- (b) may employ professional persons to act in relation to any affairs of the trust or to hold any of the trust property; and
- (c) may consult professional persons in relation to any of the affairs of the trust.

(3) Where a trustee in good faith and without negligence makes such delegation, appointment or consultation under this section, the trustee shall not be liable for any loss to the trust arising from such delegation, appointment or consultation.

(4) A trustee may authorise a person referred to in subsection (2) to retain any commission or other distribution usually payable in relation to any such transaction.

### **Remuneration and expenses of trustee**

**34.**(1) A trustee shall be entitled to such remuneration, as may be specified in the terms of the trust, for the trustee's services.

(2) Where the terms of a trust are silent as to the remuneration, a trustee shall be entitled to reasonable remuneration for services that the trustee provides.

(3) A trustee may reimburse himself, herself or itself out of the trust, for all expenses and liabilities reasonably incurred by the trustee in connection with the trust.

### **Power to appropriate**

**35.** Subject to the terms of the trust, a trustee may, without the consent of any beneficiary, appropriate trust property in or towards satisfaction of the interest of a beneficiary in such manner as the trustee thinks fit.

### **Corporate trustee acting by resolution**

**36.** A corporate trustee may —

- (a) act in connection with a trust by a resolution of such corporate trustee or of its board of directors or other governing body; or
- (b) by such a resolution appoint one or more of its officers or employees to act on its behalf in connection with the trust.

### **Trustee disclosures**

**37.**(1) Subject to section 29 and an order of the Court, the terms of a trust may —



- (a) confer upon any person a right to request the disclosure of information or a document concerning the trust;
  - (b) determine the extent of the right of any person to information or a document concerning the trust; or
  - (c) impose a duty upon a trustee to disclose information or a document concerning the trust to any person.
- (2) Subject to the terms of the trust and to any order of the Court —
- (a) a beneficiary under the trust not being a charity;
  - (b) a charity which is referred to by name in the terms of the trust as a beneficiary under the trust; or
  - (c) an enforcer,

may request disclosure by the trustee or trustees of documents which relate to or form part of the accounts of the trust.

(3) Subject to section 29 and any order of the Court, a trustee may refuse to comply with —

- (a) a request for disclosure of information or a document concerning the trust under subsection (1)(a) or any document which relates to or forms part of the accounts of the trust under subsection (2); or
- (b) any other request for disclosure of information or a document concerning the trust,

where the trustee in the exercise of its discretion is satisfied that it is in the interests of one or more of the beneficiaries, or the beneficiaries as a whole, to refuse the request.

(4) Notwithstanding subsections (1), (2) and (3), subject to the terms of the trust and to any order of the Court, a trustee shall not be required to disclose to any person information or a document which —

- (a) discloses the trustee's deliberations as to the manner in which the trustee has exercised a power or discretion or performed a duty conferred or imposed upon the trustee;
- (b) discloses the reason for any particular exercise of a power or discretion or performance of a duty referred to in paragraph (a), or the material upon which such reason shall or might have been based; or
- (c) relates to the exercise or proposed exercise of a power or discretion, or the performance or proposed performance of a duty, referred to in paragraph (a).

(5) Notwithstanding the terms of the trust, on the application of the trustee, an enforcer, a beneficiary or, with leave of the court any other person, the court may make such order as it thinks fit determining the extent to which any person may request or receive information or a document concerning the trust, whether generally or in any particular instance.

### ***Chapter 5 - Liability of trustee***

#### **Liability for breach of trust**

**38.(1)** Subject to this Act and to the terms of the trust, a trustee shall be liable for a breach of trust committed by the trustee or in which the trustee has concurred.

- (2) A trustee who is liable for a breach of trust shall be liable for —
  - (a) the loss or depreciation in value of the trust property resulting from such breach; and
  - (b) the profit, if any, which would have accrued to the trust property if there had been no such breach.

(3) Where there are two or more breaches of trust, a trustee shall not set off a gain from one breach of trust against a loss resulting from another breach of trust.

(4) A trustee who resigns in order to facilitate a breach of trust shall be liable for that breach as if the trustee had not resigned.

(5) A trustee shall not be liable for a breach of trust committed prior to the trustee's appointment.

(6) A trustee shall not be liable for a breach of trust committed by a co-trustee unless —

- (a) the trustee becomes aware or ought reasonably to have become aware of the commission of such breach or of the intention of its co-trustee to commit a breach of trust; and
- (b) the trustee actively conceals such breach or such intention or fails within a reasonable time to take proper steps to protect or restore the trust property or prevent such breach.

(7) Where two or more trustees are liable in respect of a breach of trust, they shall be liable jointly and severally.

(8) A trustee who becomes aware of a breach of trust to which subsection (5) relates shall take reasonable steps to have such breach remedied.

(9) Nothing in the terms of a trust shall relieve, release or exonerate a trustee from liability for breach of trust arising from the trustee's own actual fraud, dishonesty or willful misconduct.

### **Beneficiary may relieve or indemnify trustee**

**39.(1)** A beneficiary may —

- (a) relieve a trustee of liability to the beneficiary for a breach of trust;
- (b) indemnify a trustee against liability for a breach of trust.

(2) Subsection (1) shall not apply, unless the beneficiary —

- (a) has capacity to contract;

- (b) has full knowledge of all material facts; and
- (c) is not improperly induced by the trustee to take action under subsection (1).

### **Trustee acting in respect of more than one trust**

**40.(1)** A trustee of a particular trust who or which acts for more than one trust shall not, in the absence of fraud, be affected by notice of any instrument, matter, fact or thing in relation to any other trust, had the trustee obtained notice by reason of the trustee's acting or having acted for the purposes of the other trust.

(2) A trustee of a trust shall disclose to the trustee's co-trustee any interest which the trustee has as a trustee of another trust, if any transaction in relation to the first mentioned trust is to be entered into with the trustee of such other trust.

### **Liability of trustee to third parties**

**41.(1)** Where a trustee is a party to any transaction or matter affecting the trust —

- (a) if the other party knows that the trustee is acting as trustee, any claim by the other party shall be against the trustee as trustee of the trust and shall extend only to the trust property;
- (b) if the other party does not know that the trustee is acting as trustee, any claim by the other party may be made against the trustee personally:

(2) In a case to which paragraph (b) applies, the trustee shall, without prejudice to the trustee's personal liability, have a right of recourse to the trust property by way of indemnity.

(3) Subsection (1) or (2) shall not affect any liability the trustee may have for breach of trust.

### **Constructive trustee**

**42.(1)** Subject to subsection (2) and section 8(2), where a person makes or receives a profit, gain or advantage from a breach of trust the person shall be

deemed to be a trustee (in this section referred to as a “constructive trustee”) of that profit, gain, or advantage.

(2) Subsection (1) shall not apply to a *bona fide* purchaser of property for value and without notice of a breach of trust.

(3) Subject to any order of the Court to the contrary, a constructive trustee shall deliver the property of which it is a constructive trustee to the person entitled to it.

### **Position of outgoing trustee**

**43.(1)** Subject to subsection (2), when a trustee resigns, retires or is removed, it shall duly surrender the trust property in the trustee's possession or under the trustee's control.

(2) A trustee who resigns, retires or is removed may require to be provided with reasonable security for liabilities whether existing, future, contingent or otherwise before surrendering trust property.

(3) If the provision for security to which subsection (2) refers is extended or renewed by a contract, or other arrangement, to which the trustee who resigns, retires or is removed is not a party, and —

- (a) the contract or other arrangement expressly provides that the trustee may in its own right enforce a term of the contract or other arrangement; or
- (b) a term of the contract or other arrangement purports to confer a benefit on the trustee,

and in either case the contract or other arrangement expressly identifies the trustee, the trustee may enforce that term in the trustee's own right.

(4) A trustee who resigns, retires or is removed and has complied with subsection (1) shall be released from liability to any beneficiary, trustee or person interested under the trust for any act or omission in relation to the trust property or the trustee's duty as a trustee except for liability —

- (a) arising from any breach of trust to which such trustee (or in the case of a corporate trustee any of its officers or employees) was a party or to which the trustee was privy;
- (b) in respect of actions to recover from such trustee (or in the case of a corporate trustee any of its officers or employees) trust property or the proceeds of trust property in the possession of such trustee, officers or employees; or
- (c) arising from the trustee's fraud, dishonesty or willful misconduct.

### ***Chapter 6 - Variation of trusts, certain powers and class interests***

#### **Variation of terms of a trust**

**44.** Without prejudice to the power of the Court to vary the terms of a trust, a trust may be varied in any manner provided by its terms.

#### **Power of accumulation and advancement**

**45.(1)** Subject to section 15, the terms of a trust may direct or authorise the accumulation for any period of all or part of the income of the trust.

(2) Subject to subsection (3), income of the trust which is not accumulated under subsection (1) shall be distributed.

(3) Subject to the terms of the trust and subject to any prior interests or charges in relation to the trust property, where a beneficiary is a minor and whether or not the beneficiary's interest —

- (a) is a vested interest; or
- (b) is an interest which will become vested —
  - (i) on attaining the age of majority,
  - (ii) at any specific age, or
  - (iii) upon the happening of any event,

the trustee may —

- (A) accumulate the income attributable to the interest of such beneficiary pending the attainment of the age of majority or such specific age or the happening of such event;
- (B) apply such income or part of it to or for the maintenance, education or other benefit of such beneficiary;
- (C) advance or appropriate to or for the benefit of any such beneficiary such interest or part of such interest.

(4) A written receipt by a parent or lawful guardian of a beneficiary who is a minor shall be a sufficient discharge to the trustee for a distribution made under subsection (3).

(5) Subject to the terms of the trust and subject to any prior interests or charges affecting the trust property, the trustee may advance or apply for the benefit of a beneficiary part of the trust property prior to the date of the happening of the event upon the happening of which the beneficiary becomes entitled absolutely thereto.

(6) Any part of the trust property advanced or applied under subsection (5) shall be brought into account in determining from time to time the interest of the beneficiary in the trust property.

(7) No part of the trust property advanced or applied under subsection (5) shall exceed the presumptive, contingent or vested share of the beneficiary in the trust property.

### **Power of trustee to appoint or assign**

**46.** The terms of a trust may confer on the trustee or any other person power to appoint or assign all or any part of the trust property or any interest in the trust property to, or to trustees for the benefit of, any person, whether or not such person was a beneficiary of the trust immediately prior to such appointment or assignment.

**Power of revocation**

**47.(1)** A trust and any exercise of a power under a trust may be expressed to be —

- (a) revocable whether wholly or partly; or
- (b) capable of variation.

(2) No revocation or variation under subsection (1) shall prejudice anything lawfully done by a trustee in relation to a trust before the trustee receives notice of such revocation or variation.

(3) Subject to the terms of the trust, where the trust is revoked the trustee shall hold the trust property on trust for the settlor absolutely.

(4) Where a trust is partly revoked, subsection (3) shall apply to the property which is the subject of such revocation.

(5) In subsection (3) “settlor” means the particular person who provided the property which is the subject of revocation.

**Power to provide for change of proper law**

**48.** The terms of a trust may provide for the proper law of the trust to be changed to the law of another jurisdiction.

**Class interests**

**49.(1)** Subject to the terms of a trust, the following rules shall apply where a trust or an interest under a trust is in favour of a class of persons —

- (a) a class ceases when it is no longer possible for any other person to become a member of the class;
- (b) where any class interest relates to income and for any period there is no member of the class in existence the income shall be accumulated and, subject to section 15, shall be retained until there is a member of the class in existence or the class closes.



(2) In this section “class interest” means a trust or an interest which is in favour of a class of persons.

### ***Chapter 7 - Failure, lapse and termination of trusts***

#### **Failure or lapse of interest**

**50.(1)** Subject to the terms of a trust and subject to any order of the Court, where —

- (a) an interest lapses;
- (b) a trust terminates;
- (c) other than in the case of a trust for a charitable or non-charitable purpose, there is no beneficiary and no person may become a beneficiary in accordance with the terms of the trust; or
- (d) property is vested in a person which is not for his or her sole benefit and the trusts upon which he or she is to hold the property are not declared or communicated to the person,

the interest or property affected by such lapse, termination, lack of beneficiary or lack of declaration or communication of trusts shall be held by the trustee or the person referred to in sub-paragraph (d), in trust for the settlor absolutely or if he or she is dead for his or her personal representative.

(2) An application to the Court under this section may be made by any person referred to in section 71(1).

(3) In subsection (1) “settlor” means the particular person who provided the interest or property affected as mentioned in that subsection.

#### **Termination of a trust**

**51.(1)** On the termination of a trust, the trust property shall be distributed by the trustee within a reasonable time in accordance with the terms of the trust to the beneficiaries entitled thereto.

(2) Notwithstanding subsection (1), the trustee may require to be provided with reasonable security for liabilities whether existing, future, contingent or otherwise before distributing trust property.

(3) Without prejudice to the powers of the Court under subsection (4) and notwithstanding the terms of the trust, where all the beneficiaries are in existence and have been ascertained and none are incapacitated adults or minors, the Court may require the trustee to terminate the trust and distribute the trust property among them.

(4) The Court may —

- (a) require the trustee to distribute the trust property;
- (b) direct the trustee not to distribute the trust property; or
- (c) make such other order as it thinks fit.

(5) In this section, “liabilities” includes contingent liabilities.

(6) An application to the Court under this section may be made by any person referred to in section 71(1).

### ***Chapter 8 - Protector***

#### **Appointment of protector**

**52.**(1) The terms of a trust may provide for the appointment of a person as a protector of the trust.

(2) A protector of a trust may be a settlor or an enforcer of the trust, but not a trustee of the trust.

(3) A protector of a trust may be a beneficiary of the trust, but not a sole beneficiary.

#### **Powers of a protector**

**53.**(1) Subject to the terms of the trust, powers vested in the protector may include —

- (a) the power to remove, or appoint a new trustee or additional trustee;
  - (b) the power to add or exclude a beneficiary;
  - (c) the power to approve or change the proper law of the trust;
  - (d) the power to approve proposed trust distributions;
  - (e) the power to approve proposed trust investments;
  - (f) the power to appoint replacement protectors;
  - (g) the power to approve the termination of the trust upon distribution of all of the trust's property; and
  - (h) such further powers as are conferred on the protector by the terms of the trust or the provisions of this Act.
- (2) Subsection (1)(b) shall not apply to —
- (a) a charitable trust; and
  - (b) a purpose trust where the terms of the trust do not provide for the trust to have beneficiaries.

### **Remuneration and expense of protector**

**54.**(1) Unless authorised by —

- (a) the terms of the trust;
- (b) consent in writing of all of the beneficiaries; or
- (c) an order of the Court,

a protector shall not be entitled to remuneration for his or her services.

(2) Subject to the terms of the trust, a protector shall be reimbursed by the trustee from the trust property all expenses and liabilities reasonably incurred in connection with the trust.

**Entitlement of protector to documents**

**55.(1)** A protector of a trust shall be entitled, on a written request to the trustee of the trust, to —

- (a) a copy of the instrument creating the trust, any amendment thereto and any additional deed supplemental to the instrument creating the trust; and
- (b) access to and copies of the accounting records of the trust.

(2) A protector shall not disclose any information or document referred to in subsection (1) to a beneficiary, if any, or to any third party unless such beneficiary or other party is entitled under the terms of the trust.

**Duty of co-protectors to act together**

**56.(1)** Subject to the terms of the trust, where there is more than one protector, all the protectors shall join in the performance of their duties and powers in relation to the trust.

(2) Subject to subsection (3), where there is more than one protector no power or discretion given to the protectors shall be exercised unless all the protectors agree on its exercise.

(3) The terms of a trust may empower protectors to act by a majority and a protector who dissents from a decision of the majority of the protectors shall record his or her dissent in writing.

**Liability of a protector**

**57.** A protector or a person acting as an officer, employee or agent of the protector or performing any duty on behalf of the protector shall not be liable for damages done or omitted to be done in the discharge of the duties of the protector under this Act or under the terms of the trust, unless it is proved that the act or omission constituted or arose from the person's own fraud, dishonesty or willful misconduct.

**Cessation of appointment of protector**

**58.(1)** Subject to the terms of the trust and subsection (3), a protector may

resign from his or her office by giving reasonable notice in writing delivered to the trustee.

(2) Subject to the terms of the trust and subsection (3), a resignation under subsection (1) shall take effect —

- (a) upon delivery of the notice to the trustee; or
- (b) on such date or contingent event as may be specified in the notice.

(3) A resignation given in order to facilitate a breach of this Act or any duty imposed on the enforcer under the terms of the trust shall be of no effect.

(4) A protector shall cease to be a protector of a trust immediately upon —

- (a) the protector's resignation becoming effective;
- (b) the protector's removal from office by the Court;
- (c) the coming into effect of a provision in the terms of the trust under which the protector is removed from office or otherwise ceases to hold office; or
- (d) the protector's appointment as a trustee of the trust.

### *Chapter 9 - Enforcer*

#### **Enforcer**

**59.**(1) The terms of the trust in the case of a purpose trust shall provide for —

- (a) the appointment of one or more persons as an enforcer in relation to the trust's non-charitable purposes; and
- (b) the appointment of one or more persons as enforcer at any time when there is none.

(2) A charitable trust can have an enforcer, in which case the terms of

the trust shall provide for the appointment of one or more persons as enforcer in relation to the trust's charitable purposes.

(3) An enforcer of a trust can also be a settlor, a beneficiary or a protector of the trust, but the appointment of a person as enforcer of the trust shall not have effect if the person is also a trustee of the trust.

(4) A trustee of a purpose trust shall, at any time when there is no enforcer in relation to those purposes, take such steps as may be necessary to secure the appointment of an enforcer in accordance with the terms of the trust.

### **Duties of enforcer**

**60.**(1) Subject to the terms of a trust, it shall be the duty of an enforcer of a purpose trust to enforce the trust in relation to its non-charitable purposes.

(2) In the case of a charitable trust which has an enforcer, it shall be the duty of the enforcer to enforce the trust in relation to its charitable purposes.

(3) Except with the approval of the Court or as permitted by this Act or expressly provided by the terms of the trust, an enforcer shall not —

- (i) directly or indirectly profit from the enforcer's appointment;
- (ii) cause or permit any other person to profit directly or indirectly from the enforcer's appointment; or
- (iii) on the enforcer's own account enter into any transaction with the trustees or relating to the trust property which may result in such profit.

### **Remuneration and expense of enforcer**

**61.**(1) An enforcer shall not be entitled to remuneration for his or her services, unless authorised by —

- (a) the terms of the trust;
- (b) a consent in writing of all of the beneficiaries; or
- (c) an order of the Court.

(2) Subject to the terms of the trust, an enforcer shall be reimbursed by the trustee or trustees from the trust property all expenses and liabilities reasonably incurred in connection with the trust.

### **Entitlement of enforcer to documents**

**62.**(1) An enforcer of a trust shall be entitled, on a written request to the trustees of the trust, to —

- (a) a copy of the instrument creating the trust, any amendment thereto and any deed supplemental to the instrument creating the trust; and
- (b) access to and copies of the accounting records of the trust.

(2) An enforcer shall not disclose any information or document referred to in subsection (1) to a beneficiary, or to any other person unless such beneficiary or other person is entitled to receive such information or document under the terms of the trust or any written law.

### **Duty of co-enforcers to act together**

**63.**(1) Subject to the terms of the trust, where there is more than one enforcer all the enforcers shall join in enforcing the trust.

(2) Subject to subsection (3), where there is more than one enforcer no power or discretion given to the enforcers shall be exercised unless all the enforcers agree on its exercise.

(3) The terms of a trust may empower enforcers to act by a majority and an enforcer who dissents from a decision of the majority of the enforcers may require his or her dissent to be recorded in writing.

### **Liability of enforcer**

**64.** An enforcer or a person acting as an officer, employee or agent of the enforcer or performing any duty on behalf of the enforcer shall not be liable in damages for anything done or omitted to be done in the discharge or of the duties of the enforcer under this Act or under the terms of the trust, unless it is proved that the act or omission constituted or arose from the person's own fraud, dishonesty or willful misconduct.

**Cessation of appointment of enforcer**

**65.**(1) Subject to the terms of the trust and subsection (3), an enforcer may resign from office by notice in writing delivered to the trustee or trustees.

(2) Subject to the terms of the trust and subsection (3), a resignation under subsection (1) shall take effect —

- (a) on delivery of the notice to the trustee or trustees; or
- (b) on such date or contingent event as may be specified in the notice.

(3) A resignation given in order to facilitate a breach of this Act or any duty imposed on the enforcer under the terms of the trust shall be of no effect.

(4) An enforcer shall cease to be an enforcer of a trust immediately upon —

- (a) his or her resignation becoming effective;
- (b) his or her removal from office by the Court;
- (c) the coming into effect of a provision in the terms of the trust under which the enforcer is removed from office or otherwise ceases to hold office; or
- (d) his or her appointment as a trustee of the trust.

***Chapter 10 - Trust protection provisions*****Application of Laws of Seychelles to a Seychelles trust**

**66.**(1) In this section —

“foreign” refers to any jurisdiction outside Seychelles;

“heirship rights” means rights, claims or interests in, against or to property of a person arising or accruing in consequence of his or her death, other than rights, claims or interests created by will or other



voluntary disposition by such person or resulting from an express limitation in the disposition of property;

“personal relationship” includes the situation where there exists, or has in the past existed, any of the following relationships between a person and the settlor —

- (a) any relationship by blood, marriage or adoption (whether or not the marriage or adoption is recognised by law);
- (b) any arrangement between the person and settlor such as to give rise in any jurisdiction to any rights, obligations or responsibilities analogous to parent and child or husband and wife; or
- (c) any relationship between the person or the settlor and a third person who has a personal relationship;

“trust” includes a former trust.

(2) Subject to subsection (4), any question in respect of —

- (a) the validity or interpretation of a trust;
- (b) the validity or effect of any transfer or other disposition of property to a trust;
- (c) the capacity of a settlor;
- (d) the administration of the trust, whether the administration be conducted in Seychelles or elsewhere, including questions as to the powers, obligations, liabilities and rights of trustees and their appointment or removal; or
- (e) the existence and extent of powers, conferred or retained, including powers of variation or revocation of the trust and powers of appointment and the validity of any exercise of such powers,

shall be determined in accordance with the law of Seychelles and no rule of foreign law shall apply.

(3) Without prejudice to the generality of subsection (2), any question mentioned therein shall be determined without consideration of whether or not —

- (a) any foreign law prohibits or does not recognise the concept of a trust; or
- (b) the trust or disposition avoids or defeats rights, claims, or interests conferred by any foreign law upon any person by reason of a personal relationship to the settlor or by way of heirship rights, or contravenes any rule of foreign law or any foreign judicial or administrative order or action intended to recognize, protect, enforce or give effect to any such rights, claims or interests.

(4) No foreign judgment with respect to a trust shall be enforceable to the extent that it is inconsistent with this section.

### **Protection of trust property**

**67.(1)** In this section —

“creditor” means a person to whom an obligation is owed;

“disposition” means any disposition, or series thereof, effected and includes, any transaction, gift, grant or transfer of property of any nature whatsoever;

“intent to defraud” means an intention of a transferor willfully to defeat an obligation owed to a creditor;

“obligation” means an obligation or liability (which shall include a contingent liability) which existed on or prior to the date of a relevant disposition and of which the transferor had actual notice;

“relevant disposition” means a disposition to which subsection (3) applies;

“transferor” means the person who as owner of property makes a relevant disposition or causes it to be made;

“transferee” means the person to whom a relevant disposition is made and shall include a successor in title;

“trust” includes reference to the trustee or trustees of the trust, in their capacity as trustee;

“undervalue”, in relation to a disposition of property, means —

- (a) the provision of no consideration for the disposition; or
- (b) a consideration for the disposition the value of which is significantly less than the value of the property.

(2) Subject to subsection (3), a disposition of property to a trust shall not be void, voidable or otherwise liable to be set aside, or subject to any implied condition, by reason of —

- (a) bankruptcy or liquidation of the settlor; or
- (b) any action, proceeding or other claim by a creditor of the settlor.

(3) If the Court, in respect of a claim by a creditor is satisfied beyond reasonable doubt that the disposition of property to the trust was made —

- (a) with an intent to defraud and at an undervalue; or
- (b) where the transferor was insolvent or became insolvent as a result of the disposition,

the Court shall declare the disposition void and set aside to the extent necessary to satisfy the obligation of the claimant creditor together with such costs as the Court may direct.

(4) The burden of proof for an intent to defraud for the purposes of subsection (3) shall be upon the creditor seeking to set aside the disposition.

(5) No action or proceedings shall be commenced under this section unless initiated within two years of the date of the relevant disposition.

(6) If the Court sets aside a disposition under subsection (3) —

(a) where the Court is satisfied that the transferee has acted in bad faith —

(i) the transferee shall have a first and paramount charge over the property, the subject of the disposition, of an amount equal to the entire costs properly incurred by the transferee in the defence of the action or proceedings to set aside (and not merely such costs as might otherwise be allowed by the Court); and

(ii) the relevant disposition shall be set aside subject to the proper fees, costs, pre-existing rights, claims and interests of the transferee, (and of any predecessor transferee who or which has not acted in bad faith); and

(b) unless the Court is satisfied that a beneficiary of a trust has acted in bad faith the disposition shall only be set aside subject to the right of such beneficiary to retain any distribution made consequent upon the prior exercise of a trust, power or discretion vested in the trustee of such trust or any other person, and otherwise properly exercised.

(7) The burden of proof that a transferee or beneficiary has acted in bad faith for the purposes of subsection (6) shall be upon the person making the allegation.

### **Spendthrift or protective trust**

**68.(1)** The terms of a trust may make the interest of a beneficiary liable to termination.

(2) Without prejudice to subsection (1), the terms of a trust may make the interest of a beneficiary in the income or capital of the trust property subject to —

- (a) a restriction on alienation or disposal; or
- (b) diminution or termination in the event of the beneficiary becoming bankrupt or any of his or her property becoming liable to sequestration for the benefit of his or her creditors.

### **PART III POWERS OF COURT**

#### **Application of Part III**

**69.** This Part shall apply in relation to a Seychelles trust and, to the extent that the context admits, shall apply to a foreign trust.

#### **Application for directions**

**70.** A trustee may apply to the Court for direction in respect of the manner in which the trustee may act in connection with any matter relating to the trust and the Court may make such order, as it thinks fit.

#### **Application and certain powers of Court**

**71.(1)** An application to the Court for an order or declaration under subsection (2) may be made by the Authority or by the trustee, the settlor, the enforcer, a protector or a beneficiary or, with leave of the Court, by any other person.

(2) The Court may —

- (a) make an order concerning —
  - (i) the execution or the administration of a trust;
  - (ii) a trustee of a trust, including an order relating to the exercise of any power, discretion or duty of the trustee, the appointment or removal of a trustee, the remuneration of a trustee, the submission of accounts, the conduct of the trustee and distribution of property;
  - (iii) a beneficiary or a person having a connection with the trust;

- (iv) the appointment or removal of an enforcer in relation to a non-charitable purpose of the trust; or
- (v) the appointment or removal of a protector;
- (b) make a declaration as to the validity or the enforceability of a trust;
- (c) rescind or vary any order or declaration made under this Act, or make any new order or declaration.

(3) Where the Court makes an order for the appointment of a trustee, it may impose such conditions, including the vesting of the trust property, as it may consider necessary.

(4) Subject to any order of the Court, a trustee appointed under this section shall have the same powers, discretions and duties and may act as if the trustee had been originally appointed.

### **Variation of terms of a Seychelles trust by Court and approval of transactions**

**72.(1)** Subject to subsection (2), the Court may, by order, approve on behalf of —

- (a) a minor or incapacitated adult having, directly or indirectly, an interest, whether vested or contingent, under the trust;
- (b) any person, whether ascertained or not, who may become entitled, directly or indirectly, to an interest under the trust at a future date or on a contingent event of any specified description;
- (c) any person unborn; or
- (d) any person in respect of an interest that may arise by reason of a discretionary power given to a person on the failure or determination of an existing interest that has not failed or determined,

any arrangement, by whomsoever proposed and whether or not there is any other person beneficially interested who is capable of assenting thereto, varying or revoking all or any of the terms of a Seychelles trust or enlarging the powers of the trustee of managing or administering any of the trust property.

(2) The Court shall not approve an arrangement on behalf of any person referred to in subsection (1)(a), (b) or (c) unless the arrangement thereof appears to be for the benefit of that person.

(3) Where in the management or administration of a Seychelles trust, any sale, lease, pledge, charge, surrender, release or other disposition, or any purchase, investment, acquisition, expenditure or other transaction is in the opinion of the Court expedient and the same may not be effected by reason of the absence of any power vested in the trustee or trustees by the terms of the trust or by proper law, the Court may confer upon the trustee or trustees generally or in any particular circumstances a power for such purpose on such terms and conditions as the Court thinks fit and may direct in any manner and from the property any cost authorised to be expended and the cost of any transaction to be paid or borne.

(4) An application to the Court under this section may be made by any person referred to in section 71 (1).

### **Charitable trusts or purpose trusts**

73.(1) Where trust property of a Seychelles trust is held for a charitable purpose or non-charitable purpose and any of the circumstances referred to in subsection (2) apply, the Court may, on the application of a trustee, the Authority, an enforcer or a protector, declare that the property or the remainder of the property, shall be held for such other charitable purpose or non-charitable purpose, as the Court considers to be consistent with the original intention of the settlor.

(2) The circumstances referred to in subsection (1) are that —

- (a) the purpose has, as far as is reasonably possible, been fulfilled, has ceased to exist or is no longer applicable;
- (b) the purpose cannot be carried out having regard to the directions given by the settlor or the spirit of the gift;

- (c) the purpose provides a use for only part of the trust property;
- (d) the property, and any other property applicable for a similar purpose, may more effectively be applied to a common purpose, with regard to the spirit of the gift;
- (e) the purpose was laid down by reference to an area that is no longer a unit for that purpose, or by reference to a class of persons or to an area that is no longer appropriate, with regard to the spirit of the gift or the practicality of administering the gift;
- (f) the purpose has been adequately provided for by other means;
- (g) in the case of a trust for charitable purposes, the purpose has ceased for whatever reason to be charitable; or
- (h) the purpose has ceased to provide a suitable and effective method of managing the property, with regard to the spirit of the gift.

(3) Where trust property of a Seychelles trust is held for a charitable purpose or non-charitable purpose the Court may, on the application of a trustee, the Authority, an enforcer or a protector, approve any arrangement that varies or revokes the purposes of the trust or enlarges or modifies the powers of management or administration of the trustees, if it is satisfied that the arrangement is —

- (i) suitable and expedient; and
- (ii) consistent with the original intention of the settlor and the spirit of the gift.

(4) The Court shall not approve an arrangement under subsection (3) unless it is satisfied that any person with a material interest in the trust has had an opportunity to be heard.

### **Power to relieve trustee from personal liability**

**74.(1)** The Court may relieve a trustee either wholly or partly from personal liability for a breach of trust where it appears to the Court that —



- (a) the trustee is or may not be personally liable for the breach of trust;
- (b) the trustee has acted honestly and reasonably;
- (c) the trustee ought fairly to be excused —
  - (i) for the breach of trust, or
  - (ii) for omitting to obtain the directions of the Court in the matter in which such breach arose.

(2) Subsection (1) shall apply whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Act.

### **Execution of instruments by order of Court**

**75.** Where a trustee commits a breach of trust at the instigation or at the request or with the consent of a beneficiary, the Court may by order impound all or part of the interest of the beneficiary by way of indemnity to the trustee or any person claiming through the trustee.

### **Power to indemnify beneficiary for breach of trust**

**76.(1)** Where any person neglects or refuses to comply with an order of the Court directing the person to execute or make, any conveyance, assignment, document, instrument or endorsement, the Court may, on such terms and conditions, order that the conveyance, assignment, document, instrument or endorsement, be executed or made by such other person as the Court nominates for the purpose at the cost of the person in default, or otherwise as the Court directs.

(2) A conveyance, assignment, document, instrument or endorsement executed or made by such other person as the Court may nominate under subsection (1) shall be valid and be for all purposes available whether or not it had been executed or made by the person originally directed to execute or make it.

**Payment of costs**

77. The Court may order the costs and expenses incidental to an application to the Court under this Act to be paid out of the trust property or to be paid in such manner by such persons as the Court may direct.

**Interpretation and general provisions relating to sections 79 and 80**

78.(1) In sections 79 and 80 —

- (a) references to a transfer or other disposition of property to a trust, do not include a testamentary disposition;
- (b) “power” includes a discretion as to the way in which an obligation is performed.
- (c) “mistake” includes —
  - (i) a mistake as to the effect of, any consequences of, or any of the advantages to be gained by, a transfer or other disposition of property to a trust, or the exercise of a power over or in relation to a trust or trust property;
  - (ii) a mistake as to a fact existing either before or at the time of a transfer or other disposition of property to a trust, or the exercise of a power over or in relation to a trust or trust property; or
  - (iii) a mistake of law including a law of a foreign jurisdiction.

(2) Without prejudice to section 71 and subject to subsection (4), the Court may, consequential upon a declaration made under section 79 or 80, make such order or orders as it thinks fit.

(3) No order may be made under subsection (2) which would prejudice any bona fide purchaser for value of any trust property without notice of the matters which render the transfer or other disposition of property to a trust, or the exercise of any power over or in relation to a trust or trust property, voidable.

(4) Nothing in section 79 or 80 shall prejudice —

- (a) any application for a declaration by the Court that a transfer or other disposition of property to a trust, or the exercise of any power in relation to a trust, is void or voidable on grounds other than those specified in 79 or 80; or
- (b) any personal remedy which may be available against a trustee or any other person.

**Power to set aside a transfer or disposition of property to a trust due to mistake**

**79.(1)** In this section, “person exercising a power” means a person who exercises a power to transfer or make other disposition of property to a trust on behalf of a settlor.

(2) The Court may on the application of a settlor or any of his or her personal representatives or successors in title, and in the circumstances set out in subsection (3), declare that a transfer or other disposition of property to a trust —

- (a) by a settlor acting in person (whether alone or with any other settlor); or
- (b) through a person exercising a power,

is voidable and has such effect, if any, as the Court may determine.

(3) The circumstances referred to in subsection (2) are where the settlor or person exercising a power —

- (a) made a mistake in relation to the transfer or other disposition of property to a trust; and
- (b) would not have made the transfer or other disposition but for that mistake,

and the mistake is serious as to render it just for the Court to make a declaration under this section.

**Power to set aside the exercise of powers in relation to a trust or trust property due to mistake**

**80.(1)** In this section, “person exercising a power” means a person who, otherwise than in the capacity of trustee, exercises a power over, or in relation to a trust, or trust property.

(2) The Court may on the application of any person specified in subsection (4), and in the circumstances set out in subsection (3), declare that the exercise of a power by a trustee or a person exercising a power in relation to a trust or trust property is voidable and —

- (a) has such effect as the Court may determine; or
- (b) is of no effect from the time of its exercise.

(3) The circumstances referred to in subsection (2) are where the trustee or person exercising a power —

- (a) made a mistake in relation to the exercise of its power; and
- (b) would not have exercised the power, or would not have exercised the power in the way it was exercised, but for that mistake,

and the mistake is serious as to render it just for the Court to make a declaration under this section.

(4) An application under subsection (2) may be made by —

- (a) the trustee who exercised the power concerned, or the person exercising a power (as the case may be);
- (b) any other trustee;
- (c) a beneficiary, protector or enforcer; or
- (d) any other person with leave of the Court.

## **PART IV FOREIGN TRUSTS**

### **Provisions relating to foreign trusts**

**81.**(1) This section shall apply to a foreign trust.

(2) Subject to subsections (3) and (5), a foreign trust shall be regarded as being governed by and shall be interpreted in accordance with its proper law.

(3) A foreign trust shall not be enforceable in Seychelles —

(a) to the extent that it purports —

(i) to do anything which is contrary to the law of Seychelles;

(ii) to confer any right or power or impose any obligation the exercise or carrying out of which is contrary to the law of Seychelles;

(iii) to hold, directly or indirectly, immovable property in contravention of section 10(2)(b)(i) or (ii) in Seychelles; or

(b) to the extent that the Court declares that the trust or any activity carried on is immoral or contrary to public policy.

(4) Where subsection (3)(a)(iii) applies, any person in whom the title to such immovable property is vested shall not be a trustee of such immovable property.

(5) Sections 26 to 29 shall apply in the case of a foreign trust with a trustee in Seychelles.

## **PART V PROVISIONS OF GENERAL APPLICATION**

### **Application of Part V**

**82.** This Part shall apply to a Seychelles trust and, to the extent that the context admits, shall apply to a foreign trust.

**Nature of interest of trustee in trust property**

**83.(1)** Subject to subsection (2) —

- (a) legal title to trust property shall be in the name of the trustee or in the name of another person on behalf of the trustee;
- (b) the interest of a trustee in trust property is limited to that which is necessary for the proper administration of the trust; and
- (c) trust property shall constitute a separate fund and shall not form part of the trustee's own property.

(2) Where a trustee is also a beneficiary of the same trust, subsection (1)(c) shall not apply to the trustee's interest in the trust property as a beneficiary.

**Limitation of interest of trustee and following of trust property**

**84.(1)** Subject to subsection (2) —

- (a) the interest of a trustee in the trust property is limited to that which is necessary for the proper performance of the trust; and
- (b) such property shall not be deemed to form part of the trustee's assets.

(2) Where a trustee is also a beneficiary of the same trust, subsection (1) shall not apply to the trustee's interest in the trust property as a beneficiary.

(3) Without prejudice to the liability of a trustee for breach of trust, trust property which has been alienated or converted in breach of trust or the property into which it has been converted may be followed and recovered unless it is in the hands of a bona fide purchaser for value without notice of a breach of trust or a person (other than the trustee) deriving title through such a person.

(4) Where a trustee becomes insolvent or upon distraint, execution or any similar process of a written law being made, taken or used against any rty

property of the trustee, the creditors of the trustee shall have no right or claim against the trust property except to the extent that the trustee itself has a claim against the trust or has a beneficial interest in the trust.

### **Protection of persons dealing with trustee**

**85.(1)** *A bona fide* purchaser for value without actual notice of any breach of trust —

- (a) may deal with a trustee in relation to trust property as if the trustee was the beneficial owner of the trust property; and
- (b) shall not be affected by the trusts on which such property is held.

(2) No person paying or advancing money to a trustee shall be concerned to the use of the money, or that no more than is necessary is raised, or otherwise as to the propriety of the transaction or the application of the money.

### **Limitation of actions or prescription**

**86.(1)** Notwithstanding any other written law, no period of limitation or prescription shall apply to an action brought against a trustee in respect of any fraud to which the trustee was a party or to which the trustee was privy.

(2) Where subsection (1) does not apply, the period within which an action founded on breach of trust or to recover trust property from the trustee may be brought against a trustee by a beneficiary, a protector or an enforcer is —

- (a) three years from the delivery of the final accounts of the trust to the beneficiary, protector or the enforcer; or
- (b) three years from the date on which the beneficiary, protector or the enforcer first has knowledge of the occurrence of a breach of trust,

whichever period shall first begin to run.

(3) Where the beneficiary is a minor the period referred to in

subsection (2) shall not begin to run until the day on which the beneficiary ceases to be a minor.

(4) Where subsection (1) does not apply —

- (a) the period within which an action founded on breach of trust may be brought against a trustee by an enforcer or protector is three years from —
  - (i) the date of delivery of the final accounts to the enforcer or protector; or
  - (ii) the date on which the enforcer or protector first has knowledge of the breach of trust,

whichever is earlier; and

- (b) the period within which an action founded on breach of trust may be brought against a former trustee by a current trustee is three years from the date on which the former trustee ceased to be a trustee of the trust.

(5) This section does not apply to a foreign trust whose proper law is the law of a jurisdiction to which the Hague Convention on the Law Applicable to Trusts and on their Recognition concluded on 1 July 1985, for the time being extends.

### **Fiscal matters**

**87.(1)** Notwithstanding any other provisions of this Act, where a trust derives assessable income in Seychelles, its trustees shall —

- (a) within one month of deriving the first assessable income, notify the Authority in writing that the trust is deriving assessable income and the nature of the activities giving rise to this assessable income; and
- (b) within one year of deriving the first assessable income, submit to the Authority an annual return, in a form prescribed



by the Authority and accompanied by the annual financial statements complying with the requirements of sections 142 and 144 and the Sixth Schedule of the Companies Act.

(2) The Authority shall send a copy of the notice in subsection (1)(a) to the Seychelles Revenue Commission.

(3) Subject to subsection (4) and notwithstanding anything in the Stamp Duty Act, all instruments relating to —

- (a) the formation of a trust;
- (b) transfers of property to or by a trust (acting by its trustees);
- (c) transactions in respect of beneficiaries' interests in a trust;
- (d) the creation, variation or discharge of a charge or other security interests over any property of a trust; and
- (e) other transactions relating to the business or assets of a trust (acting by its trustees),

are exempt from the payment of stamp duty.

(4) Subsection (3) shall not apply to an instrument or class of instruments which the Minister may by regulation exempt, and to an instrument relating to —

- (a) the transfer to or by a trust (acting by its trustees) of an interest in immovable property in Seychelles; or
- (b) the transfer to or by a trust (acting by its trustees) of shares or other interests in a company or other legal person which owns or has any interest in immovable property in Seychelles.

(5) A trustee who fails to comply with subsection (1) shall be liable to a penalty fee not exceeding US\$5,000.

## **PART VI MISCELLANEOUS**

### **Immunity**

**88.** No action, prosecution or other proceedings shall be brought against the Authority or an employee or agent of the Authority, in respect of an act done or omitted to be done in good faith by such person in the performance of functions under this Act.

### **Compliance inspections**

**89.(1)** Any person authorised by the Authority in writing may, for the purpose of monitoring and assessing compliance with this Act, during normal business hours and after giving a notice to the approved trustee of a trust —

- (a) access the principal place of business in Seychelles of the approved trustee;
- (b) inspect the documents required by this Act to be kept in relation to the trust, including, the register to be kept by the approved trustee under section 28(1);
- (c) during or after inspection request explanations pertaining to the trust from the directors or managerial staff of the approved trustee.

(2) Any person who impedes, prevents or obstructs any person acting under the authority of subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding SCR 300,000.

### **Non-disclosure obligation and permitted exceptions**

**90.(1)** Subject to subsection (2), the Authority and each officer, employee and agent of the Authority shall not disclose to a third party any information acquired in the performance of the functions of the Authority.

(2) Subsection (1) shall not apply to any disclosure —

- (a) pursuant to an order of the Court;

- (b) required under this Act or any other written law of Seychelles;
- (c) having the prior written consent of the approved trustee of the relevant trust; or
- (d) where the information disclosed is in statistical form or is otherwise disclosed in such a manner that does not enable the identity of any trust or other person, to which the information relates, to be ascertained.

(3) A person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding SCR 300,000.

### **Punishment for contravening any provision for which no fine is provided**

**91.** Any person who contravenes any provisions of this Act, for which no fine is provided for in this Act, commits an offence and shall on conviction be liable to a fine not exceeding SCR500,000.

### **Power of Authority to refuse to take action in certain cases**

**92.(1)** The Authority may refuse to take any action required under this Act for which a fee is prescribed until such fee is paid.

(2) Before imposing any penalty fee under this Act by the Authority, the person concerned shall be given an opportunity of being heard.

(3) The Authority may, for good cause and reason to be recorded in writing, waive all or any part of any penalty fee imposed under this Act.

### **Act to prevail over other laws**

**93.** Where there is any inconsistency between this Act and the Civil Code of Seychelles Act or the Commercial Code of Seychelles Act, this Act shall prevail.

### **Regulations**

**94.** The Minister may make regulations for carrying out and giving effect to the provisions of this Act and may by regulations amend the Schedule.

**PART VII**  
**REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS**

**Repeal, savings and transitional provisions of International Trusts Act 1994**

**95.(1)** The International Trusts Act (*Cap 276*) is hereby repealed.

(2) Notwithstanding the repeal under subsection (1) —

- (a) any statutory instruments made under the repealed Act, shall to the extent that they are not inconsistent with this Act, shall continue to have effect until they are amended or repealed under the provisions of this Act;
- (b) all suits, prosecutions, appeals or other legal proceedings instituted in any Court or tribunal under the repealed Act and pending before such Court or tribunal prior to the commencement of this Act shall, with effect from such commencement, be deemed to have been instituted under this Act and may be continued accordingly;
- (c) all decrees, orders and judgments made by a court under the repealed Act and remaining unsatisfied prior to the commencement of this Act, shall be enforced under the repealed Act as if this Act has not been enacted;
- (d) anything done or any action taken under the repealed Act shall be deemed to have been done or taken under this Act.

(3) The repeal under subsection (1) shall not affect the legality or validity of —

- (a) anything done in relation to a trust existing before the commencement of this Act; or
- (b) any trust arising from a document or deposition executed or taken effect before the commencement of this Act.

**Re-registration of former trusts**

**96.(1)** For the purposes of this section, —

- (a) a “former trust” means a trust —
  - (i) in respect of which a declaration has been registered under section 75 of the repealed Act; and
  - (ii) subsisting as such on the commencement of this Act;
- (b) “repealed Act” means the International Trusts Act (*Cap 276*) repealed by section 96.

(2) A former trust shall be deemed to be re-registered as a registered trust under this Act with effect from the date of the commencement of this Act, and the Authority shall as soon as is practicable —

- (a) allot a reference number to the trust; and
- (b) enter in the Register the name and other particulars referred to in section 13(1).

(3) The reference number allotted to a trust under subsection (2) may be the number previously allotted to the trust under the repealed Act.

(4) The approved trustee of a former trust shall be deemed to be re-registered under subsection (2), and may request from the Authority, a letter confirming the re-registration and the Authority shall issue at no cost, a letter to that effect.

(5) The letter of re-registration referred to in subsection (5) shall state —

- (a) the name and unique registration number of the trust;
- (b) that the former trust was re-registered under this Act on the commencement of this Act; and
- (c) the date of registration under section 75 of the repealed Act.

(6) Except as otherwise provided, the provisions of this Act shall apply to a trust that is deemed to be registered under this section as it such trust is registered under this Act.

## SCHEDULE

### (Sections 11, 12 and 13)

#### FEE

1	2	3
Sl. No.	Provisions of the Act and purpose	Amount (in US\$)
1.	<i>section 11(1)(b)</i> Trustee appointment declaration registration fee (one off)	\$200
2.	<i>section 12(1)</i> Filing of a notice of appointment of a Seychelles trustee	\$50
3.	<i>section 12(2)</i> Filing of a notice of cessation of a Seychelles trustee	\$50
4.	<i>section 12(3)</i> Filing of a notice of termination of a registered trust	\$50
5.	<i>section 13(2)</i> An inspection of the Register (per trust)	\$50
6.	<i>section 13(2)</i> Obtaining a copy of any document available on inspection (per page)	\$1
7.	<i>section 13(4)</i> Request of official search	\$75
8.	Filing of any document (as required or permitted under this Act) relating to a registered trust, other than as set out above in this Schedule	\$75

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 28<sup>th</sup> July, 2021.



Ms. Alexandria Faure  
Deputy Clerk to the National Assembly

**FOUNDATIONS (AMENDMENT) BILL, 2021***(Bill No. 35 of 2021)***OBJECTS AND REASONS**

The Foundations Act allows for the registration of Foundations with the FSA. A foundation has the features of both a company and a trust. In view that civil law jurisdictions do not recognize trusts, foundations were introduced in Seychelles to serve that market. A foundation is legally a separate entity. Once assets have been transferred to a foundation, they become the assets of that foundation with full legal and beneficial title and do not form part of the founder's personal estate on death.

2. In line with international standard in relation to exchange of information in tax matters and especially, following the subsequent review of Seychelles by the Global Forum of the Organization for Economic Corporation & Development (“OECD”), amendments are being proposed to the Foundations Act, to improve the availability of information in Seychelles and hence, improving the standing of Seychelles' vis-à-vis such international standards. To give effect to these matters, some of the notable amendment of this Bill are hereby mentioned.

3. A new section 30A would now impose an obligation on registered agents to preserve for 7 years, such records of the foundation (already being kept at their business premise in Seychelles) in respect of which they act as registered agent. This will ensure the availability of information, mainly legal ownership and accounting information upon request by relevant authorities.

4. Amendment to section 75 is being proposed in order to reduce the risk of unavailability of accounting records (as currently similar to IBCs, the law allows foundations to keep accounting records outside Seychelles on the condition that they should promptly be made available to Seychelles' authorities upon request) to require all foundations to keep their accounting records at their registered office (i.e. with the registered agent) in Seychelles. A foundation will also be allowed to keep a copy of its accounting records in electronic form in Seychelles instead of the original records.



5. Amendment to section 101 is being proposed in order to ensure that struck-off foundations remedy any previous contraventions to record keeping obligations before being restored. It is being proposed, to make it a legal requirement that the Court will only restore a foundation if it is satisfied that the foundation is in compliance with its obligations relating to accounting records, and the keeping of registers of councilors, registered agents, supervisory persons, authorised persons, beneficiaries and founders.

6. Amendment to section 101 is being proposed in order to reduce the risks associated with struck-off foundations retaining their legal status for 10 years, to reduce the number of years that a struck off foundation holds its legal status from 10 years to 3 years (i.e. a foundation will be automatically dissolved after 3 years of being struck off).

7. Amendment to section 103 in line with OECD's recommendation for international business companies (IBCs), in order to reduce the risks associated with struck-off foundations retaining their legal status for 10 years, it is proposed to reduce the number of years that a struck off foundation be “automatically” dissolved to 3 years.

8. Amendment to schedule 1 to provide for the new fees payable to the Registrar and amendment 9 provides for commencement date in relation to section 5, 6, 7 and 8 to come into operation from 1<sup>st</sup> January 2022 and that section 75 as amended shall be complied with by Foundations within 6 months from the commencement of this Act.

9. The Bill seeks to achieve the above objectives.

**Dated this 23rd day of July, 2021.**

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

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**FOUNDATIONS (AMENDMENT) BILL, 2021**

*(Bill No. 35 of 2021)*

**ARRANGEMENT OF SECTIONS**

**Sections**

1. Short title
2. Amendment of section 2 of Cap 270
3. Insertion of new section 30A
4. Amendment of section 75
5. Amendment of Section 77A
6. Substitution of new section for section 101
7. Amendment of section 102
8. Amendment of section 103
9. Amendment of Schedule 1
10. Commencement and compliance of certain provisions



**FOUNDATIONS (AMENDMENT) BILL, 2021**

*(Bill No. 35 of 2021)*



**A BILL**

**FOR**

**AN ACT to amend the Foundations Act (*Cap 270*).**

**ENACTED** by the President and the National Assembly.

**Short title**

**1.** This Act may be cited as the Foundations (Amendment) Act, 2021.

**Amendment of section 2 of Cap 270**

2. Section 2 of the Foundations Act (*Cap 270*) (*hereinafter referred to as the “principal Act”*) is amended by repealing the definition of “Registrar”, and substituting therefor the following definition —

“ “Registrar” means the Financial Services Authority established under the Financial Services Authority Act (*Act 19 of 2013*);”.

**Insertion of new section 30A**

3. The principal Act is amended by inserting after section 30, the following section —

**Registered Agent —**

“30A.(1) A registered agent shall, in respect of each Foundation (including a Foundation, whose name has been struck-off the Register or which is dissolved or which has continued outside Seychelles) to which it was or is acting as registered agent, preserve for at least 7 years —

- (a) the registers specified in section 77(1), from the date of the last striking-off or dissolution of the Foundation;
- (b) the accounting records of the Foundation in the possession of the registered agent, from the date of completion of the transactions or operations to which they each relate.

(2) Where a registered agent ceases to hold a licence to provide foundation services under the International Corporate Service Providers Act (*Cap 275*), that person shall handover all the records specified under subsection (1) to the Registrar or any other person approved by the Registrar.

(3) All records to be handedover under subsection (2) shall be preferably in the digital form or in such form as agreed upon between the Registrar and the registered agent.

(4) If the registered agent fails to comply with the requirements of this section, the registered agent shall be liable to a penalty not exceeding US\$10,000.”.

#### **Amendment of section 75**

**4.** Section 75 of the principal Act is amended —

- (a) in subsection (1)(c), by repealing the word “accounts”, and substituting therefor the words “financial statements”;
- (b) by repealing subsection (3), and substituting therefor the following subsections —

“(3) A Foundation shall —

- (a) prepare an annual financial summary to be kept at its registered office in Seychelles within 6 months from the end of the Foundation's financial year; and
- (b) on a bi-annual basis, keep its accounting records at its registered office in Seychelles.

(3A) It shall be sufficient compliance with subsection (3) if a copy of the accounting records and financial summary is kept in electronic form at the Foundation's registered office.

(3B) Where a Foundation keeps a copy of its accounting records at its registered office, the Foundation shall keep, with its registered agent, a written record of the physical address of the place where the original accounting records are being kept, and of any change thereto.

(3C) The financial year of the Foundation shall be the calendar year, unless it is changed by a resolution of councillors and notified to the Foundation's registered agent within 14 days of the passing of the resolution.

(3D) The Registrar may issue written guidelines regarding the implementation of the obligations relating to accounting records.”;

- (c) by repealing subsections (5) and (6), and substituting therefor the following subsections —

“(5) Where a Foundation fails to comply with the requirements of subsection (1), (3) or (3B), the Foundation shall be liable to a penalty not exceeding US\$10,000.

(6) Where a Foundation is liable to a penalty under subsection (5) for non-compliance with subsection (1), (3) or (3B), the councillor who is responsible for such non-compliance shall also be liable to a penalty not exceeding US\$10,000.”.

### **Amendment of section 77A**

5. Section 77A of the principal Act is amended —

- (i) by inserting after subsection (1), the following subsection —

“(1A) For the purposes of sub-section (1), where a document is not in the English or French language, the Registrar may request a translation of the records in the English or French language from the Foundation or from the registered agent.”

- (ii) in subsection (2),

by inserting after the words “compliance inspection” the words “, or fails to comply with subsection (1A),”.

### **Substitution of new section for section 101**

6. The principal Act is amended by repealing section 101, and substituting therefor the following section —

### **Application to Court for restoration of Foundation to Register**

“101.(1) This section shall apply in relation to the proposed restoration of the name of a Foundation who has been dissolved or whose name has been struck off the Register but is not yet dissolved.

(2) An application for restoration of the name of the Foundation to the Register may be made to the court by —

- (a) a creditor, councillor, founder, protector or liquidator of the Foundation; or
- (b) any person who can establish an interest in the Foundation to be restored to the Register.

(3) An application under sub-section (2) to restore the name of a struck-off or dissolved Foundation to the Register may be made to the Court —

- (a) within one year from the date of the striking off the Foundation; or
- (b) within five years of the date of dissolution of the Foundation.

(4) A notice of the application shall be served on the Registrar, who is entitled to appear and be heard on the hearing of the application.

(5) On an application under subsection (2) and subject to subsection (6), the court may —

- (a) restore the Foundation to the Register subject to such conditions as it considers appropriate; and
- (b) give such directions or make such orders as it considers necessary or desirable for the



purpose of placing the Foundation and any other persons as nearly as possible in the same position as if the Foundation had not been dissolved or struck off the Register.

(6) The court shall not make an order restoring a Foundation to the Register, unless it is satisfied that —

- (a) a person with a foundation services licence under the International Corporate Service Providers Act (*Cap 275*) has agreed to act as registered agent of the Foundation; and
- (b) the Foundation is in compliance with its obligations —
  - (i) under this Act relating to —
    - (A) accounting records; and
    - (B) the registers specified under section 77(1); and
  - (ii) under the Beneficial Ownership Act, 2020 (*Act 4 of 2020*) relating to register of beneficial owners.

(7) Where the court makes an order restoring a Foundation to the Register, a sealed copy of the order shall be filed with the Registrar by the applicant.

(8) On receiving a sealed copy of the order under subsection (7), and subject to payment to the Registrar of all outstanding annual fees and any penalty or other fees payable under this Act in relation to the Foundation, the Registrar shall restore the Foundation to the Register with effect from the date and time that the copy of the sealed order was filed.

(9) A Foundation is restored to the Register with the name that it had immediately before it was dissolved or struck-off the Register.

(10) A Foundation that is restored to the Register is deemed to have continued in existence as if it had never been dissolved or struck off the Register.”.

### **Amendment of section 102**

7. Section 102 of the principal Act is amended —

(a) by repealing subsection (1), and substituting therefor the following subsections —

“(1) Subject to subsection (1A), where the name of a Foundation has been struck off the Register under section 99(2) or a Foundation has been deemed dissolved under section 103(1), the Foundation or a councillor, beneficiary, founder, supervisory person or liquidator thereof, may apply to the Registrar to have the name of the Foundation restored to the Register.

(1A) An application under subsection (1) may be made to the Registrar —

(a) within one year from the date of the striking off the Foundation; or

(b) within five years of the date of dissolution of the Foundation.”;

(b) in subsection (2), by repealing the words “The Registrar may”, and substituting therefor the words “Subject to subsection (2A), the Registrar may”;

(c) by inserting after subsection (2), the following subsection —

“(2A) The Registrar shall not restore the name of a Foundation to the Register unless the Registrar is satisfied that the Foundation is in compliance with its obligations —

(a) under this Act relating to —

(i) accounting records; and

- (ii) the registers specified in section 77(1); and
- (b) under the Beneficial Ownership Act, 2020 (*Act 4 of 2020*) relating to register of beneficial owners.”.

### **Amendment of section 103**

8. Section 103 of the principal Act is amended in subsection (1) by repealing the words “3 years or 10 years respectively” and substituting thereof the words “one year”.

### **Amendment of Schedule 1**

9. Schedule 1 of the principal Act is amended, in PART 2, by inserting after paragraph (l), the following paragraphs —

<p style="text-align: right;"><i>[section 101(7)]</i></p> <p>(m) For filing with the Registrar of a sealed copy of an order of the court for the restoration of the name of a Foundation to the Register</p>	US\$500
<p style="text-align: right;"><i>[section 102(1)]</i></p> <p>(n) For the restoration of the name of a Foundation to the Register by the Registrar —</p> <p style="padding-left: 40px;">(i) if the application for restoration is made 6 months or less after the date that the name of the Foundation was struck off the Register; or</p> <p style="padding-left: 40px;">(ii) if the application for restoration is made more than 6 months after the date that the name of the Foundation was struck off the Register.</p>	<p style="text-align: center;">(i) US\$300</p> <p style="text-align: center;">(ii) US\$500”.</p>

**Commencement and compliance of certain provisions**

**10.**(1) Sections 5, 6, 7 and 8 shall come into operation from 1st January, 2022.

(2) Every Foundation shall comply with section 75 of the Foundation Act (*Cap 270*), as amended by this Act, within a period of 6 months from the commencement of this Act.

## **INTERNATIONAL CORPORATE SERVICE PROVIDERS (AMENDMENT) BILL, 2021**

*(Bill No. 36 of 2021)*

### **OBJECTS AND REASONS**

As a consequence of the amendments made to the International Business Companies Act, 2016 (“IBC Act”) to introduce Private Trust Companies (PTCs) amendments are required in the International Corporate Service Providers Act to provide for the main provisions for PTCs. The notable amendments to cater for these changes are hereby mentioned.

2. Amendment of Cap 275 to introduce some terms in relation to trust throughout the Act.

3. Amendment to section 3 is being proposed to provide that every Seychelles trust must have a Trustee Service Provider (“trustee”) licensed by the FSA under the ICSP Act. The amendments to the ICSP Act (read with the proposed new Trusts Bill and IBC Act) will widen the scope of who may be a trustee of a Seychelles trust which only involves “connected trust services” (related persons). In such cases the trustee may either be a licensed trustee or a PTC, therefore, the following amendments herein stated are being proposed.

4. A new section 3A to allow a PTC or a licensed trustee to provide ‘connected trust services’.

5. A new section 3B that places restrictions on what a private trust company may do.

6. A new section 3C places an obligation on a private trust company to ensure that at all times its registered agent is a company that holds an international corporate service license and a trustees services license under this Act.

7. A new section 3D that places an obligation on registered agents of a private trust company to keep at its registered office records as specified in regards to a trust and a trust register.

8. Amendment of schedule 3 provide for the payment of the annual license fee on a pro-rata basis if the license is not granted in the month of January.

9. Amendment 7 is inserting a new schedule which provides;

(a) the definition of the terms 'Connected Trust Services';

(b) An interpretation part for schedule 5; and

(c) A definition of the term 'Connected persons'

10. The Bill seeks to achieve the above objectives.

**Dated this 23rd day of July, 2021.**

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

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**INTERNATIONAL CORPORATE SERVICE PROVIDERS  
(AMENDMENT) BILL, 2021**

*(Bill No. 36 of 2021)*

**ARRANGEMENT OF SECTIONS**

**Sections**

1. Short title
2. Amendment of Cap 275 by substituting certain terms throughout the Act
3. Amendment of section 2
4. Amendment of section 3
5. Insertion of new sections 3A, 3B, 3C and 3D
6. Amendment of Schedule 3
7. Insertion of new Schedule 5





**INTERNATIONAL CORPORATE SERVICE PROVIDERS  
(AMENDMENT) BILL, 2021**

*(Bill No. 36 of 2021)*



**A BILL**

**FOR**

**AN ACT to amend the International Corporate Service Providers Act  
(Cap 275).**

**ENACTED** by the President and the National Assembly.

**Short title**

**1.** This Act may be cited as the International Corporate Service Providers (Amendment) Act, 2021.

## **Amendment of Cap 275 by substituting certain terms throughout the Act**

**2.** The International Corporate Service Providers Act (*Cap 275*) (*hereinafter referred to as the “principal Act”*) is amended by repealing the words “international trust”, “international trustee services” and “international trustee”, wherever they appear throughout the principal Act (including Schedules) and substituting therefor the words “trust”, “trustee services” and “trustee”, respectively.

### **Amendment of section 2**

**3.** Section 2 of the principal Act is amended —

- (i) by repealing the definition of “international trust”;
- (ii) by inserting, in the alphabetical order, the following definitions —

“ “Authority” means the Financial Services Authority established under the Financial Services Authority Act (Act 19 of 2013);

“connected trust services” has the meaning as defined in Schedule 5;

“private trust company” means an international business company —

- (a) whose memorandum of association states that it is a private trust company; and
- (b) which shall not conduct any business other than the providing of connected trust services in relation to a trust to which it is a trustee;

“trust” means a trust established under the Trusts Act, 2021;”.

**Amendment of section 3****4.** Section 3 of the principal Act is amended —

- (a) in subsection (1), by inserting after paragraph (iii), the following paragraph —

“(iii-a) A private trust company shall not require a licence under this section to provide connected trust services.”;

- (b) by inserting after subsection (1), the following subsection —

“(1A) A person holding an international trustee services licence, on the commencement of the International Corporate Service Providers (Amendment) Act, 2021, shall be deemed to hold a trustee services licence under this Act.”.

**Insertion of new sections 3A, 3B, 3C and 3D****5.** The principal Act is amended, by inserting after section 3, the following sections —**Authorisation for providing connected trust services**

“**3A.**(1) A private trust company shall not provide any connected trust services without obtaining an authorisation from the Authority.

(2) A private trust company shall make an application to the Authority for obtaining an authorisation under subsection (1) which shall be accompanied with —

- (a) a declaration stating —

- (i) the name of the private trust company and its registration number;
- (ii) the name of its registered agent or company secretary; and

(iii) that it is in compliance with the requirements of this section and Schedule 5; and

(b) an application fee of US\$1,000.

(3) The Authority may grant or reject the application for authorisation and may at any time revoke the authorisation granted under this section.

(4) A private trust company shall, on or before the date of each annual anniversary of it being authorised under this section —

(a) file with the Authority a compliance declaration in the form provided by the Authority; and

(b) pay an annual fee of US\$1,000.

(5) Where the annual fee referred to in subsection (4)(b) is not paid within the period specified in that subsection, there shall be payable an additional fee equal to 10 per cent of the annual fee for each month or part thereof during which the annual fee and additional fee remains unpaid.

(6) A private trust company that files any false, misleading or inaccurate information under subsection (2)(a) or (4)(a) commits an offence and is liable on conviction to fine not exceeding SCR300,000.

(7) Without prejudice to subsection (6), the Authority may revoke the authorisation granted to a private trust company if the Authority is satisfied that the company has filed any false, misleading or inaccurate information under subsection (2)(a) or (4)(a) and notify the company in writing.

(8) Sections 5 to 7 and Parts III and IV shall, in so far as practicable, apply to a private trust company authorised under this section as they apply to a licensee under this Act.

**Restrictions**

**3B.(1)** A private trust company shall not —

- (a) provide any trust services that is not connected trust services; or
- (b) solicit trust services from members of the public.

(2) A private trust company that contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding SCR300,000.

**Registered agent**

**3C.** A private trust company shall ensure that at all times its registered agent is a company which —

- (a) holds both an international corporate services licence and a trustee services licence under this Act; or
- (b) holds an international corporate services licence and is wholly owned by one or more persons who wholly owns another company which holds a trustee services licence under this Act.

**Records to be kept at registered office**

**3D.** A private trust company shall, in relation to each trust of which it is trustee, keep at its registered office —

- (a) copies of the trust deed, or other document creating or establishing a trust, and any deed or document varying the terms of the trust under the Trusts Act, 2021; and
- (b) the trust register required to be kept under section 28 of the Trusts Act, 2021.”.

### **Amendment of Schedule 3**

**6.** Schedule 3 of the principal is amended in Part 2, by inserting after paragraph 2, the following paragraph —

“**3.** If a licence under this Act is not first granted in the month of January, the first annual licence fee payable under this Act shall be reduced on a quarterly pro-rata basis, calculated having regard to the quarter in which the licence was first granted.”.

### **Insertion of new Schedule 5**

**7.** The principal Act is amended, by inserting after Schedule 4, the following Schedule —

#### **“SCHEDULE 5**

#### **CONNECTED TRUST SERVICES**

**1. Connected trust services.** “connected trust services” means the trust services provided in respect of —

- (a) a single trust where each beneficiary of the trust is —
  - (i) a connected person in relation to the settlor of the trust; or
  - (ii) a charity; or
- (b) a group of two or more connected trusts;

**2. Interpretation.** (1) For the purposes of this Schedule —

“connected person” has the meaning specified in paragraph 3;

“connected trusts” means as defined in subparagraphs (2) and (3);

“group of companies” comprises, subject to subparagraph (4), every company which, directly or indirectly, is a subsidiary of

the same holding company, and such group includes the holding company;

“settlor” means as defined in the Trusts Act, 2021;

“trust” means a trust created or established and registered in accordance with the Trusts Act, 2021;

“trust services” means the provision of trustee services, whether provided in or outside Seychelles.

(2) A trust (the first trust) is connected to another trust (the second trust) where the settlor of the first trust is a connected person with respect to the settlor of the second trust.

(3) A group of two or more trusts are connected trusts where each trust in the group is connected to all of the other trusts in the group.

(4) A company shall be treated as a subsidiary (“the subsidiary”) of another company (“the holding company”) where —

- (a) the holding company is a member of the subsidiary and controls the composition of the board of directors of the subsidiary;
- (b) the holding company, directly or indirectly, controls more than half of the votes which may be cast at general meetings of the subsidiary; or
- (c) the subsidiary is a subsidiary of any other company which is itself a subsidiary of the holding company.

(5) In subparagraph (4)(a), the composition of the board of directors of a company shall be treated as controlled by another company if that other company, by the exercise of some power, without the consent or concurrence of any other person, can appoint or remove all or a majority of the directors.

**3. Connected persons.** (1) For the purposes of this Schedule, a person is a connected person in relation to another person if —

- (a) each is in a group of companies;
- (b) one is a company and the other is a beneficial owner of shares or other ownership interests of that company or of any other company in the same group of companies;
- (c) each is the trustee of a related trust; or
- (d) one individual is related to the other by virtue of any of the following relationships —
  - (i) spouse;
  - (ii) the descendants of the individual and their spouses;
  - (iii) parents, including step-parents;
  - (iv) grandparents;
  - (v) parents-in-law, including step-parents-in-law;
  - (vi) brother, step-brother, sister, step-sister and their spouses and children;
  - (vii) spouse's grandparents;
  - (viii) spouse's brother, step-brother, sister, step-sister and their spouses and children;
  - (ix) parent's brother, step-brother, sister, step-sister and their spouses;
  - (x) children of the brother, step-brother, sister or step-sister of the individual's parents, both present and future, including step-children and their spouses; or



(xi) children of the individual's brother, step-brother, sister or step-sister, both present and future, including step-children and their spouses.

(2) For any of the relationships specified in subparagraph (1)(d) that may be established by affinity or consanguinity, that same relationship may be established by adoption.

(3) In subparagraph (1)(d)(ii), the terms “descendants of the individual”, means the individual's children, the children of his children, the children of those children, and so on.

(4) In subparagraph (3), “children” includes step-children.”.

**COMPANIES (SPECIAL LICENCES) (AMENDMENT) BILL, 2021***(Bill No. 34 of 2021)***OBJECTS AND REASONS**

Companies (Special Licences), commonly referred to as CSLs, are companies incorporated or continued under the Companies Ordinance, 1972 read with the CSL Act. A CSL, in the past, used to be taxed on its worldwide income at a business tax rate of 1.5%, but this is no longer applicable. In order to improve the regulatory oversight of such companies and enhance their business environment, a number of the notable amendments are being proposed to the CSL Act are hereby detailed..

2. To amendment to section 5 will revise the application requirements for a Special Licence for a new company to bring it in line the IBC process. In the past, a CSL application had been assessed as if it was a “licence” for a “regulated activity”, when in reality it is not.

3. To amend section 8 to provide that, where a company is incorporated, continued, converted or an existing company issued with a Special Licence under the Act, the Companies Act shall apply to the company, subject to the provisions of the CSL Act.

4. To amend section 9 to provide clarification regarding the validity of a Special Licence. That is, a Special Licence issued by the FSA shall be valid unless revoked by or surrendered to the Authority.

5. To amend section 10 to extend the grounds under which the Authority may revoke a Special Licence to include cases where a relevant company has failed to —

- (a) pay its annual fee within 6 months of the due date; and
- (b) have a secretary for a period longer than 60 days.

6. In section 10, to amend the revocation process so that the revocation of a Special Licence is effective when it is revoked by the Authority rather

than having to wait for any appeal against the decision of the Authority to be made to the Court first (or the company failing to make an appeal within 90 days from the date of revocation by the Authority).

7. A new section 12A to provide, in line with modern company laws, the minimum number of member of a CSL which may be one.

8. To amend section 13 to reflect the current practice whereby the secretary of a CSL must be a person licensed under the International Corporate Service Providers Act to provide international corporate services.

9. To amend section 15 to extend the time frame for submission of a CSL's annual return and audited accounts from 90 days to 6 months for practicality purposes. The new provisions will also provide power to the Authority to extend the time frame for submission of these documents.

10. In view of the new conversion provisions under the International Business Companies Act, 2016 (i.e. which provides for IBCs to convert into a domestic company under the Companies Ordinance, 1972 and vice versa), it is proposed to amend section 16 and 17 of the CSL Act to remove references to IBCs. Only foreign companies will be able to continue into Seychelles via the CSL Act. This will remove the conflict between the IBC Act and CSL Act.

11. To repeal the current section 22 providing for the “Preservation of secrecy” as it is not in line with the international standards of transparency and to replace it with new provisions in line with newly enacted laws. The new provisions will provide that the Authority, the Registrar of Companies, and each officer, employee and agent of the Authority or the Registrar of Companies, shall not disclose to a third party any information or documents acquired in the performance of their functions under this Act, except where permitted or required under any provisions of this Act or any other written laws of Seychelles, pursuant to a Court Order, etc.

12. To repeal and replace current section 23 to provide more detailed provisions in relation to payment of annual licence fees. A CSL must pay to the Authority the annual licence fee on the date of each anniversary of its Special Licence. Where it fails to comply, the amount of the annual licence

fee shall increase by 10%. In the event that the contravention continues, the amount of the annual licence fee shall increase by 25% after 3 months from the date when it becomes due.

13. In line with the Base Erosion and Profit Shifting (BEPS) project of the OECD whereby the tax concessionary rate and the withholding tax exemptions are being removed, the following additional amendments are being proposed

(a) Repeal section 4 and Schedule 1: In view that there will no longer be much incentives for CSLs (except for stamp duty), it is proposed to remove the list of approved activities. Therefore, CSLs will be able to conduct any legal activity that it wishes to undertake.

(b) Repeal section 20(2) to (6). In view that CSLs will be able to undertake any activity in Seychelles, it is proposed to repeal all exemptions and concessions under section 20 except for stamp duty, but modified accordingly so as it will not apply in relation transfer of interest involving immovable property.

(c) Repeal section 24(2) which provides that that any amendment made by the Minister through Regulations shall not operate to the disadvantage of a CSL at the time of the coming into effect of the regulations in connect ion with any concession enjoyed by that company at the time.

13. By inserting a new section 25 to provide that every existing relevant company, regardless of whether the validity period specified on its special licence has expired, shall comply sections 15 (submission of annual return and audited accounts) and 23 (payment of annual licence fees) within 3 months of enactment of this Amended Act.

14. The Bill seeks to achieve the above objectives.

**Dated this 23rd day of July, 2021.**

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

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**COMPANIES (SPECIAL LICENCES) (AMENDMENT) BILL, 2021***(Bill No. 34 of 2021)***ARRANGEMENT OF SECTIONS****Sections**

1. Short title
2. Amendment of section 2 of Cap 253
3. Repeal of section 4
4. Amendment of section 5
5. Amendment of section 6
6. Substitution of section 8
7. Amendment of section 9
8. Amendment of section 10
9. Insertion of new section 10A
10. Amendment of section 12
11. Insertion of new section 12A
12. Amendment of section 13
13. Substitution of section 15
14. Amendment of section 16
15. Amendment of section 17
16. Amendment of section 18
17. Insertion of new sections 18A, 18B, 18C and 18D
18. Repeal of section 19
19. Amendment of section 20
20. Substitution of section 22
21. Substitution of section 23
22. Amendment of section 24
23. Insertion of new section 25
24. Repeal of Schedule 1
25. Amendment of Schedule 3

**COMPANIES (SPECIAL LICENCES) (AMENDMENT) BILL, 2021**

*(Bill No. 34 of 2021)*



**A BILL**

**FOR**

**AN ACT to amend the Companies (Special Licences) Act (*Cap* 253).**

**ENACTED** by the President and the National Assembly.

**Short title**

**1.** This Act may be cited as the Companies (Special Licences) (Amendment) Act, 2021.

**Amendment of section 2 of Cap 253**

2. Section 2 of the Companies (Special Licences) Act (*Cap 252*) (*hereinafter referred to as the “principal Act”*) is amended by inserting, in alphabetical order, the following definitions —

“ “assessable income” means the income as defined under the Business Tax Act;

“ordinary company” means a company incorporated under the Companies Act, but does not include a relevant company;”.

**Repeal of section 4**

3. The principal Act is amended, by repealing section 4.

**Amendment of section 5**

4. Section 5(2) of the principal Act is amended —

(i) by repealing paragraph (a) and substituting therefor the following paragraph —

“(a) the application fee set out in Schedule 3;”;

(ii) in paragraph (b), by repealing the words “and, where any such shareholder is a nominee, the name and address of the person on whose behalf the shares are held by the nominee”;

(iii) in paragraph (d), by repealing subparagraph (iv);

(iv) in paragraph (e), by repealing the words “, if any, issued under section 19”, and substituting therefor the words “issued by the Registrar of Companies”.

**Amendment of section 6**

5. Section 6 of the principal Act is amended —

- (i) by repealing the words “the certificate”, and substituting therefor the words “a written notice”;
- (ii) by repealing the words “section 5(2)(c), (d) and (e)”, and substituting therefor the words “section 5(2)(b), (c) and (d)”.

### **Substitution of section 8**

**6.** The principal Act is amended, by repealing section 8, and substituting therefor the following section —

#### **Effect of incorporation**

“8.(1) Where —

- (a) a company is incorporated or continued in accordance with section 7 or section 16;
- (b) an international business company is converted into a relevant company in accordance with the International Business Companies Act, 2016;
- (c) an ordinary company is issued with a special licence,

the provisions of the Companies Act shall, subject to the provisions of this Act, apply to and in respect of that company.”.

### **Amendment of section 9**

**7.** Section 9 of the principal Act is amended —

- (i) in subsection (2), by repealing the word “licence”, and substituting therefor the words “special licence”;
- (ii) by inserting after subsection (2), the following subsection —

“(3) A special licence issued under this Act shall be valid unless revoked by, or surrendered to, the Authority.”.



**Amendment of section 10**

**8.** Section 10 of the principal Act is amended —

(a) in subsection (1) —

- (i) in paragraph (c), by repealing the word “or” appearing at the end;
- (ii) in paragraph (d), by repealing the comma (“,”), and substituting therefor a semicolon (“;”);
- (iii) by inserting, after paragraph (d), the following paragraphs —

“(e) a relevant company has failed to pay its increased annual licence fee payable under section 23(3) within 6 months following the due date of its annual licence fee payable under section 23(1); or

(f) a relevant company has failed to appoint a secretary under section 13(1) within a period of 60 days from the date of its vacancy.”;

(b) in subsection (2) —

- (i) by repealing the words “if the Authority after considering any representations which the relevant company makes within that time is satisfied that the ground specified in the notice for the proposed revocation is made out”, and substituting therefor the words “the relevant company has not shown good cause in its representation as to why its special licence should not be revoked”;
- (ii) by repealing the words “and the notice shall only have effect subject to the provisions of subsection (4)”;

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

“(3) Upon revocation or surrender of a special licence —

- (a) the provisions of this Act shall not apply to the relevant company; and
- (b) the relevant company remains a body corporate registered under the Companies Act.”;

- (d) by repealing subsection (4).

### **Insertion of new section 10A**

9. The principal Act is amended, by inserting after section 10, the following section —

#### **Surrender of special licence**

“10A. A relevant company which has paid all fees and penalty fees due under this Act may, at any time, surrender its special licence to the Authority in accordance with section 30 of the Financial Services Authority Act, 2013.”.

### **Amendment of section 12**

10. Section 12 of the principal Act is amended, by repealing the words “two individuals”, and substituting therefor the words “one individual”.

### **Insertion of new section 12A**

11. The principal Act is amended, by inserting after section 12, the following section —

#### **Requirement of minimum number of members of a relevant company**

“12A. A relevant company shall at all times have one or more members as required under the Companies Act.”.

**Amendment of section 13**

**12.** Section 13(1) of the principal Act is amended, by repealing the words “resident of Seychelles or a body corporate incorporated in Seychelles”, and substituting therefor the words “person licensed under the International Corporate Service Providers Act to provide international corporate services”.

**Substitution of section 15**

**13.** The principal Act is amended, by repealing section 15, and substituting therefor the following section —

**Annual return and accounts**

**“15.(1)** A relevant company shall submit to the Authority, within 6 months of the end of its financial year or within such longer period as may be approved in writing by the Authority —

- (a) its annual return;
- (b) its annual audited accounts; and
- (c) the fee set out in Schedule 3.

(2) The annual return referred to in subsection (1)(a) may be signed by the secretary and one or more directors on behalf of all the directors. if so authorised by a resolution of directors.

(3) The audited accounts referred to in subsection (1)(b) may be signed by one or more directors on behalf of all the directors if so authorised by a resolution of directors.

(4) If a relevant company contravenes subsection (1) it shall be liable to a penalty fee not exceeding US\$10,000.

(5) Section 117 of the Companies Act (relating to offences in connection with annual return) shall apply to a relevant company as if the words “the Registrar” in that section

were repealed and the words “the Authority” were substituted therefor.

(6) Any person may inspect during office hours the annual return and audited accounts of a relevant company which has derived any assessable income in Seychelles.

(7) The Authority may, in good faith and for the reasons to be recorded in writing, waive all or any part of any penalty fee imposed under this section.”.

### **Amendment of section 16**

**14.** Section 16 of the principal Act is amended —

- (i) in the marginal heading, by repealing the words “an IBC or”;
- (ii) in subsection (1), —
  - (a) by repealing the words “An international business company incorporated under the International Business Companies Act or a company”, and substituting therefor the words “A company”;
  - (b) in paragraph (d), by repealing the words “the certificate”, and substituting therefor the words “a notice”.

### **Amendment of section 17**

**15.** Section 17(1)(a)(iii) of the principal Act is amended, by repealing the words “the International Business Companies Act or”.

### **Amendment of section 18**

**16.** Section 18 of the principal Act is amended —

- (i) in subsection (1), by inserting after the words “Subject to” the words “subsection (3) and to”;

- (ii) by inserting after subsection (2), the following subsection —

“(3) A relevant company that continues as a company incorporated under the laws of a jurisdiction outside Seychelles does not cease to be a company incorporated in accordance with this Act, unless —

- (a) it has paid all its fees and any penalty fee or fine required to be paid under this Act or the Companies Act;
- (b) it has submitted its annual return under this Act; and
- (c) the laws of the jurisdiction outside Seychelles permit such continuation and the company has complied with those laws.”.

### **Insertion of new sections 18A, 18B, 18C and 18D**

**17.** The principal Act is amended by inserting after section 18, the following sections —

#### **Application for special licence by an ordinary company**

“**18A.**(1) An application by an ordinary company for a special licence shall be made to the Authority in the prescribed form and accompanied with —

- (a) a certified copy of the company's certificate of incorporation and memorandum and articles of association under the Companies Act;
- (b) a certificate of good standing issued under the Companies Act;

- (c) a certified copy of the particulars of directors of the company;
- (d) a certified copy of the particulars of the secretary of the company;
- (e) a certified copy of the notice of the situation of the registered office of the company; and
- (f) the application fee set out in Schedule 3.

(2) If the Authority approves an application under subsection (1), it shall notify the applicant and issue a special licence to the company on payment of the annual licence fee.

(3) Where a company is issued a special licence under this section, the provisions of the Companies Act shall, subject to the provisions of this Act, continue to apply to and in respect of that company.

### **Certificate of good standing**

**18B.** The Registrar of Companies shall not issue a certificate of good standing under the Companies Act unless he has received a written confirmation from the Authority that —

- (a) the relevant company has paid all fees and penalties due and payable under this Act; and
- (b) the relevant company is in compliance with this Act.

### **Conversion of a relevant company into an international business company and *vice-versa***

**18C.** The conversion of —

- (a) a relevant company into an international business company; or

- (b) an international business company into relevant company,

shall be made in accordance with Part X of the International Business Companies Act, 2016.

**A relevant company to notify change in its shareholder, director or secretary to Authority**

**18D.** A relevant company shall notify the Authority any change in its shareholders, directors or secretary within fourteen days of such change.”.

**Repeal of section 19**

- 18.** The principal Act is amended by repealing section 19.

**Amendment of section 20**

- 19.** Section 20 of the principal Act is amended —

- (i) in subsection (1), by repealing the word “Notwithstanding”, and substituting therefor the words “Subject to subsection (2) and notwithstanding”;
- (ii) by repealing subsection (2), and substituting therefor the following subsection —

“(2) Subsection (1) shall not apply to an instrument relating to —

- (a) the transfer to or by a company of an interest in immovable property situated in Seychelles; or
- (b) a transaction in respect of the shares, debt obligations or other securities of a company if it, or any of its subsidiaries, has an interest in any immovable property situated in Seychelles.”;

(iii) by repealing subsections (3), (4), (5) and (6).

### **Substitution of section 22**

**20.** The principal Act is amended by repealing section 22, and substituting therefor the following section —

#### **Non-disclosure obligations**

“**22.**(1) Subject to subsection (2), the Authority, the Registrar of Companies and an officer, employee or agent of the Authority or the Registrar of Companies shall not disclose to a third party any information or documents acquired in the performance of their functions under this Act.

(2) Subsection (1) shall not apply to any disclosure —

- (a) permitted or required under any provisions of this Act or any other written law of Seychelles;
- (b) made pursuant to an order of the court;
- (c) of an information or documents in relation to a relevant company made with the prior written consent of the relevant company; or
- (d) of any information in statistical form or otherwise in such manner that does not enable the identity of the company or other person, to which the information relates, to be ascertained.”.

### **Substitution of section 23**

**21.** The principal Act is amended by repealing section 23, and substituting therefor the following section —

#### **Annual licence fee**

“**23.**(1) A relevant company shall pay an annual licence fee



specified in Schedule 3 to the Authority on or before the date of each anniversary of grant of its special licence.

(2) Where the annual licence fee is not paid by the date specified in subsection (1), the amount of the annual licence fee shall increase by ten percent.

(3) Where a relevant company fails to pay the amount due as an increased annual licence fee under subsection (2) within 3 months from the date when it becomes due, then the amount of the annual licence fee shall increase by twenty-five percent.”.

### **Amendment of section 23**

**22.** Section 24 of the principal Act is amended, by repealing subsection (2).

### **Insertion of new section 25**

**23.** The principal Act is amended by inserting after section 24, the following section —

“**25.**(1) A relevant company existing at the date of the commencement of the Companies (Special Licences) (Amendment) Act, 2020, regardless of whether or not the validity of its special licence has expired, shall comply with sections 15 and 23, as amended by that Act, within 3 months of such commencement.

(2) The Registrar under the International Business Companies Act, 1916 shall strike off the name of an international business company continued under this Act from the register and publish a notice of the striking off in the *Gazette*.

(3) The date of the striking off the name of the company from the register under subsection (2) shall be the date the company was continued under this Act.”.

**Repeal of Schedule 1**

**24.** The principal Act is amended by repealing Schedule 1.

**Amendment of Schedule 3**

**25.** Schedule 3 of the principal Act is amended —

- (i) by repealing the words “section 23”, and substituting therefor the words “section 5(2)(a), 15(1)(c), 18(1)(f) and 23(1)”;
- (ii) by inserting after paragraph (c), the following paragraph
  - “(d) Inspection of annual return  
and audited accounts SCR200”.

**LIMITED PARTNERSHIP (AMENDMENT) BILL, 2021***(Bill No. 32 of 2021)***OBJECTS AND REASONS**

The Limited Partnerships Act allows for the registration of limited partnerships with the FSA. A Limited Partnership must carry on its business outside the Seychelles but must have its registered office in Seychelles for the service of process and delivery of all notices and communications. However, the Limited Partnership may carry on business in Seychelles as long as the business fulfils the objectives of the Limited Partnership, which shall be offshore activities.

2. Following the subsequent review of Seychelles by the Global Forum of the Organization for Economic Corporation & Development (“OECD”), a number of amendments are being proposed to the Limited Partnerships Act, in an effort to improve the availability of information in Seychelles and hence, improving the standing of Seychelles' vis-à-vis such international standards. Additional amendments are also being proposed in view of the recently enacted new Beneficial Ownership Act. To give effect to these matters, some of the notable amendment of this Bill are hereby mentioned.

3. Amendment to section 6 to introduce new requirements to require the registered office of a limited partnership to be the same address as the principal place of business in Seychelles of its registered agent.

4. To introduce a new section 6A to require every limited partnership to have a registered agent in Seychelles. The registered agent shall be a person licensed to provide international corporate services under the International Corporate Service Providers Act.

5. New section 11A. One main issue being faced by the Seychelles authorities in the implementation of the exchange of information mechanism for tax matters is the availability of accounting information for international business companies (“IBCs”). Therefore, in order to reduce the risk of unavailability of accounting records, it is proposed to require all limited partnerships to keep their accounting records at their registered office (i.e. with the registered agent) in Seychelles.

6. A new section 26 is being proposed in order to place the obligation to keep register of mortgages, register of limited partnership interests and accounting records at the business premise of the registered agent in Seychelles.

**Dated this 23rd day of July, 2021.**

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

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**LIMITED PARTNERSHIP (AMENDMENT) BILL, 2021**

*(Bill No. 32 of 2021)*

**ARRANGEMENT OF SECTIONS**

**Sections**

1. Short title
2. Amendment of section 6 of Cap 281
3. Insertion of new section 6A
4. Amendment of section 9
5. Amendment of section 10
6. Amendment of section 11
7. Amendment of section 11A
8. Amendment of section 24
9. Insertion of new section 26
10. Compliance of certain provisions



**LIMITED PARTNERSHIP (AMENDMENT) BILL, 2021**

*(Bill No. 32 of 2021)*



**A BILL  
FOR**

**AN ACT to amend the Limited Partnership Act (*Cap 281*).**

**ENACTED** by the President and the National Assembly.

**Short title**

**1.** This Act may be cited as the Limited Partnership (Amendment) Act, 2021.

**Amendment of section 6 of Cap 281**

2. Section 6 of the Limited Partnership Act (*hereinafter referred to as the “principal Act”*) is amended by inserting after subsection (2), the following subsection —

“(3) The registered office of a limited partnership shall be the same address as the principal place of business in Seychelles of its registered agent.”.

**Insertion of new section 6A**

3. The principal Act is amended by inserting after section 6, the following section —

**Requirement of registered agent**

“6A.(1) Every limited partnership shall at all times have a registered agent in Seychelles.

(2) The registered agent of limited partnership shall be a person licensed to provide international corporate services under the International Corporate Service Providers Act (*Cap 275*).

(3) If default is made in complying with the requirement of subsection (1), the limited partnership shall be liable to a penalty of one hundred US dollars and additional penalty of twenty-five US dollars for each day that such default continues, and the penalty shall be a debt due to the Registrar.”.

**Amendment of section 9**

4. Section 9(1) of the principal Act is amended by inserting after paragraph (e), the following paragraph —

“(f) the name and address of the registered agent of the limited partnership.”.

**Amendment of section 10**

5. Section 10(4) of the principal Act is amended by repealing the words “of twenty-five US dollars for each day that such default continues”, and substituting therefor the words “not exceeding five thousand US dollars”.



**Amendment of section 11**

6. Section 11(4) of the principal Act is amended by repealing the words “of twenty-five US dollars for each day that such default continues”, and substituting therefor the words “not exceeding ten thousand US dollars”.

**Amendment of section 11A**

7. Section 11A of the principal Act is amended —

- (a) in subsection (1)(c), by repealing the words “accounts”, and substituting therefor the words “financial statements”;
- (b) in section 11A, by repealing subsection (3) and substituting therefor the following —

“(3) A limited partnership shall —

- (a) prepare an annual financial summary to be kept at its registered office in Seychelles within 6 months from the end of the limited partnership's financial year; and
- (b) on a bi-annual basis, keep its accounting records at its registered office in Seychelles.

(3A) The financial year of a limited partnership shall be the calendar year, unless it is changed by the general partner and notified to the limited partnership's registered agent within 14 days.

(3B) The Registrar may issue written guidelines regarding the implementation of the obligations relating to accounting records.”;

- (c) by repealing subsection (4) and substituting therefor the following subsections —

“(4) It shall be sufficient compliance with subsections (3) if a copy of the accounting records and financial summary

is kept in electronic form at the limited partnership's registered office in Seychelles.

(4A) Where a limited partnership keeps a copy of its accounting records at its registered office in Seychelles, the limited partnership shall keep with its registered agent a written record of the physical address of the place where the original accounting records are kept, and of any change thereto.”;

- (d) in subsection (6), by repealing the words “of twenty-five US dollars for each day that such default continues”, and substituting therefor the words “not exceeding ten thousand US dollars”.

#### **Amendment of section 24**

**8.** Section 24 of the principal Act is amended —

- (i) by inserting after sub-section (1), the following subsection —

“(1A) For the purposes of subsection (1), where a document is not in the English or French language, the Registrar may request a translation of the records in the English or French language from the general partner of the limited partnership or from the registered agent.”;

- (ii) inserting after the words “compliance inspection” the words “, or fails to comply with subsection (1A),”.

#### **Insertion of new section 26**

**9.** The principal Act is amended by inserting after section 25, the following section —

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

“**26.(1)** A registered agent shall, in respect of each limited partnership (including a deregistered limited partnership) to which it was or is acting as registered agent, preserve for at least 7 years —

- (a) the register of mortgages and the register of limited partnership interest, from the date of deregistration of the limited partnership; and
- (b) the accounting records of the limited partnership in the possession of the registered agent, from the date of completion of the transaction or operation to which they each relate.

(2) Where a registered agent ceases to hold a licence to provide international corporate services under the International Corporate Service Providers Act (*Cap 275*), that person shall handover all the records specified under subsection (1) to the Registrar or any other person approved by the Registrar.

(3) All records to be handed over under subsection (2) shall be preferably in the digital form or in such form as agreed upon between the Registrar and the registered agent.

(4) If the registered agent fails to comply with the requirements of this section, the registered agent shall be liable to a penalty not exceeding ten thousand US dollars.”.

### **Compliance of certain provisions**

**10.** Every limited partnership shall comply with the provisions of sections 6, 6A, 9 and 11A of the Limited Partnership Act (*Cap 281*), as amended by this Act, within a period of six months from the commencement of this Act.

**FOUNDATIONS (AMENDMENT) BILL, 2021***(Bill No. 35 of 2021)***OBJECTS AND REASONS**

The Foundations Act allows for the registration of Foundations with the FSA. A foundation has the features of both a company and a trust. In view that civil law jurisdictions do not recognize trusts, foundations were introduced in Seychelles to serve that market. A foundation is legally a separate entity. Once assets have been transferred to a foundation, they become the assets of that foundation with full legal and beneficial title and do not form part of the founder's personal estate on death.

2. In line with international standard in relation to exchange of information in tax matters and especially, following the subsequent review of Seychelles by the Global Forum of the Organization for Economic Corporation & Development (“OECD”), amendments are being proposed to the Foundations Act, to improve the availability of information in Seychelles and hence, improving the standing of Seychelles' vis-à-vis such international standards. To give effect to these matters, some of the notable amendment of this Bill are hereby mentioned.

3. A new section 30A would now impose an obligation on registered agents to preserve for 7 years, such records of the foundation (already being kept at their business premise in Seychelles) in respect of which they act as registered agent. This will ensure the availability of information, mainly legal ownership and accounting information upon request by relevant authorities.

4. Amendment to section 75 is being proposed in order to reduce the risk of unavailability of accounting records (as currently similar to IBCs, the law allows foundations to keep accounting records outside Seychelles on the condition that they should promptly be made available to Seychelles' authorities upon request) to require all foundations to keep their accounting records at their registered office (i.e. with the registered agent) in Seychelles. A foundation will also be allowed to keep a copy of its accounting records in electronic form in Seychelles instead of the original records.

5. Amendment to section 101 is being proposed in order to ensure that struck-off foundations remedy any previous contraventions to record keeping obligations before being restored. It is being proposed, to make it a legal requirement that the Court will only restore a foundation if it is satisfied that the foundation is in compliance with its obligations relating to accounting records, and the keeping of registers of councilors, registered agents, supervisory persons, authorised persons, beneficiaries and founders.

6. Amendment to section 101 is being proposed in order to reduce the risks associated with struck-off foundations retaining their legal status for 10 years, to reduce the number of years that a struck off foundation holds its legal status from 10 years to 3 years (i.e. a foundation will be automatically dissolved after 3 years of being struck off).

7. Amendment to section 103 in line with OECD's recommendation for international business companies (IBCs), in order to reduce the risks associated with struck-off foundations retaining their legal status for 10 years, it is proposed to reduce the number of years that a struck off foundation be “automatically” dissolved to 3 years.

8. Amendment to schedule 1 to provide for the new fees payable to the Registrar and amendment 9 provides for commencement date in relation to section 5, 6, 7 and 8 to come into operation from 1<sup>st</sup> January 2022 and that section 75 as amended shall be complied with by Foundations within 6 months from the commencement of this Act.

9. The Bill seeks to achieve the above objectives.

**Dated this 23rd day of July, 2021.**

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

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**FOUNDATIONS (AMENDMENT) BILL, 2021**

*(Bill No. 35 of 2021)*

**ARRANGEMENT OF SECTIONS**

**Sections**

1. Short title
2. Amendment of section 2 of Cap 270
3. Insertion of new section 30A
4. Amendment of section 75
5. Amendment of Section 77A
6. Substitution of new section for section 101
7. Amendment of section 102
8. Amendment of section 103
9. Amendment of Schedule 1
10. Commencement and compliance of certain provisions



**FOUNDATIONS (AMENDMENT) BILL, 2021**

*(Bill No. 35 of 2021)*



**A BILL**

**FOR**

**AN ACT to amend the Foundations Act (*Cap 270*).**

**ENACTED** by the President and the National Assembly.

**Short title**

**1.** This Act may be cited as the Foundations (Amendment) Act, 2021.



**Amendment of section 2 of Cap 270**

2. Section 2 of the Foundations Act (*Cap 270*) (*hereinafter referred to as the “principal Act”*) is amended by repealing the definition of “Registrar”, and substituting therefor the following definition —

“ “Registrar” means the Financial Services Authority established under the Financial Services Authority Act (*Act 19 of 2013*);”.

**Insertion of new section 30A**

3. The principal Act is amended by inserting after section 30, the following section —

**Registered Agent —**

“30A.(1) A registered agent shall, in respect of each Foundation (including a Foundation, whose name has been struck-off the Register or which is dissolved or which has continued outside Seychelles) to which it was or is acting as registered agent, preserve for at least 7 years —

- (a) the registers specified in section 77(1), from the date of the last striking-off or dissolution of the Foundation;
- (b) the accounting records of the Foundation in the possession of the registered agent, from the date of completion of the transactions or operations to which they each relate.

(2) Where a registered agent ceases to hold a licence to provide foundation services under the International Corporate Service Providers Act (*Cap 275*), that person shall handover all the records specified under subsection (1) to the Registrar or any other person approved by the Registrar.

(3) All records to be handedover under subsection (2) shall be preferably in the digital form or in such form as agreed upon between the Registrar and the registered agent.

(4) If the registered agent fails to comply with the requirements of this section, the registered agent shall be liable to a penalty not exceeding US\$10,000.”.

#### **Amendment of section 75**

**4.** Section 75 of the principal Act is amended —

- (a) in subsection (1)(c), by repealing the word “accounts”, and substituting therefor the words “financial statements”;
- (b) by repealing subsection (3), and substituting therefor the following subsections —

“(3) A Foundation shall —

- (a) prepare an annual financial summary to be kept at its registered office in Seychelles within 6 months from the end of the Foundation's financial year; and
- (b) on a bi-annual basis, keep its accounting records at its registered office in Seychelles.

(3A) It shall be sufficient compliance with subsection (3) if a copy of the accounting records and financial summary is kept in electronic form at the Foundation's registered office.

(3B) Where a Foundation keeps a copy of its accounting records at its registered office, the Foundation shall keep, with its registered agent, a written record of the physical address of the place where the original accounting records are being kept, and of any change thereto.

(3C) The financial year of the Foundation shall be the calendar year, unless it is changed by a resolution of councillors and notified to the Foundation's registered agent within 14 days of the passing of the resolution.

(3D) The Registrar may issue written guidelines regarding the implementation of the obligations relating to accounting records.”;

- (c) by repealing subsections (5) and (6), and substituting therefor the following subsections —

“(5) Where a Foundation fails to comply with the requirements of subsection (1), (3) or (3B), the Foundation shall be liable to a penalty not exceeding US\$10,000.

(6) Where a Foundation is liable to a penalty under subsection (5) for non-compliance with subsection (1), (3) or (3B), the councillor who is responsible for such non-compliance shall also be liable to a penalty not exceeding US\$10,000.”.

### **Amendment of section 77A**

5. Section 77A of the principal Act is amended —

- (i) by inserting after subsection (1), the following subsection —

“(1A) For the purposes of sub-section (1), where a document is not in the English or French language, the Registrar may request a translation of the records in the English or French language from the Foundation or from the registered agent.”

- (ii) in subsection (2),

by inserting after the words “compliance inspection” the words “, or fails to comply with subsection (1A),”.

### **Substitution of new section for section 101**

6. The principal Act is amended by repealing section 101, and substituting therefor the following section —

### **Application to Court for restoration of Foundation to Register**

“101.(1) This section shall apply in relation to the proposed restoration of the name of a Foundation who has been dissolved or whose name has been struck off the Register but is not yet dissolved.

(2) An application for restoration of the name of the Foundation to the Register may be made to the court by —

- (a) a creditor, councillor, founder, protector or liquidator of the Foundation; or
- (b) any person who can establish an interest in the Foundation to be restored to the Register.

(3) An application under sub-section (2) to restore the name of a struck-off or dissolved Foundation to the Register may be made to the Court —

- (a) within one year from the date of the striking off the Foundation; or
- (b) within five years of the date of dissolution of the Foundation.

(4) A notice of the application shall be served on the Registrar, who is entitled to appear and be heard on the hearing of the application.

(5) On an application under subsection (2) and subject to subsection (6), the court may —

- (a) restore the Foundation to the Register subject to such conditions as it considers appropriate; and
- (b) give such directions or make such orders as it considers necessary or desirable for the

purpose of placing the Foundation and any other persons as nearly as possible in the same position as if the Foundation had not been dissolved or struck off the Register.

(6) The court shall not make an order restoring a Foundation to the Register, unless it is satisfied that —

- (a) a person with a foundation services licence under the International Corporate Service Providers Act (*Cap 275*) has agreed to act as registered agent of the Foundation; and
- (b) the Foundation is in compliance with its obligations —
  - (i) under this Act relating to —
    - (A) accounting records; and
    - (B) the registers specified under section 77(1); and
  - (ii) under the Beneficial Ownership Act, 2020 (*Act 4 of 2020*) relating to register of beneficial owners.

(7) Where the court makes an order restoring a Foundation to the Register, a sealed copy of the order shall be filed with the Registrar by the applicant.

(8) On receiving a sealed copy of the order under subsection (7), and subject to payment to the Registrar of all outstanding annual fees and any penalty or other fees payable under this Act in relation to the Foundation, the Registrar shall restore the Foundation to the Register with effect from the date and time that the copy of the sealed order was filed.

(9) A Foundation is restored to the Register with the name that it had immediately before it was dissolved or struck-off the Register.

(10) A Foundation that is restored to the Register is deemed to have continued in existence as if it had never been dissolved or struck off the Register.”.

### **Amendment of section 102**

7. Section 102 of the principal Act is amended —

(a) by repealing subsection (1), and substituting therefor the following subsections —

“(1) Subject to subsection (1A), where the name of a Foundation has been struck off the Register under section 99(2) or a Foundation has been deemed dissolved under section 103(1), the Foundation or a councillor, beneficiary, founder, supervisory person or liquidator thereof, may apply to the Registrar to have the name of the Foundation restored to the Register.

(1A) An application under subsection (1) may be made to the Registrar —

(a) within one year from the date of the striking off the Foundation; or

(b) within five years of the date of dissolution of the Foundation.”;

(b) in subsection (2), by repealing the words “The Registrar may”, and substituting therefor the words “Subject to subsection (2A), the Registrar may”;

(c) by inserting after subsection (2), the following subsection —

“(2A) The Registrar shall not restore the name of a Foundation to the Register unless the Registrar is satisfied that the Foundation is in compliance with its obligations —

(a) under this Act relating to —

(i) accounting records; and

- (ii) the registers specified in section 77(1); and
- (b) under the Beneficial Ownership Act, 2020 (*Act 4 of 2020*) relating to register of beneficial owners.”.

### **Amendment of section 103**

8. Section 103 of the principal Act is amended in subsection (1) by repealing the words “3 years or 10 years respectively” and substituting thereof the words “one year”.

### **Amendment of Schedule 1**

9. Schedule 1 of the principal Act is amended, in PART 2, by inserting after paragraph (l), the following paragraphs —

<p style="text-align: right;"><i>[section 101(7)]</i></p> <p>(m) For filing with the Registrar of a sealed copy of an order of the court for the restoration of the name of a Foundation to the Register</p>	US\$500
<p style="text-align: right;"><i>[section 102(1)]</i></p> <p>(n) For the restoration of the name of a Foundation to the Register by the Registrar —</p> <p style="padding-left: 40px;">(i) if the application for restoration is made 6 months or less after the date that the name of the Foundation was struck off the Register; or</p> <p style="padding-left: 40px;">(ii) if the application for restoration is made more than 6 months after the date that the name of the Foundation was struck off the Register.</p>	<p style="text-align: center;">(i) US\$300</p> <p style="text-align: center;">(ii) US\$500”.</p>

**Commencement and compliance of certain provisions**

**10.**(1) Sections 5, 6, 7 and 8 shall come into operation from 1st January, 2022.

(2) Every Foundation shall comply with section 75 of the Foundation Act (*Cap 270*), as amended by this Act, within a period of 6 months from the commencement of this Act.



## **INTERNATIONAL CORPORATE SERVICE PROVIDERS (AMENDMENT) BILL, 2021**

*(Bill No. 36 of 2021)*

### **OBJECTS AND REASONS**

As a consequence of the amendments made to the International Business Companies Act, 2016 (“IBC Act”) to introduce Private Trust Companies (PTCs) amendments are required in the International Corporate Service Providers Act to provide for the main provisions for PTCs. The notable amendments to cater for these changes are hereby mentioned.

2. Amendment of Cap 275 to introduce some terms in relation to trust throughout the Act.

3. Amendment to section 3 is being proposed to provide that every Seychelles trust must have a Trustee Service Provider (“trustee”) licensed by the FSA under the ICSP Act. The amendments to the ICSP Act (read with the proposed new Trusts Bill and IBC Act) will widen the scope of who may be a trustee of a Seychelles trust which only involves “connected trust services” (related persons). In such cases the trustee may either be a licensed trustee or a PTC, therefore, the following amendments herein stated are being proposed.

4. A new section 3A to allow a PTC or a licensed trustee to provide ‘connected trust services’.

5. A new section 3B that places restrictions on what a private trust company may do.

6. A new section 3C places an obligation on a private trust company to ensure that at all times its registered agent is a company that holds an international corporate service license and a trustees services license under this Act.

7. A new section 3D that places an obligation on registered agents of a private trust company to keep at its registered office records as specified in regards to a trust and a trust register.

8. Amendment of schedule 3 provide for the payment of the annual license fee on a pro-rata basis if the license is not granted in the month of January.

9. Amendment 7 is inserting a new schedule which provides;

(a) the definition of the terms 'Connected Trust Services';

(b) An interpretation part for schedule 5; and

(c) A definition of the term 'Connected persons'

10. The Bill seeks to achieve the above objectives.

**Dated this 23rd day of July, 2021.**

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

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**INTERNATIONAL CORPORATE SERVICE PROVIDERS  
(AMENDMENT) BILL, 2021**

*(Bill No. 36 of 2021)*

**ARRANGEMENT OF SECTIONS**

**Sections**

1. Short title
2. Amendment of Cap 275 by substituting certain terms throughout the Act
3. Amendment of section 2
4. Amendment of section 3
5. Insertion of new sections 3A, 3B, 3C and 3D
6. Amendment of Schedule 3
7. Insertion of new Schedule 5



**INTERNATIONAL CORPORATE SERVICE PROVIDERS  
(AMENDMENT) BILL, 2021**

*(Bill No. 36 of 2021)*



**A BILL**

**FOR**

**AN ACT to amend the International Corporate Service Providers Act  
(Cap 275).**

**ENACTED** by the President and the National Assembly.

**Short title**

**1.** This Act may be cited as the International Corporate Service Providers (Amendment) Act, 2021.

## **Amendment of Cap 275 by substituting certain terms throughout the Act**

**2.** The International Corporate Service Providers Act (*Cap 275*) (*hereinafter referred to as the “principal Act”*) is amended by repealing the words “international trust”, “international trustee services” and “international trustee”, wherever they appear throughout the principal Act (including Schedules) and substituting therefor the words “trust”, “trustee services” and “trustee”, respectively.

### **Amendment of section 2**

**3.** Section 2 of the principal Act is amended —

- (i) by repealing the definition of “international trust”;
- (ii) by inserting, in the alphabetical order, the following definitions —

“ “Authority” means the Financial Services Authority established under the Financial Services Authority Act (Act 19 of 2013);

“connected trust services” has the meaning as defined in Schedule 5;

“private trust company” means an international business company —

- (a) whose memorandum of association states that it is a private trust company; and
- (b) which shall not conduct any business other than the providing of connected trust services in relation to a trust to which it is a trustee;

“trust” means a trust established under the Trusts Act, 2021;”.

**Amendment of section 3****4.** Section 3 of the principal Act is amended —

- (a) in subsection (1), by inserting after paragraph (iii), the following paragraph —

“(iii-a) A private trust company shall not require a licence under this section to provide connected trust services.”;

- (b) by inserting after subsection (1), the following subsection —

“(1A) A person holding an international trustee services licence, on the commencement of the International Corporate Service Providers (Amendment) Act, 2021, shall be deemed to hold a trustee services licence under this Act.”.

**Insertion of new sections 3A, 3B, 3C and 3D****5.** The principal Act is amended, by inserting after section 3, the following sections —**Authorisation for providing connected trust services**

“**3A.**(1) A private trust company shall not provide any connected trust services without obtaining an authorisation from the Authority.

(2) A private trust company shall make an application to the Authority for obtaining an authorisation under subsection (1) which shall be accompanied with —

- (a) a declaration stating —

- (i) the name of the private trust company and its registration number;
- (ii) the name of its registered agent or company secretary; and

(iii) that it is in compliance with the requirements of this section and Schedule 5; and

(b) an application fee of US\$1,000.

(3) The Authority may grant or reject the application for authorisation and may at any time revoke the authorisation granted under this section.

(4) A private trust company shall, on or before the date of each annual anniversary of it being authorised under this section —

(a) file with the Authority a compliance declaration in the form provided by the Authority; and

(b) pay an annual fee of US\$1,000.

(5) Where the annual fee referred to in subsection (4)(b) is not paid within the period specified in that subsection, there shall be payable an additional fee equal to 10 per cent of the annual fee for each month or part thereof during which the annual fee and additional fee remains unpaid.

(6) A private trust company that files any false, misleading or inaccurate information under subsection (2)(a) or (4)(a) commits an offence and is liable on conviction to fine not exceeding SCR300,000.

(7) Without prejudice to subsection (6), the Authority may revoke the authorisation granted to a private trust company if the Authority is satisfied that the company has filed any false, misleading or inaccurate information under subsection (2)(a) or (4)(a) and notify the company in writing.

(8) Sections 5 to 7 and Parts III and IV shall, in so far as practicable, apply to a private trust company authorised under this section as they apply to a licensee under this Act.



**Restrictions**

**3B.(1)** A private trust company shall not —

- (a) provide any trust services that is not connected trust services; or
- (b) solicit trust services from members of the public.

(2) A private trust company that contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding SCR300,000.

**Registered agent**

**3C.** A private trust company shall ensure that at all times its registered agent is a company which —

- (a) holds both an international corporate services licence and a trustee services licence under this Act; or
- (b) holds an international corporate services licence and is wholly owned by one or more persons who wholly owns another company which holds a trustee services licence under this Act.

**Records to be kept at registered office**

**3D.** A private trust company shall, in relation to each trust of which it is trustee, keep at its registered office —

- (a) copies of the trust deed, or other document creating or establishing a trust, and any deed or document varying the terms of the trust under the Trusts Act, 2021; and
- (b) the trust register required to be kept under section 28 of the Trusts Act, 2021.”.

### **Amendment of Schedule 3**

**6.** Schedule 3 of the principal is amended in Part 2, by inserting after paragraph 2, the following paragraph —

“**3.** If a licence under this Act is not first granted in the month of January, the first annual licence fee payable under this Act shall be reduced on a quarterly pro-rata basis, calculated having regard to the quarter in which the licence was first granted.”.

### **Insertion of new Schedule 5**

**7.** The principal Act is amended, by inserting after Schedule 4, the following Schedule —

#### **“SCHEDULE 5**

#### **CONNECTED TRUST SERVICES**

**1. Connected trust services.** “connected trust services” means the trust services provided in respect of —

- (a) a single trust where each beneficiary of the trust is —
  - (i) a connected person in relation to the settlor of the trust; or
  - (ii) a charity; or
- (b) a group of two or more connected trusts;

**2. Interpretation.** (1) For the purposes of this Schedule —

“connected person” has the meaning specified in paragraph 3;

“connected trusts” means as defined in subparagraphs (2) and (3);

“group of companies” comprises, subject to subparagraph (4), every company which, directly or indirectly, is a subsidiary of

the same holding company, and such group includes the holding company;

“settlor” means as defined in the Trusts Act, 2021;

“trust” means a trust created or established and registered in accordance with the Trusts Act, 2021;

“trust services” means the provision of trustee services, whether provided in or outside Seychelles.

(2) A trust (the first trust) is connected to another trust (the second trust) where the settlor of the first trust is a connected person with respect to the settlor of the second trust.

(3) A group of two or more trusts are connected trusts where each trust in the group is connected to all of the other trusts in the group.

(4) A company shall be treated as a subsidiary (“the subsidiary”) of another company (“the holding company”) where —

- (a) the holding company is a member of the subsidiary and controls the composition of the board of directors of the subsidiary;
- (b) the holding company, directly or indirectly, controls more than half of the votes which may be cast at general meetings of the subsidiary; or
- (c) the subsidiary is a subsidiary of any other company which is itself a subsidiary of the holding company.

(5) In subparagraph (4)(a), the composition of the board of directors of a company shall be treated as controlled by another company if that other company, by the exercise of some power, without the consent or concurrence of any other person, can appoint or remove all or a majority of the directors.

**3. Connected persons.** (1) For the purposes of this Schedule, a person is a connected person in relation to another person if —

- (a) each is in a group of companies;
- (b) one is a company and the other is a beneficial owner of shares or other ownership interests of that company or of any other company in the same group of companies;
- (c) each is the trustee of a related trust; or
- (d) one individual is related to the other by virtue of any of the following relationships —
  - (i) spouse;
  - (ii) the descendants of the individual and their spouses;
  - (iii) parents, including step-parents;
  - (iv) grandparents;
  - (v) parents-in-law, including step-parents-in-law;
  - (vi) brother, step-brother, sister, step-sister and their spouses and children;
  - (vii) spouse's grandparents;
  - (viii) spouse's brother, step-brother, sister, step-sister and their spouses and children;
  - (ix) parent's brother, step-brother, sister, step-sister and their spouses;
  - (x) children of the brother, step-brother, sister or step-sister of the individual's parents, both present and future, including step-children and their spouses; or

(xi) children of the individual's brother, step-brother, sister or step-sister, both present and future, including step-children and their spouses.

(2) For any of the relationships specified in subparagraph (1)(d) that may be established by affinity or consanguinity, that same relationship may be established by adoption.

(3) In subparagraph (1)(d)(ii), the terms “descendants of the individual”, means the individual's children, the children of his children, the children of those children, and so on.

(4) In subparagraph (3), “children” includes step-children.”.

**TRUST BILL, 2021***(Bill No. 31 of 2021)***OBJECTS AND REASONS**

The International Trusts Act was one of the first piece of legislation enacted in 1994 to kick-start the offshore industry in Seychelles, together with the International Business Companies Act and the International Trade Zone Act. A number of deficiencies has been highlighted by international standard setting bodies, namely FATF and the Global Forum for Transparency and Exchange on Information Tax Matters under the ambit of the OECD, that requires to be rectified. Therefore, the aim of the new law is to provide a stronger basis for growth of Seychelles as a value-added financial centre while remaining compliant with international standards and best practices. Some of the notable new provisions being proposed in order to achieve these objectives are hereby mentioned.

2. Adding express provisions relating to trust “protectors”. A trust settlor (founder) may (but is not required to) appoint a protector to oversee operation of the Trust. While a protector should not control a trust, the protector can be given veto power on certain trust decisions, such as the power to approve or direct the addition or removal of a trustee or beneficiary.

3. Improving the provisions that provide for varieties of trusts, including trusts with beneficiaries, trusts for charitable purposes (without beneficiaries), trusts for non-charitable purposes (without beneficiaries) and hybrid trusts (i.e. a purpose trust which also has beneficiaries). Note that all these trusts are already provided for under the 1994 Act, but the new Trusts Act covers them more clearly and comprehensively.

4. Adding express provision for “enforcers” of trusts for non-charitable purposes (i.e. which trust will usually not have any beneficiaries).

5. Adding express provisions for settlor's reserved powers. This is provided for under the trust laws of all the major small island state financial centres including Jersey, Guernsey, Cayman Islands, Bermuda, British

Virgin Islands, etc. This means that the settlor (being the person who transfers his or her assets to establish a new trust) may retain certain powers in respect of the trust such as the power to add or remove beneficiaries or to add or remove trustees.

6. Removal of the existing 100-year limit on the duration of non-charitable trusts and allowing a trust, unless its terms provide otherwise, to continue in existence for an unlimited period (until final distribution of all trust property in accordance with the terms of the trust). This has been adopted in leading offshore trust jurisdictions, such as Jersey, Guernsey and Bermuda.

7. In order to reduce the risks of unavailability of accounting records, it is proposed to require all trustees to keep accounting records relating to each trust under their administration at either their registered office in Seychelles (in the case of a private trust company) or at their principal place of business in Seychelles (in the case of a licensed trustee).

8. In line with FATF's Recommendation 25 (including the recommendations made in the Seychelles' Mutual Evaluation Report), to introduce new obligation on trustees to disclose their status as a trustee to a financial institution or a designated non-financial business or profession when forming a business relationship or carrying out an occasional transaction in an amount equal to or above to the amount prescribed under Third Schedule of the Anti-Money Laundering and Countering the Financing of Terrorism Act.

9. In line with OECD and FATF standards, it is proposed to introduce an obligation on trustees to preserve for at least 7 years, the Trust Register pertaining to each trust, containing details of the trust's trustees, beneficiary or class of beneficiaries, settlors, protectors, etc. When a trustee ceases business, such records shall be provided to the FSA or to any other person approves by the FSA. This will ensure the availability of such information in Seychelles.

10. In line with FATF Recommendations, to expand the content of the Trusts Register to include the identity of regulated agents and service providers of the trust including, but not limited to, investment advisors, investment managers, accountants and tax advisors of the trust.

11. As a change to the 1994 Act, the new Trusts Act will require all Seychelles trusts to be in writing. This will add legal certainty and avoid potential confusion and litigation on oral trusts (which are permitted under the 1994 Act along with implied “constructive” trusts).

12. The new Trusts Act will permit non-resident or resident settlors. A settlor is the person who transfers his or her assets to establish a new trust (i.e. to a trustee to hold for the benefit of the beneficiaries).

13. Improvement and clarification of the provisions relating to court jurisdiction and conflict of laws, including addressing the current inappropriate definition of international trust which is problematic as regards foreign law trusts.

14. To provide that Seychelles law recognize (at least to some extent) foreign trusts. Non-recognition would undermine Seychelles' ability to become a successful trust jurisdiction. Trusts will typically be used for holding assets outside Seychelles. So, while the norm will be for Seychelles trustees to form Seychelles law trusts, there will always be niche situations where a foreign law trust is preferred (by a foreign client).

15. The Bill seeks to achieve the above objectives.

**Dated this 23rd day of July, 2021.**

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

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**TRUSTS BILL, 2021***(Bill No. 31 of 2021)***ARRANGEMENT OF SECTIONS****Sections****PART I - PRELIMINARY**

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3. Existence and recognition of trusts in Seychelles
4. The Settlor
5. Proper law of a trust
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## **TRUST BILL, 2021**

*(Bill No. 31 of 2021)*



## **A BILL FOR**

**AN ACT to provide for the creation, registration, administration and regulation of trusts including the Seychelles trusts and foreign trusts and for matters connected therewith or incidental thereto.**

**ENACTED** by the President and the National Assembly.

### **PART I PRELIMINARY**

#### **Short title and commencement**

**1.** This Act may be cited as the Trusts Act, 2021 and shall come into operation on such date as the Minister may, by notice in the *Gazette*, appoint.

## Interpretation

2. In this Act, unless the context otherwise requires —

“accounting records” in relation to a trust, means documents relating to —

- (a) the trust's assets and liabilities;
- (b) all receipts and expenditure of the trust; and
- (c) all sales, purchases and other transactions to which the trust is a party;

“approved trustee” in relation to —

- (a) a trust, other than a connected trust, means a licensed trustee; or
- (b) a connected trust means a private trust company or a licensed trustee.

*Explanation* — For the purposes of this definition, where —

- (i) the settlor of a trust (the first trust) is a connected person with respect to the settlor of another trust (the second trust), the first trust is connected to the second trust and both trusts are connected trusts;
- (ii) each trust in a group of two or more trusts are connected to each other, all the trusts in the group are connected trusts;

“assessable income” means the assessable income as defined in section 2 of the Business Tax Act;

“Authority” means the Financial Services Authority established under the Financial Services Authority Act;

“beneficiary” means a person entitled to benefit under a trust or in whose favour a discretion to distribute property held on trust may be exercised;

“beneficial owner” in relation to property of a trust —

- (a) means a person who ultimately owns the property whether, directly or indirectly, alone or jointly with another person; and
- (b) does not include a nominee who holds the property on behalf of another person;

“breach of trust” means a breach of any duty imposed on a trustee by this Act or by the terms of the trust;

“charitable purpose” means a purpose defined in section 17;

“charitable trust” means a trust created for one or more charitable purposes;

“corporate trustee” means a trustee which is a corporation;

“corporation” means a company or other body corporate incorporated in Seychelles or any other jurisdiction;

“Court” means the Supreme Court of Seychelles;

“enforcer” shall be construed in accordance with Chapter 9 of Part II;

“foreign law” means the laws of any jurisdiction outside Seychelles;

“foreign trust” means a trust whose proper law is the law of a jurisdiction other than Seychelles;

“former trust” means a trust established under the repealed Act;



“incapacitated adult” means an individual, other than a minor, who has no capacity to contract under the law of Seychelles or under the law of the person's domicile;

“interest of a beneficiary” means the beneficiary's interest under a trust and references to the beneficiary's interest have a corresponding meaning;

“licensed trustee” means a company licensed to provide trustee services under the International Corporate Service Providers Act;

“Minister” means the Minister responsible for Finance;

“minor” means an individual under the age of eighteen;

“non-charitable purpose” means a purpose other than a charitable purpose;

“officer” in relation to a corporation, includes a director, manager or secretary;

“person” includes any individual, company or other body corporate;

“personal representative” means the executor or administrator for the time being of a deceased person and, in the context of a Seychelles trust, includes the principal heir;

“private trust company” means a private trust company as defined in the International Business Companies Act, 2016 (*Act 15 of 2016*);

“professional persons” means accountants, advocates, attorneys-at-law, bankers, brokers, custodians, investment advisors, investment managers, nominees, custodians, property agents, solicitors and other professional agents or persons;

“property” means property of any description wherever situated,

and in relation to rights and interests, includes the rights and interests whether vested, contingent, defeasible or future;

“protector” shall be construed in accordance with Chapter 8 of Part II;

“purpose trust” means a trust created for the fulfillment of one or more non-charitable purposes, whether or not it has any beneficiaries;

“Register” means the register of trusts to be kept by the Authority pursuant to section 13(1);

“registered trust” means a trust in respect of which a trustee appointment declaration has been registered under section 11(3);

“repealed Act” means the International Trusts Act (*Cap 275*);

“settlor” shall be construed in accordance with section 4;

“Seychelles trust” means a trust created or established under section 8;

“terms of the trust” means —

- (a) in the case of a Seychelles trust, the written terms of the trust and any other terms made applicable by this Act; and
- (b) in the case of a foreign trust, the written or oral terms of trust and any other terms made applicable by the proper law of the trust;

“trust” has the meaning as defined in section 3, and includes —

- (a) the trust property; and
- (b) the rights, powers, duties, interests, relationships and obligations under a trust;

“trustee appointment declaration” means a declaration by an approved trustee in accordance with section 11(2);

“trust property” means the property held in a trust.

### **Existence and recognition of a trust**

**3.(1)** Subject to section 8(2), a trust exists where a person known as a trustee, holds, or has vested in the person or is deemed to hold or have vested in the person, property —

- (a) for the benefit of one or more beneficiaries; or
- (b) for any charitable or non-charitable purpose which is not for the benefit only of the trustee; or
- (c) for both such benefit referred to in paragraph (a) and any such purpose referred to in paragraph (b).

(2) Subject to this Act, a trust shall be valid and enforceable under the laws of Seychelles.

### **The settlor**

**4.(1)** Subject to this Act, any person, known as a settlor, who has the legal capacity to contract may create a trust by providing trust property or by making a testamentary disposition on trust or to a trust.

(2) A settlor may also be a trustee, a beneficiary, a protector or an enforcer, but shall not be the sole beneficiary or trustee of a trust of which he or she is a settlor.

(3) Subsection (2) is not contravened, if a settlor is the sole beneficiary of a trust during the settlor's lifetime, provided that the terms of the trust provide for the trust to have one or more persons as beneficiary upon the settlor's death.

(4) A settlor shall be deemed to have had the capacity to create a trust if, at the time he or she transfers or otherwise vests trust property in a trust, he or she is not a minor, is of sound mind and not incapacitated under —

- (a) the laws of Seychelles; or
- (b) the laws of his or her domicile or nationality; or
- (c) the proper law governing the transfer or disposition.

### **Proper law of a trust**

**5.(1)** Subject to section 48, the proper law of a trust shall be the law of the jurisdiction —

- (a) expressed by the terms of the trust as the proper law;
- (b) if not so expressed, implied from the terms of the trust; or
- (c) if paragraph (a) and (b) do not apply, with which the trust at the time it was created had the closest connection.

(2) For the purpose of subsection (1)(c), in ascertaining, the law with which a trust had the closest connection, reference shall be made in particular to —

- (a) the place of management and control of the trust;
- (b) the *location* of the property of the trust;
- (c) the place of residence or business of the trustee;
- (d) the places where the objects of the trust are to be fulfilled.

### **Jurisdiction of Court**

**6.** The Court has jurisdiction where —

- (a) the trust is a Seychelles trust;
- (b) a trustee of a foreign trust is resident in Seychelles;
- (c) management of trust property of a foreign trust is carried on in Seychelles or from Seychelles;

- (d) trust property of a foreign trust is situated in Seychelles; or
- (e) a beneficiary of a trust is resident in Seychelles.

## **PART II**

### **PROVISIONS APPLICABLE TO SEYCHELLES TRUSTS**

#### *Chapter 1 - Trust establishment and registration*

#### **Application of Part II**

7. This Part shall apply only to a Seychelles trust, except for sections 10, 11, 12 and 13 which shall apply to a Seychelles trust and a foreign trust.

#### **Trust to be in writing**

8.(1) Subject to subsection (2) and the other provisions of this Act, a Seychelles trust is created by a settlor providing trust property *inter vivos* or by will, to one or more trustees as contemplated in section 3.

(2) A Seychelles trust shall be of no effect, unless created or established in writing by —

- (a) a declaration of trust executed by the original trustees of the trust in which the trustees acknowledge that they hold the trust property in accordance with the terms of the trust; or
- (b) a trust deed executed by the settlor and the original trustees of the trust by which the trust property is transferred to the trustees and they acknowledge that they shall hold the trust property in accordance with the terms of the trust.

#### **Seychelles trusts**

9. Subject to this Act, the proper law of a Seychelles trust is the laws of Seychelles.

#### **Trust property, operation and restriction**

10.(1) Subject to subsection (2) and section 14(2) —

- (a) any property within or outside Seychelles may be held by or vested in the trust;
  - (b) subject to the terms of the trust, a trustee may accept from any person property to be added to the trust property.
- (2) A trust shall not —
- (a) carry on any activity which is unlawful, immoral or contrary to any public policy of Seychelles;
  - (b) own or otherwise hold an interest in —
    - (i) immovable property in Seychelles; or
    - (ii) shares or other interests in any company or other entity which owns or has any interest in immovable property in Seychelles.

### **Registration of trustee appointment declaration**

**11.(1)** An approved trustee, on appointment as trustee of a trust, shall —

- (a) make a trustee appointment declaration; and
- (b) apply for registration of the trustee appointment declaration by submitting to the Authority the trustee appointment declaration and the registration fee specified to in the First Schedule.

(2) The trustee appointment declaration under subsection (1) shall be in writing and state —

- (a) the name of the trust;
- (b) the date of formation of the trust;
- (c) the name and address of each approved trustee of the trust;
- (d) that the property of the trust does not include any —

- 
- (i) immovable property in Seychelles; or
    - (ii) shares or other interests in any company or other entity which owns or has any interest in immovable property in Seychelles;
  - (e) that the instrument creating the trust is in writing; and
  - (f) the proper law of the trust.
- (3) On receipt of a trustee appointment declaration accompanied by the registration fee, the Authority shall —
- (a) register the trustee appointment declaration in the Register;
  - (b) allocate a reference number to the trust; and
  - (c) issue, to the approved trustee who submitted the trustee appointment declaration, a letter stating —
    - (i) the name of the trust;
    - (ii) the reference number of the trust;
    - (iii) the date of registration of the trustee appointment declaration.
- (4) Upon registration of a trustee appointment declaration, the trust shall be a registered trust and a letter issued by the Authority under subsection (3)(c) shall be *prima facie* evidence of compliance by the approved trustee of the trust with all the requirements of this Act in respect of registration of a trustee appointment declaration.
- (5) An approved trustee who provides in a trustee appointment declaration any false or misleading information commits an offence and shall on conviction be liable to a fine not exceeding US\$25,000.
- (6) Failure to register a trustee appointment declaration under this section shall not invalidate the trust, but it shall not be entitled to the exemptions under section 88.

**Notice of appointment or termination of a trustee**

**12.(1)** If, subsequent to registration of a trust under section 11(3), a new approved trustee is appointed to a registered trust, the new trustee shall within 21 days file a written notice thereof with the Authority in the approved form accompanied with the applicable fee set out in the First Schedule.

(2) Where an approved trustee of a registered trust ceases to be a trustee of the trust, the trustee shall within 21 days file a written notice thereof with the Authority in the approved form accompanied with the applicable fee set out in the First Schedule.

(3) At any time after a trustee appointment declaration is registered, and the trust is terminated or otherwise ceases to exist, the last approved trustee of the trust shall within 21 days file a written notice thereof with the Authority in the approved form accompanied with the applicable fee set out in the First Schedule.

(4) Where an approved trustee is required to file a notice under subsection (3) as a result of a trust terminating or otherwise ceasing to exist, the trustee shall not be required to file a notice under subsection (2).

(5) A trustee who contravenes subsection (1), (2) or (3) shall be liable to a penalty fee not exceeding US\$5,000.

**Register of trusts**

**13.(1)** The Authority shall keep a Register of all registered trusts, which shall state in respect of each trust —

- (a) the name of the trust;
- (b) the reference number of the trust allocated under section 11(3);
- (c) the name and address of each approved trustee of the trust;
- (d) the date of registration of the trustee appointment declaration relating to the trust (in the case of a trust



initially registered under the repealed Act, the date of registration of the declaration under section 75(1)(a) of the repealed Act);

- (e) the date of any notice of termination of trust filed pursuant to section 12(3);
- (f) the date of any order of a Court that the trust is set aside or otherwise ended.

(2) The Register shall be in such form as the Authority may determine and shall, together with the documents referred to in subsection (3), be open to inspection by any person during ordinary office hours on payment of the fee set out in the First Schedule.

(3) No document filed with or otherwise kept by the Authority in relation to a trust shall be open to inspection, except the Register and the trustee appointment declaration filed under section 11(1).

(4) Any person, on payment of the fee set out in the First Schedule, may request the Authority for a Certificate of Official Search under the official seal of the Authority in respect of any trust, which shall contain the information set out in subsection (1)(a) to (e).

### **Validity of a Seychelles trust**

**14.(1)** Subject to subsections (2), (3) and (4), a Seychelles trust shall be valid and enforceable in accordance with its terms.

(2) A Seychelles trust shall be invalid and unenforceable to the extent that —

- (a) it purports to do anything which is contrary to the law of Seychelles;
- (b) it purports to confer any right or power or impose any obligation the exercise or carrying out of which is contrary to the law of Seychelles;

- (c) it purports to apply to immovable property situated in Seychelles in contravention of section 10(2)(b);
- (d) it is created for a purpose in relation to which there is no beneficiary identifiable or ascertainable, unless —
  - (i) it is a charitable trust; or
  - (ii) it is a purpose trust and if the terms of the trust provide for —
    - (A) the appointment of an enforcer in relation to the trust's non-charitable purposes; and
    - (B) the appointment of a new enforcer at any time when there is none; or
- (e) the Court declares that —
  - (i) the trust was established by duress, fraud, mistake, undue influence or misrepresentation or in breach of fiduciary duty;
  - (ii) the trust is immoral or contrary to public policy;
  - (iii) the terms of the trust are so uncertain that the performance is rendered impossible; or
  - (iv) the settlor was, at the time of its creation, incapable of creating the trust.

(3) Where a trust is created for two or more purposes of which some are lawful and others are unlawful —

- (a) if those purposes cannot be separated, the trust shall be invalid;
- (b) where the purposes can be separated, the Court may declare that the trust is valid as to each purpose that is lawful.

(4) Where a trust is partially invalid, the Court may declare what property is trust property and what property is not trust property.

(5) Where subsection (2)(c) applies, any person in whom the title to such immovable property is vested shall not be, and shall not be deemed to be, a trustee of such immovable property.

(6) Any property to which a trust is wholly or partially invalid shall, subject to any order of the Court, be held by the trustees on trust for the settlor absolutely or, if he or she is dead, for his or her personal representative.

(7) An application may be made to the Court under this section by any person referred to in section 71(1).

### **Duration of a Seychelles trust**

**15.(1)** Unless its terms provide otherwise, a trust may continue in existence for an indefinite period.

(2) No rule against perpetuities or excessive accumulations shall apply to a trust or to any advancement, appointment, distribution or application of assets from a trust.

(3) Except where the terms of a trust provide to the contrary, any advancement, appointment, distribution or application of assets from that trust to another trust shall be valid even if the other trust may continue after the date by which the first trust may terminate.

### **Powers reserved by settlor**

**16.(1)** A trust is not invalidated by the reservation or grant by the settlor (whether to the settlor or to any other person) of all or any of the following powers or interests —

- (a) a power to revoke, vary or amend the terms of a trust or any trusts or powers arising wholly or partly under it;
- (b) a power to direct or approve the advancement, appointment,

distribution or application of income or capital of the trust property;

- (c) a power to act as, or to direct the appointment or removal of, a director or officer of any corporation wholly or partly owned by the trust;
- (d) a power to direct the trustee in connection with the purchase, retention, sale, management, lending, pledging or charging of the trust property or the exercise of any powers or rights arising from such property;
- (e) a power to appoint or remove any trustee, enforcer, protector or beneficiary;
- (f) a power to appoint or remove a professional person acting in relation to the affairs of the trust or holding any trust property;
- (g) a power to change the proper law of the trust or the forum for the administration of the trust;
- (h) a power to restrict the exercise of any powers or discretions of trustee by requiring that such power shall only be exercisable with the consent of the settlor or any other person specified in the terms of the trust;
- (i) a beneficial interest in the trust property.

(2) The reservation, grant or exercise of a power or interest referred to in subsection (1) does not —

- (a) constitute the holder of the power or interest a trustee; or
- (b) subject to the terms of the trust, impose any fiduciary duty on the holder.

(3) A trustee who acts in compliance with the exercise of any power referred to in subsection (1) does not, by reason only of such compliance, act in breach of trust.

**Charitable purposes**

**17.(1)** Notwithstanding any other law of Seychelles or a foreign law, the following purposes of a trust shall be deemed to be charitable —

- (a) the relief of poverty;
- (b) the advancement of education;
- (c) the advancement of religion;
- (d) the advancement of health or the saving of lives;
- (e) the advancement of the arts, culture, heritage or science;
- (f) the advancement of amateur sport;
- (g) the advancement of animal welfare;
- (h) the protection of the environment;
- (i) the advancement of human rights and fundamental freedoms; or
- (j) any other charitable purpose beneficial to the public.

**(2)** A purpose referred to in subsection (1) shall be charitable, notwithstanding that —

- (a) the purpose may only benefit a section of the public or members of the public;
- (b) the trust may also benefit privately one or more persons or objects within a class of persons or objects;
- (c) the trust is liable to be modified or terminated whether by the exercise of the power of appointment or disposition of assets;
- (d) the trustee of the trust has power to defer the distribution of the property under the trust for a period not exceeding the duration of the trust;

- (e) the trust may be of a discretionary nature; or
- (f) the objects are pursued within or outside of Seychelles.

## ***Chapter 2 - Beneficiaries***

### **Beneficiaries of a trust**

**18.(1)** A beneficiary shall be —

- (a) identifiable by name; or
- (b) ascertainable by reference to —
  - (i) a class, or
  - (ii) a relationship to some person whether or not living at the time of the creation of the trust or at the time which under the terms of the trust is the time by reference to which members of a class are to be determined.

(2) The terms of a trust may provide for the addition or removal of a person as beneficiary or for the exclusion of a beneficiary from benefit.

(3) The terms of a trust may impose upon a beneficiary an obligation as a condition for benefit.

(4) The interest of a beneficiary under a trust constitutes movable property.

(5) Subject to the terms of the trust, a beneficiary may sell, pledge, charge, transfer or otherwise deal with his or her interest in any manner.

(6) Subject to section 4(3), a settlor or trustee of a trust may also be a beneficiary of the trust, but not the sole beneficiary.

### **Entitlement of beneficiary to information**

**19.(1)** Subject to the terms of the trust, a beneficiary is entitled, on a written request to the trustee of the trust, to inspect or obtain —

- (a) a copy of the instrument creating the trust, any amendment thereto and any deed supplemental to the instrument creating the trust; and
- (b) a copy of the annual audited financial statements of the trust, if any, or, in the absence of annual audited financial statements, a summary of the financial position of the trust, with reference to the assets, liabilities, income and costs of the trust.

(2) Subject to the terms of the trust, on receipt of a written request to inspect or obtain documents under subsection (1), a trustee shall comply with such request within a reasonable time.

(3) Where a trustee does not make documents available for inspection under subsection (1) within a reasonable time, the beneficiary may apply to the Court for relief.

(4) The Court may, subject to the terms of the trust, make an order in relation to inspection by, or delivery of the documents to the beneficiary.

(5) Where the terms of the trust provide that a beneficiary shall not have the right to inspect or receive copy of any of the documents referred to in subsection (1), a trustee who does not comply with a written request under subsection (1) shall not have contravened subsection (2).

### **Disclaimer of interest**

**20.(1)** A beneficiary may, irrespective of the terms of a trust, disclaim in writing, either permanently or for such period as he or she may specify, the whole or any part of his or her interest under the trust.

(2) Subsection (1) applies irrespective of whether the beneficiary has received any benefit from the interest or not.

(3) Subject to the terms of the trust, if a disclaimer under subsection (1) so provides it may be revoked in accordance with its terms.

### ***Chapter 3 - Appointment, resignation and discharge of trustees***

#### **Number and type of trustees**

**21.(1)** Every trust shall have an approved trustee, and subject to this Act and the International Corporate Service Providers Act, may have one or more co-trustees who may be persons resident outside Seychelles.

(2) A trust shall not be invalidated on grounds of having fewer trustees than required by this Act or the terms of the trust.

(3) If the number of trustees falls below the minimum number required under subsection (1) or, if greater, by the terms of the trust, the required number of new trustees shall be appointed as soon as practically possible.

(4) If there are fewer trustees than are required under subsection (1) or, if greater, by the terms of the trust, the existing trustees may only act for the purpose of preserving the trust property.

#### **Appointment of new or additional trustee**

**22.(1)** Subsection (2) applies, if —

- (a) the terms of a trust do not provide for the appointment of new or additional trustee;
- (b) any such terms providing for any such appointment have lapsed or failed;
- (c) the person who has the power to make any such appointment is not capable of exercising the power; or
- (d) there is no other power to make the appointment.

(2) Without prejudice to the Court's power to appoint a new or additional trustee pursuant to an application made under section 71, a new or additional trustee may be appointed by —



- (a) the trustees for the time being;
- (b) the last remaining trustee; or
- (c) the personal representative or liquidator of the last remaining trustee.

(3) A trustee having power to appoint a new trustee who fails to exercise such power may be removed from office by the Court.

(4) Subject to the terms of the trust, a trustee appointed under this section shall have the same powers, discretions and duties and may act as if the trustee had been originally appointed a trustee.

(5) On the appointment of a new or additional trustee all requisite for vesting the trust property in the trustees for the time being of the trust shall be done.

### **Prohibition of renunciation after acceptance**

**23.(1)** No person shall be obliged to accept an appointment as a trustee and a person who knowingly does any act or thing in relation to the trust property consistent with the status of a trustee of that property shall be deemed to have accepted appointment as a trustee.

(2) A person who has not accepted and is not deemed to have accepted an appointment as trustee may disclaim such appointment within a reasonable period after becoming aware of it, by notice in writing to the settlor or trustees.

(3) If the settlor is deceased or otherwise unavailable and there are no trustees or persons to whom subsection (2) applies, may apply to the Court for relief from the person's appointment and the Court may make such order as it thinks fit.

### **Resignation or renewal of trustee**

**24.(1)** Subject to subsection (3), a trustee, not being a sole trustee, may resign from office by notice in writing delivered to the co-trustees.

(2) A resignation under subsection (1) shall take effect on the delivery of notice in accordance with subsection (1).

(3) If two or more trustees purport to resign simultaneously, the effect of which would mean that there would be no trustee, the resignations shall have no effect.

(4) A trustee shall cease to be a trustee of the trust immediately upon —

- (a) the trustee's removal from office by the Court; or
- (b) the trustee's resignation becoming effective; or
- (c) the coming into effect of a provision in the terms of a trust under which the trustee is removed from office or otherwise ceases to hold office.

(5) A person who ceases to be a trustee under this section shall execute all documents necessary for the vesting of the trust property in the new or continuing trustees.

#### ***Chapter 4 - Duties and general powers of trustees***

##### **Duties of trustees**

**25.**(1) A trustee shall in the execution of its duties and in the exercise of its powers and discretion —

- (a) act —
  - (i) with due diligence;
  - (ii) prudently;
  - (iii) to the best of the trustee's ability and skill; and
- (b) observe the utmost good faith.

(2) Subject to this Act, a trustee shall carry out its functions as trustee and administer the trust —

- 
- (a) in accordance with the terms of the trust; and
  - (b) in the interest of the beneficiaries or in the fulfillment of the purpose of the trust as the case may be.
- (3) Subject to the terms of the trust, a trustee shall —
- (a) so far as is reasonable preserve the value of the trust property;
  - (b) so far as is reasonable enhance the value of the trust property.
- (4) Except with the approval of the Court or as permitted by this Act or expressly provided by the terms of the trust, a trustee shall not —
- (i) directly or indirectly profit from the trustee's trusteeship;
  - (ii) cause or permit any other person to profit directly or in directly from such trusteeship; or
  - (iii) on the trustee's own account enter into any transaction with the trustees or relating to the trust property which may result in such profit.
- (5) A trustee shall keep trust property separate from its personal property and separately identifiable from any other property of which he or she is a trustee.
- (6) The trustee of a trust shall disclose its status as a trustee to a financial institution or a designated non-financial business or profession when forming a business relationship or carrying out an occasional transaction in an amount equal to or above to the amount prescribed under the Third Schedule of the Anti-Money Laundering and Countering the Financing of Terrorist Act, 2020 (*Act 5 of 2020*).
- (7) For the purposes of subsection (6), the terms “financial institution” and “designated non-financial business or profession” shall have the same meaning as defined under the Anti-Money Laundering and Countering the Financing of Terrorist Act, 2020 (*Act 5 of 2020*).

(8) A trustee who contravenes subsection (6) commits an offence and shall on conviction be liable to a penalty fee of US\$500 and to an additional penalty fee of US\$25 for each day or part thereof during which the contravention continues.

### **Duty to keep accounting records**

**26.(1)** A trustee shall, in relation to each trust of which it is trustee, keep or cause to be kept reliable accounting records that —

- (a) are sufficient to show and explain the trust's transactions;
- (b) enable the financial position of the trust to be determined with reasonable accuracy at any time; and
- (c) allow for financial statements of the trust to be prepared.

(2) For the purposes of subsection (1), accounting records shall be kept, depicting the true and fair view of the trust's financial position and explaining its transactions.

(3) The trustee shall, in respect of each trust (including a terminated trust) to which it was or is acting as trustee, preserve accounting records for at least 7 years from the completion of the transaction or operation to which it relates.

(4) Where a licensed trustee ceases to hold a licence under the International Corporate Service Providers Act (*Cap* 275), the licensed trustee shall handover all the records referred to in subsection (3) to the Authority or any other person approved by the Authority.

(5) All records to be handed over under subsection (4) shall be preferably in the digital form or in such form as agreed upon between the Authority and the licensed trustee.

(6) A trustee who contravenes subsection (1) or subsection (3) shall be liable to a penalty fee not exceeding US\$10,000.

**Location of accounting records**

**27.(1)** Where the approved trustee of a trust is —

(a) a licensed trustee, the trustee shall —

- (i) prepare an annual financial summary to be kept at the licensed trustee's principal place of business in Seychelles within 6 months from the end of the trust's financial year; and
- (ii) on a bi-annual basis, keep its accounting records at the licensed trustee's principal place of business in Seychelles.

(b) a private trust company, the trustee shall —

- (i) prepare an annual financial summary to be kept at the private trust company's registered office in Seychelles within 6 months from the end of the trust's financial year; and
- (ii) on a bi-annual basis, keep its accounting records at the private trust company's registered office in Seychelles.

(2) It shall be sufficient compliance with subsection (1), if a copy of the accounting records or financial summary is kept in electronic form at the approved trustee's principal place or business or registered office in Seychelles.

(3) Where an approved trustee keeps a copy of its accounting records at its principal place of business or registered office in Seychelles, the approved trustee shall keep a written record of the physical address of the place where the original accounting records are kept, and of any change thereto.

(4) The financial year of a trust shall be the calendar year, unless it is determined otherwise by the trustee.

(5) The Authority may issue written guidelines regarding the implementation of the obligations relating to accounting records.

(6) A trustee who contravenes this section shall be liable to a penalty fee not exceeding US\$10,000.

(7) The trustee of a former trust shall comply with the requirements of this section within a period of 6 months from the commencement of this Act.

### **Duty to keep trust register**

**28.(1)** A trustee, in relation to each trust of which it is the trustee, shall keep a register to be known as the trust register specifying the information referred to in subsection (2) in respect of each —

- (a) trustee;
- (b) beneficiary or class of beneficiaries;
- (c) settlor;
- (d) protector (if any);
- (e) enforcer (if any); and
- (f) regulated agent and service provider of the trust including, but not limited to, investment advisors, investment managers, accountants and tax advisors of the trust.

(2) The trust register shall specify with respect to each person referred to in subsection (1) —

- (a) the person's full name and address;
- (b) the person's nationality or place of incorporation, as the case may be;
- (c) the date on which the person was appointed or otherwise became 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;

- (d) the date on which the person ceased to be 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.

(3) Where the approved trustee of a trust is —

- (a) a licensed trustee, the register under subsection (1) shall be kept at the licensed trustee's principal place of business in Seychelles; or
- (b) a private trust company, the register under subsection (1) shall be kept at the private trust company's registered office in Seychelles.

(4) Subject to the terms of the trust, the trust register shall, during business hours, be open to inspection by any trustee, protector, enforcer, settlor or beneficiary of the trust, and shall be open for inspection for a period of not less than two hours on each business day.

(5) The trust register may be in such form as the approved trustee of the trust approves, but if it is in magnetic, electronic or other data storage form, the approved trustee shall be able to produce legible evidence of its content.

(6) The trust register is *prima facie* evidence of any matters directed or permitted by this Act to be contained therein.

(7) An approved trustee shall, in respect of each trust (including a terminated trust) to which it was or is a trustee, preserve the trust register specified under subsection (1) for at least 7 years from the date —

- (a) it ceases to be the trustee of the trust; or
- (b) the trust fails, lapses or terminates.

(8) Where an approved trustee ceases to hold a licence under the International Corporate Service Providers Act (*Cap 275*), the approved trustee shall handover all the records referred to in subsection (7) to the Authority or any other person approved by the Authority.

(9) All records to be handed over under subsection (8) shall be preferably in the digital form or in such form as agreed upon between the Authority and the approved trustee.

(10) A trustee who fails to comply with subsection (1), (2), (3), (4) or (5) shall be liable to a penalty fee of US\$500 and an additional penalty fee of US\$50 for each day or part thereof during which the contravention continues.

(11) A trustee who fails to comply with subsection (7) or (8) shall be liable to a penalty fee not exceeding US\$10,000.

(12) A trustee in a former trust shall be required to comply with the requirements of subsection (1)(f) within a period of 90 days from the commencement of this Act.

### **Furnishing of records**

**29.(1)** Where a trustee of a trust is requested pursuant to a written law of Seychelles to furnish all or any of the trust's records or copies thereof, including a request by —

- (a) the Authority under the Financial Services Authority Act or under the under the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020 (*Act 5 of 2020*);
- (b) the Seychelles Revenue Commission; or
- (c) the Financial Intelligence Unit under the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020 (*Act 5 of 2020*),

the trustee shall furnish the records or copies thereof to the requesting party within the time period specified in the request.



(2) For the purposes of this section, where a record is not in the English or French language, the party requesting the record may request a translation of the records in the English or French language.

(3) A trustee who fails to comply with this section shall be liable to a penalty not exceeding US\$5,000.

### **Duty of co-trustees to act together**

**30.**(1) Subject to the terms of the trust, where there is more than one trustee all the trustees shall join in administering the trust.

(2) Subject to subsection (3), where there is more than one trustee no power or discretion given to the trustees shall be exercised unless all the trustees agree on its exercise.

(3) The terms of a trust may empower trustees to act by a majority and a trustee who dissents from a decision of the majority may require the trustee's dissent to be recorded in writing.

### **Impartiality of trustee**

**31.** Subject to the terms of the trust, where there is more than one beneficiary, or more than one purpose, or at least one beneficiary and at least one purpose, a trustee shall be impartial and shall not execute the trust for the advantage of one at the expense of another.

### **Power of trustee**

**32.**(1) Subject to the terms of the trust and the trustee's duties under this Act, a trustee shall in relation to the trust property have the same powers as the beneficial owner of such property.

(2) A trustee shall exercise the trustee's powers only in the interests of the beneficiaries and in accordance with the terms of the trust.

(3) The terms of a trust may require a trustee to obtain the consent of other persons before exercising a power or discretion.

(4) A person who consents as provided in subsection (3) shall not by virtue of so doing be deemed to be a trustee.

**Delegation by trustee**

**33.**(1) Subject to the terms of the trust, a trustee may delegate the execution or exercise of any of its trusts or powers (both administrative and dispositive) and the delegatee may further delegate any such trusts or powers.

(2) Except where the terms of the trust specifically provide to the contrary, a trustee —

- (a) may delegate management of the trust property to a competent and qualified investment manager;
- (b) may employ professional persons to act in relation to any affairs of the trust or to hold any of the trust property; and
- (c) may consult professional persons in relation to any of the affairs of the trust.

(3) Where a trustee in good faith and without negligence makes such delegation, appointment or consultation under this section, the trustee shall not be liable for any loss to the trust arising from such delegation, appointment or consultation.

(4) A trustee may authorise a person referred to in subsection (2) to retain any commission or other distribution usually payable in relation to any such transaction.

**Remuneration and expenses of trustee**

**34.**(1) A trustee shall be entitled for such remuneration as may be specified in the terms of the trust, for its services.

(2) Where the terms of a trust are silent as to the remuneration, a trustee shall be entitled to reasonable remuneration for services that it provides.

(3) A trustee may reimburse himself or herself out of the trust, all expenses and liabilities reasonably incurred by him or her in connection with the trust.

**Power to appropriate**

**35.** Subject to the terms of the trust, a trustee may, without the consent of any beneficiary, appropriate trust property in or towards satisfaction of the interest of a beneficiary in such manner as the trustee thinks fit.

**Corporate trustee acting by resolution**

**36.** A corporate trustee may —

- (a) act in connection with a trust by a resolution of such corporate trustee or of its board of directors or other governing body; or
- (b) by such a resolution appoint one or more of its officers or employees to act on its behalf in connection with the trust.

**Trustee disclosures**

**37.(1)** Subject to section 29 and an order of the Court, the terms of a trust may —

- (a) confer upon any person a right to request the disclosure of information or a document concerning the trust;
- (b) determine the extent of the right of any person to information or a document concerning the trust; or
- (c) impose a duty upon a trustee to disclose information or a document concerning the trust to any person.

**(2)** Subject to the terms of the trust and to any order of the Court —

- (a) a beneficiary under the trust not being a charity;
- (b) a charity which is referred to by name in the terms of the trust as a beneficiary under the trust; or
- (c) an enforcer,

may request disclosure by the trustee of documents which relate to or form part of the accounts of the trust.

(3) Subject to section 29 and any order of the Court, a trustee may refuse to comply with —

- (a) a request for disclosure of information or a document concerning the trust under subsection (1)(a) or any document which relates to or forms part of the accounts of the trust under subsection (2); or
- (b) any other request for disclosure of information or a document concerning the trust,

where the trustee in the exercise of its discretion is satisfied that it is in the interests of one or more of the beneficiaries, or the beneficiaries as a whole, to refuse the request.

(4) Notwithstanding subsections (1), (2) and (3), subject to the terms of the trust and to any order of the Court, a trustee shall not be required to disclose to any person information or a document which —

- (a) discloses the trustee's deliberations as to the manner in which the trustee has exercised a power or discretion or performed a duty conferred or imposed upon the trustee;
- (b) discloses the reason for any particular exercise of a power or discretion or performance of a duty referred to in paragraph (a), or the material upon which such reason shall or might have been based; or
- (c) relates to the exercise or proposed exercise of a power or discretion, or the performance or proposed performance of a duty, referred to in paragraph (a).

(5) Notwithstanding the terms of the trust, on the application of the trustee, an enforcer, a beneficiary or, with leave of the court any other person, the court may make such order as it thinks fit determining the extent to which any person may request or receive information or a document concerning the trust, whether generally or in any particular instance.

## ***Chapter 5 - Liability of trustee***

### **Liability for breach of trust**

**38.(1)** Subject to this Act and to the terms of the trust, a trustee shall be liable for a breach of trust committed by the trustee or in which the trustee has concurred.

(2) A trustee who is liable for a breach of trust shall be liable for —

- (a) the loss or depreciation in value of the trust property resulting from such breach; and
- (b) the profit, if any, which would have accrued to the trust property if there had been no such breach.

(3) Where there are two or more breaches of trust, a trustee shall not set off a gain from one breach of trust against a loss resulting from another breach of trust.

(4) A trustee who resigns in order to facilitate a breach of trust shall be liable for that breach as if it had not resigned.

(5) A trustee shall not be liable for a breach of trust committed prior to the trustee's appointment.

(6) A trustee shall not be liable for a breach of trust committed by a co-trustee unless —

- (a) the trustee becomes aware or ought reasonably to have become aware of the commission of such breach or of the intention of its co-trustee to commit a breach of trust; and
- (b) the trustee actively conceals such breach or such intention or fails within a reasonable time to take proper steps to protect or restore the trust property or prevent such breach.

(7) Where two or more trustees are liable in respect of a breach of trust, they shall be liable jointly and severally.

(8) A trustee who becomes aware of a breach of trust to which subsection (5) relates shall take reasonable steps to have such breach remedied.

(9) Nothing in the terms of a trust shall relieve, release or exonerate a trustee from liability for breach of trust arising from the trustee's own actual fraud, dishonesty or willful misconduct.

### **Beneficiary may relieve or indemnify trustee**

**39.(1)** A beneficiary may —

- (a) relieve a trustee of liability to the beneficiary for a breach of trust;
  - (b) indemnify a trustee against liability for a breach of trust.
- (2) Subsection (1) shall not apply, unless the beneficiary —
- (a) has capacity to contract;
  - (b) has full knowledge of all material facts; and
  - (c) is not improperly induced by the trustee to take action under subsection (1).

### **Trustee acting in respect of more than one trust**

**40.(1)** A trustee of a particular trust who acts for more than one trust shall not, in the absence of fraud, be affected by notice of any instrument, matter, fact or thing in relation to any other trust, had the trustee obtained notice by reason of the trustee's acting or having acted for the purposes of the other trust.

(2) A trustee of a trust shall disclose to its co-trustee any interest which it has as a trustee of another trust, if any transaction in relation to the first mentioned trust is to be entered into with the trustee of such other trust.

### **Liability of trustee to third parties**

**41.(1)** Where a trustee is a party to any transaction or matter affecting the trust —

- (a) if the other party knows that the trustee is acting as trustee, any claim by the other party shall be against the trustee as trustee of the trust and shall extend only to the trust property;
- (b) if the other party does not know that the trustee is acting as trustee, any claim by the other party may be made against the trustee personally:

(2) In a case to which paragraph (b) applies, the trustee shall, without prejudice to its personal liability, have a right of recourse to the trust property by way of indemnity.

(3) Subsection (1) or (2) shall not affect any liability the trustee may have for breach of trust.

### **Constructive trustee**

**42.(1)** Subject to subsection (2) and section 8(2), where a person makes or receives a profit, gain or advantage from a breach of trust the person shall be deemed to be a trustee (in this section referred to as a “constructive trustee”) of that profit, gain, or advantage.

(2) Subsection (1) shall not apply to a *bona fide* purchaser of property for value and without notice of a breach of trust.

(3) Subject to any order of the Court to the contrary, a constructive trustee shall deliver the property of which it is a constructive trustee to the person entitled to it.

### **Position of outgoing trustee**

**43.(1)** Subject to subsection (2), when a trustee resigns, retires or is removed, it shall duly surrender the trust property in its possession or under its control.

(2) A trustee who resigns, retires or is removed may require to be provided with reasonable security for liabilities whether existing, future, contingent or otherwise before surrendering trust property.

(3) If the provision for security to which subsection (2) refers is extended or renewed by a contract, or other arrangement, to which the trustee who resigns, retires or is removed is not a party, and —

- (a) the contract or other arrangement expressly provides that the trustee may in its own right enforce a term of the contract or other arrangement; or
- (b) a term of the contract or other arrangement purports to confer a benefit on the trustee,

and in either case the contract or other arrangement expressly identifies the trustee, the trustee may enforce that term in its own right.

(4) A trustee who resigns, retires or is removed and has complied with subsection (1) shall be released from liability to any beneficiary, trustee or person interested under the trust for any act or omission in relation to the trust property or the trustee's duty as a trustee except for liability —

- (a) arising from any breach of trust to which such trustee (or in the case of a corporate trustee any of its officers or employees) was a party or to which the trustee was privy;
- (b) in respect of actions to recover from such trustee (or in the case of a corporate trustee any of its officers or employees) trust property or the proceeds of trust property in the possession of such trustee, officers or employees; or
- (c) arising from the trustee's fraud, dishonesty or willful misconduct.

## ***Chapter 6 - Variation of trusts, certain powers and class interests***

### **Variation of terms of a trust**

**44.** Without prejudice to the power of the Court to vary the terms of a trust, a trust may be varied in any manner provided by its terms.



**Power of accumulation and advancement**

**45.(1)** Subject to section 15, the terms of a trust may direct or authorise the accumulation for any period of all or part of the income of the trust.

(2) Subject to subsection (3), income of the trust which is not accumulated under subsection (1) shall be distributed.

(3) Subject to the terms of the trust and subject to any prior interests or charges in relation to the trust property, where a beneficiary is a minor and whether or not the beneficiary's interest —

- (a) is a vested interest; or
  - (b) is an interest which will become vested —
    - (i) on attaining the age of majority,
    - (ii) at any specific age, or
    - (iii) upon the happening of any event,
- the trustee may —

- (A) accumulate the income attributable to the interest of such beneficiary pending the attainment of the age of majority or such specific age or the happening of such event;
- (B) apply such income or part of it to or for the maintenance, education or other benefit of such beneficiary;
- (C) advance or appropriate to or for the benefit of any such beneficiary such interest or part of such interest.

(4) A written receipt by a parent or lawful guardian of a beneficiary who is a minor shall be a sufficient discharge to the trustee for a distribution made under subsection (3).

(5) Subject to the terms of the trust and subject to any prior interests or charges affecting the trust property, the trustee may advance or apply for the benefit of a beneficiary part of the trust property prior to the date of the happening of the event upon the happening of which the beneficiary becomes entitled absolutely thereto.

(6) Any part of the trust property advanced or applied under subsection (5) shall be brought into account in determining from time to time the interest of the beneficiary in the trust property.

(7) No part of the trust property advanced or applied under subsection (5) shall exceed the presumptive, contingent or vested share of the beneficiary in the trust property.

### **Power of trustee to appoint or assign**

**46.** The terms of a trust may confer on the trustee or any other person power to appoint or assign all or any part of the trust property or any interest in the trust property to, or to trustees for the benefit of, any person, whether or not such person was a beneficiary of the trust immediately prior to such appointment or assignment.

### **Power of revocation**

**47.(1)** A trust and any exercise of a power under a trust may be expressed to be —

- (a) revocable whether wholly or partly; or
- (b) capable of variation.

(2) No revocation or variation under subsection (1) shall prejudice anything lawfully done by a trustee in relation to a trust before the trustee receives notice of such revocation or variation.

(3) Subject to the terms of the trust, where the trust is revoked the trustee shall hold the trust property on trust for the settlor absolutely.

(4) Where a trust is partly revoked, subsection (3) shall apply to the property which is the subject of such revocation.

(5) In subsection (3) “settlor” means the particular person who provided the property which is the subject of revocation.

### **Power to provide for change of proper law**

**48.** The terms of a trust may provide for the proper law of the trust to be changed to the law of another jurisdiction.

### **Class interests**

**49.(1)** Subject to the terms of a trust, the following rules shall apply where a trust or an interest under a trust is in favour of a class of persons —

- (a) a class ceases when it is no longer possible for any other person to become a member of the class;
- (b) where any class interest relates to income and for any period there is no member of the class in existence the income shall be accumulated and, subject to section 15, shall be retained until there is a member of the class in existence or the class closes.

(2) In this section “class interest” means a trust or an interest which is in favour of a class of persons.

## ***Chapter 7 - Failure, lapse and termination of trusts***

### **Failure or lapse of interest**

**50.(1)** Subject to the terms of a trust and subject to any order of the Court, where —

- (a) an interest lapses;
- (b) a trust terminates;
- (c) other than in the case of a trust for a charitable or non-charitable purpose, there is no beneficiary and no person may become a beneficiary in accordance with the terms of the trust; or

- (d) property is vested in a person which is not for his or her sole benefit and the trusts upon which it is to hold the property are not declared or communicated to the person,

the interest or property affected by such lapse, termination, lack of beneficiary or lack of declaration or communication of trusts shall be held by the trustee or the person referred to in sub-paragraph (d), in trust for the settlor absolutely or if he or she is dead for his or her personal representative.

(2) An application to the Court under this section may be made by any person referred to in section 71(1).

(3) In subsection (1) “settlor” means the particular person who provided the interest or property affected as mentioned in that subsection.

### **Termination of a trust**

**51.(1)** On the termination of a trust, the trust property shall be distributed by the trustee within a reasonable time in accordance with the terms of the trust to the beneficiaries entitled thereto.

(2) Notwithstanding subsection (1), the trustee may require to be provided with reasonable security for liabilities whether existing, future, contingent or otherwise before distributing trust property.

(3) Without prejudice to the powers of the Court under subsection (4) and notwithstanding the terms of the trust, where all the beneficiaries are in existence and have been ascertained and none are incapacitated adults or minors who may require the trustee to terminate the trust and distribute the trust property among them.

(4) The Court may —

- (a) require the trustee to distribute the trust property;
- (b) direct the trustee not to distribute the trust property; or
- (c) make such other order as it thinks fit.

(5) In this section, “liabilities” includes contingent liabilities.

(6) An application to the Court under this section may be made by any person referred to in section 71(1).

### ***Chapter 8 - Protector***

#### **Appointment of protector**

**52.**(1) The terms of a trust may provide for the appointment of a person as a protector of the trust.

(2) A protector of a trust may be a settler or an enforcer of the trust, but not a trustee of the trust.

(3) A protector of a trust may be a beneficiary of the trust, but not a sole beneficiary.

#### **Powers of a protector**

**53.**(1) Subject to the terms of the trust, powers vested in the protector may include —

- (a) the power to remove, or appoint new trustee or additional trustee;
- (b) power to add or exclude a beneficiary;
- (c) power to approve or change the proper law of the trust;
- (d) power to approve proposed trust distributions;
- (e) power to approve proposed trust investments;
- (f) power to appoint replacement protectors;
- (g) power to approve the termination of the trust upon distribution of all of the trust's property; and
- (h) such further powers as are conferred on the protector by the terms of the trust or the provisions of this Act.

(2) Subsection (1)(b) shall not apply to —

- (a) charitable trust; and
- (b) a purpose trust where the terms of the trust do not provide for the trust to have beneficiaries.

### **Remuneration and expense of protector**

**54.**(1) Unless authorised by —

- (a) the terms of the trust;
- (b) consent in writing of all of the beneficiaries; or
- (c) an order of the Court,

a protector shall not be entitled to remuneration for his or her services.

(2) Subject to the terms of the trust, a protector shall be reimbursed by the trustee from the trust property all expenses and liabilities reasonably incurred in connection with the trust.

### **Entitlement of protector to documents**

**55.**(1) A protector of a trust shall be entitled, on a written request to the trustee of the trust, to —

- (a) a copy of the instrument creating the trust, any amendment thereto and any additional deed supplemental to the instrument creating the trust; and
- (b) access to and copies of the accounting records of the trust.

(2) A protector shall not disclose information or document referred to in subsection (1) to a beneficiary, if any, or to any third party unless such beneficiary or other party is entitled under the terms of the trust.

### **Duty of co-protectors to act together**

**56.**(1) Subject to the terms of the trust, where there is more than one

protector, all the protectors shall join in the performance of their duties and powers in relation to the trust.

(2) Subject to subsection (3), where there is more than one protector no power or discretion given to the protectors shall be exercised unless all the protectors agree on its exercise.

(3) The terms of a trust may empower protectors to act by a majority and a protector who dissents from a decision of the majority of the protectors shall record his or her dissent in writing.

### **Liability of a protector**

**57.** A protector or a person acting as an officer, employee or agent of the protector or performing any duty on behalf of the protector shall not be liable for damages done or omitted to be done in the discharge of the duties of the protector under this Act or under the terms of the trust, unless it is proved that the act or omission constituted or arose from the person's own fraud, dishonesty or willful misconduct.

### **Cessation of appointment of protector**

**58.(1)** Subject to the terms of the trust and subsection (3), a protector may resign from his or her office by giving reasonable notice in writing delivered to the trustee.

(2) Subject to the terms of the trust and subsection (3), a resignation under subsection (1) shall take effect —

- (a) upon delivery of the notice to the trustee; or
- (b) on such date or contingent event as may be specified in the notice.

(3) A resignation given in order to facilitate a breach of this Act or any duty imposed on the enforcer under the terms of the trust shall be of no effect.

(4) A protector shall cease to be a protector of a trust immediately upon —

- (a) the protector's resignation becoming effective;
- (b) the protector's removal from office by the Court;
- (c) the coming into effect of a provision in the terms of the trust under which the protector is removed from office or otherwise ceases to hold office; or
- (d) the protector's appointment as a trustee of the trust.

### ***Chapter 9 - Enforcer***

#### **Enforcer**

**59.**(1) The terms of the trust in the case of a purpose trust shall provide for —

- (a) the appointment of one or more persons as an enforcer in relation to the trust's non-charitable purposes; and
- (b) the appointment of one or more persons as enforcer at any time when there is none.

(2) A charitable trust can have an enforcer, in which case the terms of the trust shall provide for the appointment of one or more persons as enforcer in relation to the trust's charitable purposes.

(3) An enforcer of a trust can also be a settlor, a beneficiary or a protector of the trust, but the appointment of a person as enforcer of the trust shall not have effect if the person is also a trustee of the trust.

(4) A trustee of a purpose trust shall, at any time when there is no enforcer in relation to those purposes, take such steps as maybe necessary to secure the appointment of an enforcer in accordance with the terms of the trust.

#### **Duties of enforcer**

**60.**(1) Subject to the terms of a trust, it shall be the duty of an enforcer of a purpose trust to enforce the trust in relation to its non-charitable purposes.

(2) In the case of a charitable trust which has an enforcer, it shall be the duty of the enforcer to enforce the trust in relation to its charitable purposes.



(3) Except with the approval of the Court or as permitted by this Act or expressly provided by the terms of the trust, an enforcer shall not —

- (i) directly or indirectly profit from the enforcer's appointment;
- (ii) cause or permit any other person to profit directly or indirectly from the enforcer's appointment; or
- (iii) on the enforcer's own account enter into any transaction with the trustees or relating to the trust property which may result in such profit.

### **Remuneration and expense of enforcer**

**61.**(1) An enforcer shall not be entitled to remuneration for his or her services, unless authorised by —

- (a) the terms of the trust;
- (b) a consent in writing of all of the beneficiaries; or
- (c) an order of the Court.

(2) Subject to the terms of the trust, an enforcer shall be reimbursed by the trustee from the trust property all expenses and liabilities reasonably incurred in connection with the trust.

### **Entitlement of enforcer to documents**

**62.**(1) An enforcer of a trust shall be entitled, on a written request to the trustee of the trust, to —

- (a) a copy of the instrument creating the trust, any amendment thereto and any deed supplemental to the instrument creating the trust; and
- (b) access to and copies of the accounting records of the trust.

(2) An enforcer shall not disclose any information or document referred to in subsection (1) to a beneficiary, or to any other person unless such

beneficiary or other person is entitled to receive such information or document under the terms of the trust or any written law.

### **Duty of co-enforcers to act together**

**63.**(1) Subject to the terms of the trust, where there is more than one enforcer all the enforcers shall join in enforcing the trust.

(2) Subject to subsection (3), where there is more than one enforcer no power or discretion given to the enforcers shall be exercised unless all the enforcers agree on its exercise.

(3) The terms of a trust may empower enforcers to act by a majority and an enforcer who dissents from a decision of the majority of the enforcers may require his or her dissent to be recorded in writing.

### **Liability of enforcer**

**64.** An enforcer or a person acting as an officer, employee or agent of the enforcer or performing any duty on behalf of the enforcer shall not be liable in damages for anything done or omitted to be done in the discharge or of the duties of the enforcer under this Act or under the terms of the trust, unless it is proved that the act or omission constituted or arose from the person's own fraud, dishonesty or willful misconduct.

### **Cessation of appointment of enforcer**

**65.**(1) Subject to the terms of the trust and subsection (3), an enforcer may resign from office by notice in writing delivered to the trustee.

(2) Subject to the terms of the trust and subsection (3), a resignation under subsection (1) shall take effect —

- (a) on delivery of the notice to the trustee; or
- (b) on such date or contingent event as may be specified in the notice.

(3) A resignation given in order to facilitate a breach of this Act or any duty imposed on the enforcer under the terms of the trust shall be of no effect.

(4) An enforcer shall cease to be an enforcer of a trust immediately upon —

- (a) his or her resignation becoming effective;
- (b) his or her removal from office by the Court;
- (c) the coming into effect of a provision in the terms of the trust under which the enforcer is removed from office or otherwise ceases to hold office; or
- (d) his or her appointment as a trustee of the trust.

### ***Chapter 10 - Trust protection provisions***

#### **Application of Laws of Seychelles to a Seychelles trust**

**66.(1)** In this section —

“foreign” refers to any jurisdiction outside Seychelles;

“heirship rights” means rights, claims or interests in, against or to property of a person arising or accruing in consequence of his or her death, other than rights, claims or interests created by will or other voluntary disposition by such person or resulting from an express limitation in the disposition of property;

“personal relationship” includes the situation where there exists, or has in the past existed, any of the following relationships between a person and the settlor —

- (a) any relationship by blood, marriage or adoption (whether or not the marriage or adoption is recognised by law);
- (b) any arrangement between the person and settlor such as to give rise in any jurisdiction to any rights, obligations or responsibilities analogous to parent and child or husband and wife; or

- (c) any relationship between the person or the settlor and a third person who has a personal relationship;

“trust” includes a former trust.

- (2) Subject to subsection (4), any question in respect of —

- (a) the validity or interpretation of a trust;
- (b) the validity or effect of any transfer or other disposition of property to a trust;
- (c) the capacity of a settlor;
- (d) the administration of the trust, whether the administration be conducted in Seychelles or elsewhere, including questions as to the powers, obligations, liabilities and rights of trustees and their appointment or removal; or
- (e) the existence and extent of powers, conferred or retained, including powers of variation or revocation of the trust and powers of appointment and the validity of any exercise of such powers,

shall be determined in accordance with the law of Seychelles and no rule of foreign law shall apply.

- (3) Without prejudice to the generality of subsection (2), any question mentioned therein shall be determined without consideration of whether or not —

- (a) any foreign law prohibits or does not recognise the concept of a trust; or
- (b) the trust or disposition avoids or defeats rights, claims, or interests conferred by any foreign law upon any person by reason of a personal relationship to the settlor or by way of heirship rights, or contravenes any rule of foreign law or any

foreign judicial or administrative order or action intended to recognize, protect, enforce or give effect to any such rights, claims or interests.

(4) No foreign judgment with respect to a trust shall be enforceable to the extent that it is inconsistent with this section.

### **Protection of trust property**

**67.(1)** In this section —

“creditor” means a person to whom an obligation is owed;

“disposition” means any disposition, or series thereof, effected and includes, any transaction, gift, grant or transfer of property of any nature whatsoever;

“intent to defraud” means an intention of a transferor willfully to defeat an obligation owed to a creditor;

“obligation” means an obligation or liability (which shall include a contingent liability) which existed on or prior to the date of a relevant disposition and of which the transferor had actual notice;

“relevant disposition” means a disposition to which subsection (3) applies;

“transferor” means the person who as owner of property makes a relevant disposition or causes it to be made;

“transferee” means the person to whom a relevant disposition is made and shall include a successor in title;

“trust” includes reference to the trustee of the trust, in his or her capacity as trustee;

“undervalue”, in relation to a disposition of property, means —

(a) the provision of no consideration for the disposition; or

- (b) a consideration for the disposition the value of which is significantly less than the value of the property.

(2) Subject to subsection (3), a disposition of property to a trust shall not be void, voidable or otherwise liable to be set aside, or subject to any implied condition, by reason of —

- (a) bankruptcy or liquidation of the settlor; or
- (b) any action, proceeding or other claim by a creditor of the settlor.

(3) If the Court, in respect of a claim by a creditor is satisfied beyond reasonable doubt that the disposition of property to the trust was made —

- (a) with an intent to defraud and at an undervalue; or
- (b) the transferor was insolvent or became insolvent as a result of the disposition,

the Court shall declare the disposition void and set aside to the extent necessary to satisfy the obligation of the claimant creditor together with such costs as the Court may direct.

(4) The burden of proof for an intent to defraud for the purposes of subsection (3) shall be upon the creditor seeking to set aside the disposition.

(5) No action or proceedings shall be commenced under this section unless initiated within two years of the date of the relevant disposition.

(6) If the Court sets aside a disposition under subsection (3) —

- (a) where the Court is satisfied that the transferee has acted in bad faith —
  - (i) the transferee shall have a first and paramount charge over the property, the subject of the disposition, of an amount equal to the entire costs properly incurred by

the transferee in the defence of the action or proceedings to set aside (and not merely such costs as might otherwise be allowed by the Court); and

(ii) the relevant disposition shall be set aside subject to the proper fees, costs, pre-existing rights, claims and interests of the transferee, (and of any predecessor transferee which has not acted in bad faith); and

(b) unless the Court is satisfied that a beneficiary of a trust has acted in bad faith the disposition shall only be set aside subject to the right of such beneficiary to retain any distribution made consequent upon the prior exercise of a trust, power or discretion vested in the trustee of such trust or any other person, and otherwise properly exercised.

(7) The burden of proof that a transferee or beneficiary has acted in bad faith for the purposes of subsection (6) shall be upon the person making the allegation.

### **Spendthrift or protective trust**

**68.(1)** The terms of a trust may make the interest of a beneficiary liable to termination.

(2) Without prejudice to subsection (1), the terms of a trust may make the interest of a beneficiary in the income or capital of the trust property subject to —

- (a) a restriction on alienation or disposal; or
- (b) diminution or termination in the event of the beneficiary becoming bankrupt or any of his or her property becoming liable to sequestration for the benefit of his or her creditors.

## **PART III POWERS OF COURT**

### **Application of Part III**

**69.** This Part shall apply in relation to a Seychelles trust and, to the extent that the context admits, shall apply to a foreign trust.

### **Application for directions**

**70.** A trustee may apply to the Court for direction in respect of the manner in which the trustee may act in connection with any matter relating to the trust and the Court may make such order, as it thinks fit.

### **Application and certain powers of Court**

**71.(1)** An application to the Court for an order or declaration under subsection (2) may be made by the Authority or by the trustee, the settlor, the enforcer, a protector or a beneficiary or, with leave of the Court, by any other person.

(2) The Court may —

(a) make an order concerning —

- (i) the execution or the administration of a trust;
- (ii) the trustee of a trust, including an order relating to the exercise of any power, discretion or duty of the trustee, the appointment or removal of a trustee, the remuneration of a trustee, the submission of accounts, the conduct of the trustee and distribution of property;
- (iii) a beneficiary or a person having a connection with the trust;
- (iv) the appointment or removal of an enforcer in relation to a non-charitable purpose of the trust; or
- (v) the appointment or removal of a protector;

(b) make a declaration as to the validity or the enforceability of a trust;

(c) rescind or vary any order or declaration made under this Act, or make any new order or declaration.



(3) Where the Court makes an order for the appointment of a trustee, it may impose such conditions, including the vesting of the trust property, as it may consider necessary.

(4) Subject to any order of the Court, a trustee appointed under this section shall have the same powers, discretions and duties and may act as if the trustee had been originally appointed.

### **Variation of terms of a Seychelles trust by Court and approval of transactions**

**72.(1)** Subject to subsection (2), the Court may, by order approve on behalf of —

- (a) a minor or incapacitated adult having, directly or indirectly, an interest, whether vested or contingent, under the trust;
- (b) any person, whether ascertained or not, who may become entitled, directly or indirectly, to an interest under the trust at a future date or on a contingent event of any specified description;
- (c) any person unborn; or
- (d) any person in respect of an interest that may arise by reason of a discretionary power given to a person on the failure or determination of an existing interest that has not failed or determined,

any arrangement, by whomsoever proposed and whether or not there is any other person beneficially interested who is capable of assenting thereto, varying or revoking all or any of the terms of a Seychelles trust or enlarging the powers of the trustee of managing or administering any of the trust property.

(2) The Court shall not approve an arrangement on behalf of any person referred to in subsection (1)(a), (b) or (c) unless the arrangement thereof appears to be for the benefit of that person.

(3) Where in the management or administration of a Seychelles trust, any sale, lease, pledge, charge, surrender, release or other disposition, or any

purchase, investment, acquisition, expenditure or other transaction is in the opinion of the Court expedient and the same may not be effected by reason of the absence of any power vested in the trustee by the terms of the trust or by proper law, the Court may confer upon the trustee generally or in any particular circumstances a power for such purpose on such terms and conditions as the Court thinks fit and may direct in any manner and from the property any cost authorised to be expended and the cost of any transaction to be paid or borne.

(4) An application to the Court under this section may be made by any person referred to in section 71 (1).

### **Charitable trusts or purpose trusts**

**73.(1)** Where trust property of a Seychelles trust is held for a charitable purpose or non-charitable purpose and any of the circumstances referred to in subsection (2) apply, the Court may, on the application of a trustee, the Authority, an enforcer or a protector, declare that the property or the remainder of the property, shall be held for such other charitable purpose or non-charitable purpose, as the Court considers to be consistent with the original intention of the settlor.

(2) The circumstances referred to in subsection (1) are that —

- (a) the purpose has, as far as is reasonably possible, been fulfilled, has ceased to exist or is no longer applicable;
- (b) the purpose cannot be carried out having regard to the directions given by the settlor or the spirit of the gift;
- (c) the purpose provides a use for only part of the trust property;
- (d) the property, and any other property applicable for a similar purpose, may more effectively be applied to a common purpose, with regard to the spirit of the gift;
- (e) the purpose was laid down by reference to an area that is no longer a unit for that purpose, or by reference to a class of persons or to an area that is no longer appropriate, with regard to the spirit of the gift or the practicality of administering the gift;

- (f) the purpose has been adequately provided for by other means;
- (g) in the case of a trust for charitable purposes, the purpose has ceased for whatever reason to be charitable; or
- (h) the purpose has ceased to provide a suitable and effective method of managing the property, with regard to the spirit of the gift.

(3) Where trust property of a Seychelles trust is held for a charitable purpose or non-charitable purpose the Court may, on the application of a trustee, the Authority, an enforcer or a protector, approve any arrangement that varies or revokes the purposes of the trust or enlarges or modifies the powers of management or administration of the trustees, if it is satisfied that the arrangement is —

- (i) suitable and expedient; and
- (ii) consistent with the original intention of the settlor and the spirit of the gift.

(4) The Court shall not approve an arrangement under subsection (3) unless it is satisfied that any person with a material interest in the trust has had an opportunity to be heard.

### **Power to relieve trustee from personal liability**

**74.(1)** The Court may relieve a trustee either wholly or partly from personal liability for a breach of trust where it appears to the Court that —

- (a) the trustee is or may be personally liable for the breach of trust;
- (b) the trustee has acted honestly and reasonably;
- (c) the trustee ought fairly to be excused —
  - (i) for the breach of trust, or

- (ii) for omitting to obtain the directions of the Court in the matter in which such breach arose.

(2) Subsection (1) shall apply whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Act.

### **Execution of instruments by order of Court**

**75.** Where a trustee commits a breach of trust at the instigation or at the request or with the consent of a beneficiary, the Court may by order impound all or part of the interest of the beneficiary by way of indemnity to the trustee or any person claiming through the trustee.

### **Power to indemnify beneficiary for breach of trust**

**76.(1)** Where any person neglects or refuses to comply with an order of the Court, directing the person to execute or make, any conveyance, assignment, document, instrument or endorsement, the Court may, on such terms and conditions, order that the conveyance, assignment, document, instrument or endorsement, be executed or made by such other person as the Court nominates for the purpose at the cost of the person in default, or otherwise as the Court directs.

(2) A conveyance, assignment, document, instrument or endorsement executed or made by such other person as the Court may nominate under subsection (1) shall be valid and be for all purposes available whether or not it had been executed or made by the person originally directed to execute or make it.

### **Payment of costs**

**77.** The Court may order the costs and expenses and incidental to an application to the Court under this Act to be paid out of the trust property or to be paid in such manner by such persons as the Court may direct.

### **Interpretation and general provisions relating to sections 79 and 80**

**78.(1)** In sections 79 and 80 —

- (a) references to a transfer or other disposition of property to a trust, do not include a testamentary disposition;
- (b) “power” includes a discretion as to the way in which an obligation is performed.
- (c) “mistake” includes —
  - (i) a mistake as to the effect of, any consequences of, or any of the advantages to be gained by, a transfer or other disposition of property to a trust, or the exercise of a power over or in relation to a trust or trust property;
  - (ii) a mistake as to a fact existing either before or at the time of, a transfer or other disposition of property to a trust, or the exercise of a power over or in relation to a trust or trust property; or
  - (iii) a mistake of law including a law of a foreign jurisdiction.

(2) Without prejudice to section 71 and subject to subsection (4), the Court may, consequential upon a declaration made under section 79 or 80, make such order or orders as it thinks fit.

(3) No order may be made under subsection (2) which would prejudice any bona fide purchaser for value of any trust property without notice of the matters which render the transfer or other disposition of property to a trust, or the exercise of any power over or in relation to a trust or trust property, voidable.

(4) Nothing in section 79 or 80 shall prejudice —

- (a) any application for a declaration by the Court that a transfer or other disposition of property to a trust, or the exercise of any power in relation to a trust is void or voidable on grounds other than those specified in 79 or 80; or
- (b) any personal remedy which may be available against a trustee or any other person.

**Power to set aside a transfer or disposition of property to a trust due to mistake**

**79.(1)** In this section, “person exercising a power” means a person who exercises a power to transfer or make other disposition of property to a trust on behalf of a settlor.

(2) The Court may on the application of a settlor or any of his or her personal representatives or successors in title, and in the circumstances set out in subsection (3), declare that a transfer or other disposition of property to a trust —

- (a) by a settlor acting in person (whether alone or with any other settlor); or
- (b) through a person exercising a power,

is voidable and has such effect, if any, as the Court may determine.

(3) The circumstances referred to in subsection (2) are where the settlor or person exercising a power —

- (a) made a mistake in relation to the transfer or other disposition of property to a trust; and
- (b) would not have made the transfer or other disposition but for that mistake,

and the mistake is serious as to render it just for the Court to make a declaration under this section.

**Power to set aside the exercise of powers in relation to a trust or trust property due to mistake**

**80.(1)** In this section, “person exercising a power” means a person who, otherwise than in the capacity of trustee, exercises a power over, or in relation to a trust, or trust property.

(2) The Court may on the application of any person specified in subsection (4), and in the circumstances set out in subsection (3), declare that

the exercise of a power by a trustee or a person exercising a power in relation to a trust or trust property is voidable and —

- (a) has such effect as the Court may determine; or
- (b) is of no effect from the time of its exercise.

(3) The circumstances referred to in subsection (2) are where the trustee or person exercising a power —

- (a) made a mistake in relation to the exercise of its power; and
- (b) would not have exercised the power, or would not have exercised the power in the way it was exercised, but for that mistake,

and the mistake is serious as to render it just for the Court to make a declaration under this section.

(4) An application under subsection (2) may be made by —

- (a) the trustee who exercised the power concerned, or the person exercising a power (as the case may be);
- (b) any other trustee;
- (c) a beneficiary, protector or enforcer; or
- (d) any other person with leave of the Court.

## PART IV FOREIGN TRUSTS

### Provisions relating to foreign trusts

**81.(1)** This section shall apply to a foreign trust.

(2) Subject to subsections (3) and (5), a foreign trust shall be regarded as being governed by and shall be interpreted in accordance with its proper law.

(3) A foreign trust shall not be enforceable in Seychelles —

(a) to the extent that it purports —

- (i) to do anything which is contrary to the law of Seychelles;
- (ii) to confer any right or power or impose any obligation the exercise or carrying out of which is contrary to the law of Seychelles;
- (iii) to hold, directly or indirectly, immovable property in contravention of section 10(2)(b)(i) or (ii) in Seychelles; or

(b) to the extent that the Court declares that the trust or any activity carried on is immoral or contrary to public policy.

(4) Where subsection (3)(a)(iii) applies, any person in whom the title to such immovable property is vested shall not be a trustee of such immovable property.

(5) Sections 26 to 29 shall apply in the case of a foreign trust with a trustee in Seychelles.

## **PART V**

### **PROVISIONS OF GENERAL APPLICATION**

#### **Application of Part V**

**82.** This Part shall apply to a Seychelles trust and, to the extent that the context admits, shall apply to a foreign trust.

#### **Nature of interest of trustee in trust property**

**83.(1)** Subject to subsection (2) —

- (a) legal title to trust property shall be in the name of the trustee or in the name of another person on behalf of the trustee;



- (b) the interest of a trustee in trust property is limited to that which is necessary for the proper administration of the trust; and
- (c) trust property shall constitute a separate fund and shall not form part of the trustee's own property.

(2) Where a trustee is also a beneficiary of the same trust, subsection (1)(c) shall not apply to the trustee's interest in the trust property as a beneficiary.

### **Following of trust property**

**84.** Without prejudice to the liability of a trustee for breach of trust, trust property which has been alienated or converted in breach of trust or the property into which it has been converted may be followed and recovered from of a *bona fide* purchaser for value without notice of a breach of trust or a person (other than the trustee) deriving title through such a person.

### **Limitation of interest of trustee in trust property**

**85.(1)** Subject to subsection (2) —

- (a) the interest of a trustee in the trust property is limited to that which is necessary for the proper performance of the trust; and
- (b) such property shall not be deemed to form part of the trustee's assets.

(2) Where a trustee is also a beneficiary of the same trust, subsection (1) shall not apply to the trustee's interest in the trust property as a beneficiary.

(3) Without prejudice to the liability of a trustee for breach of trust, trust property which has been alienated or converted in breach of trust or the property into which it has been converted may be followed and recovered unless it is in the hands of a *bona fide* purchaser for value without notice of a breach of trust or a person (other than the trustee) deriving title through such a person.

(4) Where a trustee becomes insolvent or upon distraint, execution or any similar process of a written law being made, taken or used against any property of the trustee, the creditors of the trustee shall have no right or claim against the trust property except to the extent that the trustee itself has a claim against the trust or has a beneficial interest in the trust.

### **Protection of persons dealing with trustee**

**86.(1)** A *bona fide* purchaser for value without actual notice of any breach of trust —

- (a) may deal with a trustee in relation to trust property as if the trustee was the beneficial owner of the trust property; and
- (b) shall not be affected by the trusts on which such property is held.

(2) No person paying or advancing money to a trustee shall be concerned to the use of the money, or that no more than is necessary is raised, or otherwise as to the propriety of the transaction or the application of the money.

### **Limitation of actions or prescription**

**87.(1)** Notwithstanding any other written law, no period of limitation or prescription shall apply to an action brought against a trustee in respect of any fraud to which the trustee was a party or to which the trustee was privy.

(2) Where subsection (1) does not apply, the period within which an action founded on breach of trust or to recover from trust property from the trustee may be brought against a trustee by a beneficiary, a protector or an enforcer is —

- (a) three years from the delivery of the final accounts of the trust to the beneficiary, protector or the enforcer; or
- (b) three years from the date on which the beneficiary, protector or the enforcer first has knowledge of the occurrence of a breach of trust,

whichever period shall first begin to run.

(3) Where the beneficiary is a minor the period referred to in subsection (2) shall not begin to run until the day on which the beneficiary ceases to be a minor.

(4) Where subsection (1) does not apply —

- (a) the period within which an action founded on breach of trust may be brought against a trustee by an enforcer or protector is three years from —
  - (i) the date of delivery of the final accounts to the enforcer or protector; or
  - (ii) the date on which the enforcer or protector first has knowledge of the breach of trust,

whichever is earlier; and

- (b) the period within which an action founded on breach of trust may be brought against a former trustee by a current trustee is three years from the date on which the former trustee ceased to be a trustee of the trust.

(5) This section does not apply to a foreign trust whose proper law is the law of a jurisdiction to which the Hague Convention on the Law Applicable to Trusts and on their Recognition concluded on 1 July 1985, for the time being extends.

### **Fiscal matters**

**88.**(1) Notwithstanding any other provisions of this Act, where a trust derives assessable income in Seychelles, its trustees shall —

- (a) within one month of deriving the first assessable income, notify the Authority in writing that the trust is deriving assessable income and the nature of the activities giving rise to this assessable income; and

- (b) within one year of deriving the first assessable income, submit to the Authority an annual return, in a form prescribed by the Authority and accompanied by the annual financial statements complying with the requirements of sections 142 and 144 and the Sixth Schedule of the Companies Act.

(2) The Authority shall send a copy of the notice in subsection (1)(a) to the Seychelles Revenue Commission.

(3) Subject to subsection (4) and notwithstanding anything in the Stamp Duty Act, all instruments relating to —

- (a) the formation of a trust;
- (b) transfers of property to or by a trust (acting by its trustees);
- (c) transactions in respect of beneficiaries' interests in a trust;
- (d) the creation, variation or discharge of a charge or other security interests over any property of a trust; and
- (e) other transactions relating to the business or assets of a trust (acting by its trustees),

are exempt from the payment of stamp duty.

(4) Subsection (3) does not apply to an instrument relating to —

- (a) the transfer to or by a trust (acting by its trustees) of an interest in immovable property in Seychelles; or
- (b) the transfer to or by a trust (acting by its trustees) of shares or other interests in a company or other legal person which owns or has any interest in immovable property in Seychelles.

(5) A trustee who fails to comply with subsection (1) shall be liable to a penalty fee not exceeding US\$5,000.

## **PART VI MISCELLANEOUS**

### **Immunity**

**89.** No action, prosecution or other proceedings shall be brought against the Authority or an employee or agent of the Authority, in respect of an act done or omitted to be done in good faith by such person in the performance of functions under this Act.

### **Compliance inspections**

**90.(1)** Any person authorised by the Authority in writing may, for the purpose of monitoring and assessing compliance with this Act, during normal business hours and after giving a notice to the approved trustee of a trust —

- (a) access the principal place of business in Seychelles of the approved trustee;
- (b) inspect the documents required by this Act to be kept in relation to the trust, including, the register to be kept by the approved trustee under section 28(1);
- (c) during or after inspection request explanations pertaining to the trust from the directors or managerial staff of the approved trustee.

(2) Any person who impedes, prevents or obstructs any person acting under the authority of subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding SCR 300,000.

### **Limitation of actions or prescription**

**91.(1)** Subject to subsection (2), the Authority and each officer, employee and agent of the Authority, shall not disclose to a third party any information acquired in the performance of the functions of the Authority.

(2) Subsection (1) shall not apply to any disclosure —

- (a) pursuant to an order of the Court;

- (b) required under this Act or any other written law of Seychelles;
- (c) having the prior written consent of the approved trustee of the relevant trust; or
- (d) where the information disclosed is in statistical form or is otherwise disclosed in such a manner that does not enable the identity of any trust or other person, to which the information relates, to be ascertained.

(3) A person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding SCR 300,000.

### **Punishment for contravening any provision for which no fine is provided**

**92.** Any person who contravenes any provisions of this Act, for which no fine is provided for in this Act, commits an offence and shall on conviction be liable to a fine not exceeding SCR500,000.

### **Power of Authority to refuse to take action in certain cases**

**93.(1)** The Authority may refuse to take any action required under this Act for which a fee is prescribed until such fee is paid.

(2) Before imposing any penalty fee under this Act by the Authority, the person concerned shall be given an opportunity of being heard.

(3) The Authority may, for good cause and reason to be recorded in writing, waive all or any part of any penalty fee imposed under this Act.

### **Act to prevail over other laws**

**94.** Where there is any inconsistency between this Act and the Civil Code of Seychelles Act or the Commercial Code of Seychelles Act, this Act shall prevail.

## Regulations

**95.** The Minister may make regulations for carrying out and giving effect to the provisions of this Act and may by regulations amend the Schedule.

## PART VII REPEALS, SAVINGS AND TRANSITIONAL PROVISIONS

### **Repeal, savings and transitional provisions of International Trust Act 1994**

**96.**(1) The International Trusts Act (*Cap 276*) is hereby repealed.

(2) Notwithstanding the repeal under subsection (1) —

- (a) any statutory instruments made under the repealed Act, shall to the extent that they are not inconsistent with this Act, shall continue to have effect until they are amended or repealed under the provisions of this Act;
- (b) all suits, prosecutions, appeals or other legal proceedings instituted in any Court or tribunal under the repealed Act and pending before such Court or tribunal prior to the commencement of this Act shall, with effect from such commencement, be deemed to have been instituted under this Act and may be continued accordingly;
- (c) all decrees, orders and judgments made by a court under the repealed Act and remaining unsatisfied prior to the commencement of this Act, shall be enforced under the repealed Act as if this Act has not been enacted;
- (d) anything done or any action taken under the repealed Act shall be deemed to have been done or taken under this Act.

(3) The repeal under subsection (1) shall not affect the legality or validity of —

- (a) anything done in relation to a trust existing before the commencement of this Act; or

- (b) any trust arising from a document or deposition executed or taken effect before the commencement of this Act.

### **Re-registration of former trusts**

**97.(1)** For the purposes of this section,

- (a) a “former trust” means a trust —
  - (i) in respect of which a declaration has been registered under section 75 of the repealed Act; and
  - (ii) subsisting as such on the commencement of this Act;
- (b) “repealed Act” means the International Trusts Act (*Cap 276*) repealed by section 96.

(2) A former trust shall be deemed to be re-registered as a registered trust under this Act with effect from the date of the commencement of this Act, and the Authority shall as soon as is practicable —

- (a) allot a reference number to the trust; and
- (b) enter in the Register the name and other particulars referred to in section 13(1).

(3) The reference number allotted to a trust under subsection (2) may be the number previously allotted to the trust under the repealed Act.

(4) The approved trustee of a former trust shall be deemed to be re-registered under subsection (2), and may request from the Authority, a letter confirming the re-registration and the Authority shall issue at no cost, a letter to that effect.

(5) The letter of re-registration referred to in subsection (5) shall state —

- (a) the name and unique registration number of the trust;
- (b) that the former trust was re-registered under this Act on the commencement of this Act; and
- (c) the date of registration under section 75 of the repealed Act.



(6) Except as otherwise provided, the provisions of this Act shall apply to a trust that is deemed to be registered under this section as it such trust is registered under this Act.

## SCHEDULE

### (Sections 11, 12 and 13)

#### FEEs

1	2	3
Sl. No.	Provisions of the Act and purpose	Amount (in US\$)
1.	<i>section 11(1)(b)</i> Trustee appointment declaration registration fee (one off)	\$200
2.	<i>section 12(1)</i> Filing of a notice of appointment of a Seychelles trustee	\$50
3.	<i>section 12(2)</i> Filing of a notice of cessation of a Seychelles trustee	\$50
4.	<i>section 12(3)</i> Filing of a notice of termination of a registered trust	\$50
5.	<i>section 13(2)</i> An inspection of the Register (per trust)	\$50
6.	<i>section 13(2)</i> Obtaining a copy of any document available on inspection (per page)	\$1
7.	<i>section 13(4)</i> Request of official search	\$75
8.	Filing of any document (as required or permitted under this Act) relating to a registered trust, other than as set out above in this Schedule	\$75

## **INTERNATIONAL BUSINESS COMPANIES (AMENDMENT) BILL, 2021**

*(Bill No. 33 of 2021)*

### **OBJECTS AND REASONS**

In 2016, Seychelles enacted a new International Business Companies (“IBC”) Act which replaced the old International Business Companies Act of 1994. During the implementation of the International Business Companies Act, 2016 (“the Act”) over the couple of years, both the Financial Services Authority (“the FSA”) 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.

2. Also, a number of amendments are being proposed in line with Seychelles latest review by the Global Forum for Transparency and Exchange of Information in Tax Matter (under the ambit of the OECD) in 2020, whereby a number of recommendations were made (especially in relation to accounting records) and Seychelles overall rating was downgraded from Largely Compliant to Partially Compliant. It is important note that, a rating of Partially Compliant automatically moves Seychelles on the EU blacklist. Some of the notable amendments being proposed in order to achieve these changes are hereby mentioned.

3. To amend section 25(1) to extend the permitted company name endings to include: “Limited Liability Company” or “LLC” or “Company” or “Co” (note that the other permitted name endings provided for under the current law is “Limited” or “Ltd”, “Corporation” or “Co” “Incorporated” or “Inc”).

4. To amend section 26(a) to provide that an IBC's name cannot be identical to the name of a company registered under the Companies ordinance, 1972.

5. In section 29, to provide a provision that, if a name is re-reserved by the same person within 7 days after the expiry of a 30-day reservation period, the continued reservation fee shall apply.

6. In section 73(5), by repealing the words “fully paid” and substituting thereof the words “fully paid up”. This amendment to the section will provide that a company shall not redeem a share unless it is fully paid up, unless it is expressly authorized by its memorandum or articles to the contrary, in which case any redemption amount shall be paid on a pro rata basis proportionate to the amount paid up in respect of the share.

7. To repeal in section 107, subsection (1) and (4) the words “a company” and substituting the words “a company, in person or by attorney” and subsection (4) in paragraph (b) by repealing the words “provided to him” and substituting thereof the words “provided to him, within 90 days from the date of refusal”.

8. To amend section 127, to permit inspections of a company's minutes and resolutions of members by a duly appointed attorney on behalf of a member or director and to provide a period of 90 days to an aggrieved person to apply to the court following a refusal to inspect the documents.

9. To amend section 131 to remove the broad concept of “de facto” directors and replace with a narrower concept of deemed directors. That is, if at any time a company does not have a director, any person who manages, or who directs or supervises the management of, the business and affairs of the company is deemed to be a director of the company.

10. In accordance with global corporate law norms, to amend section 134 to introduce a requirement that a person shall not be appointed as a director of a company unless the person has consented in writing to being a director.

11. Whereas currently an IBC's Register of Directors must only contain a director's name, address, date of appointment and date of cessation, the amendments to section 150 will require the following additional information to be contained in the Register of Directors:

- (a) In the case of an individual, his date of birth and nationality;
- (b) In the case of a director that is a body corporate, its date of incorporation or registration and place of incorporation or registration;

- (c) In the case of an individual director, his address for service of documents and his usual residential address, if different to his address for service of documents; and
- (d) In the case of a director that is body corporate, its registered office.

12. To amend sections 162, 165 and 169 to enable a company to provide in its memorandum or articles for the type of resolution required in relation to changing the location of its registered office, appointing its registered agent and changing its registered agent. However, where the company's memorandum or articles does not state the type of resolution that is required, an ordinary resolution of members shall be sufficient.

13. To amend section 169 to allow where a company is required to change its registered agent by virtue of its registered agent's intention to resign, the company will not be required to provide a consent from the outgoing registered agent. However, the company must provide the Registrar with a copy of the outgoing registered agent's intention to resign before it effect the change.

14. To insert a new section 169A to address the issue of registered agent preserving company records. Currently, the obligation to keep register of members, directors, charges and accounting records is on the companies directly. These are required to be kept at the registered office of the company, which by default, is the business premise of the registered agent in Seychelles.

15. To amend section 175 to address the issue the authorities in Seychelles face with the implementation of the exchange of information mechanism for tax matters due to the unavailability of accounting information for IBCs. Currently, the law allows IBCs to keep accounting records outside Seychelles on the condition that they should promptly be made available to Seychelles' authorities upon request.

16. To amend section 275 in order to reduce the number of years that a company remain struck-off on the Register (before it is automatically dissolved), from 7 years to 3 years.

17. To amend section 276 to extend the Registrar's power to restore a dissolved company (rather than a Court restoration order being required)

except if the company has been struck off under section 272(1)(a) (ii), (iii) or (iv) (i.e. for carrying on business in contravention of section 5(2) of the Act, or for being used for fraudulent purposes, or which jeopardize the reputation of Seychelles as a financial centre).

18. To amend section 277 in order to reduce the risks associated with struck-off companies retaining their legal status for 12 years, it is proposed to reduce the number of years that a dissolved company may be restored by the Court from 5 years to 3 years as automatically dissolved companies and in order to ensure that struck-off companies restored by the Court remedy any previous contravention to record keeping obligations, it is proposed that the Court must only restore the company if it is satisfied that the company is in compliance with its obligations relating to accounting records, register of members, register of directors and register of beneficial owners.

19. To amend section 285 in order to extend the timeframe for filing of a resolution of members for the voluntarily winding up of a company from 21 days to 40 days.

20. To amend section 344 in order to introduce provisions to empower the Registrar to appoint Deputy Registrars and Assistant Registrars.

21. To amend sections 104, 106, 125, 126, 150, 152, 156, 157, 171, 173, 174, 175, 179 and 354 to change the current low daily penalties to a penalty not exceeding US\$5,000.

22. To amend the Part II of the Second Schedule in relation to incorporation and annual fees.

23. Amendment 60 provides specific commencement dates for some sections.

24. The Bill seeks to achieve the above objectives.

**Dated this 23rd day of July, 2021.**

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

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**INTERNATIONAL BUSINESS COMPANIES (AMENDMENT)  
BILL, 2021**

*(Bill No. 33 of 2021)*

**ARRANGEMENT OF SECTIONS**

**Sections**

1. Short title
2. Amendment of section 2 of Act 15 of 2016
3. Amendment of section 9
4. Amendment of section 12
5. Amendment of section 13
6. Amendment of section 20
7. Amendment of section 23
8. Amendment of section 25
9. Amendment of section 26
10. Amendment of section 29
11. Amendment of section 41
12. Amendment of section 55
13. Amendment of section 73
14. Amendment of section 74
15. Amendment of section 104
16. Amendment of section 106
17. Amendment of section 107
18. Amendment of section 125
19. Amendment of section 126
20. Amendment of section 127
21. Substitution of section 131
22. Substitution of section 132
23. Insertion of new section 132A
24. Amendment of section 134
25. Amendment of section 143
26. Amendment of section 150
27. Amendment of section 152
28. Amendment of section 156
29. Amendment of section 157
30. Amendment of section 162
31. Amendment of section 164

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32. Substitution of section 165
  33. Amendment of section 167
  34. Amendment of section 169
  35. Insertion of new section 169A
  36. Amendment of section 171
  37. Amendment of section 173
  38. Amendment of section 174
  39. Amendment of section 175
  40. Amendment of section 179
  41. Amendment of section 217
  42. Amendment of section 272
  43. Amendment of section 275
  44. Amendment of section 276
  45. Amendment of section 277
  46. Amendment of section 283
  47. Amendment of section 284
  48. Amendment of section 285
  49. Amendment of section 286
  50. Amendment of section 287
  51. Amendment of section 336
  52. Amendment of section 344
  53. Amendment of section 345
  54. Amendment of section 351
  55. Insertion of new sections 352A and 352B
  56. Amendment of section 354
  57. Amendment of section 377
  58. Amendment of Second Schedule
  59. Amendment of Sixth Schedule
  60. Commencement of certain provisions of this Act

**INTERNATIONAL BUSINESS COMPANIES (AMENDMENT)  
BILL, 2021**

*(Bill No. 33 of 2021)*



**A BILL  
FOR**

**AN ACT** to amend the International Business Companies Act, 2016 (*Act 15 of 2016*).

**ENACTED** by the President and the National Assembly.

**Short title**

**1.** This Act may be cited as the International Business Companies (Amendment) Act, 2021.



**Amendment of section 2 of Act 15 of 2016**

**2.** Section 2 of the International Business Companies Act, 2016 (*hereinafter referred to as the “principal Act”*) is amended —

- (i) by inserting, in alphabetical order, the following definitions —
  - ““private trust company” means a company —
  - (a) whose memorandum states that it is a private trust company; and
  - (b) which shall not carry on any business other than providing of the connected trust services as defined in the International Corporate Service Providers Act;”;
- (ii) in the definition of “ordinary company”, by inserting after the words “Companies Act”, the words “and includes a relevant company as defined in the Companies (Special Licences) Act (*Cap 253*)”;
- (iii) by repealing the definition of “tax treaty”.

**Amendment of section 9**

**3.** Section 9(1)(b) of the principal Act is amended, by repealing the words “each subscriber to the memorandum and articles”, and substituting therefor the words “the proposed registered agent of the company”.

**Amendment of section 12**

**4.** Section 12 of the principal Act is amended —

- (i) in subsection (3), by repealing the words “amount of the annual fee shall increase by ten percent”, and substituting therefor the words “company shall be liable to a penalty fee equal to ten percent of the annual fee if the payment is made within 90 days of the date when it becomes due”.
- (ii) by repealing subsection (4), and substituting therefor the following subsection —

“(4) Where the annual fee referred to in subsection (1) is not paid by the date set out in that subsection, the company shall be liable to a penalty fee equal to fifty percent of the annual fee if the payment is made after 90 days of the date when it becomes due.”.

### **Amendment of section 13**

5. Section 13 of the principal Act is amended, by inserting after subsection (2), the following subsection —

“(3) Subject to subsection (2), each subscriber to the memorandum shall become a member of the company.”.

### **Amendment of section 20**

6. Section 20 of the principal Act is amended, by inserting after subsection (3), the following subsection —

“(4) Subject to subsection (3), each subscriber to the articles shall become a member of the company.”.

### **Amendment of section 23**

7. Section 23(1) of the principal Act is amended, by repealing the words “resolution approving the amendment to its memorandum or articles”, and substituting therefor the words “amendment resolution”.

### **Amendment of section 25**

8. Section 25 of the principal Act is amended —

(i) in subsection (1) —

(A) in paragraph (a), by inserting after the word “Corporation”, the words “, “Limited Liability Company”, “Company” ”;

(B) in paragraph (b), by inserting after the word “Corp”, the words “, “LLC”, “Co” ”;

(ii) by inserting after subsection (2), the following subsection —

“(2A) The name of a private trust company shall end with the words “Private Trust Company” or with the abbreviation “PTC”. ”;

(iii) in subsection (4), by inserting after the word “Inc”, the word “, “LLC”, “PTC” ”.

### **Amendment of section 26**

9. Section 26(a) of the principal Act is amended, by inserting after the words “registered under this Act”, the words “or the Companies Act (*Cap 40*)”.

### **Amendment of section 29**

10. Section 29(3) of the principal Act is amended, by repealing the words “under this Act”, and substituting therefor the words “under this Act, provided that the request to continue reserving the name is made by the same person within 7 days after the expiry of the 30 day period referred to in subsection (1) or each other 30 days period thereafter”.

### **Amendment of section 41**

11. The principal Act is amended, by repealing section 41, and substituting therefor the following section —

#### **Authentication or attestation**

“41.(1) A document requiring authentication or attestation by a company may be signed by —

- (a) a director of the company;
- (b) a secretary of the company;
- (c) an agent of the company authorised to act generally on its behalf; or

- (d) an agent of the company specifically authorised to authenticate or attest documents on its behalf.

(2) An authentication or attestation under subsection (1) need not be under its common seal.”.

### **Amendment of Section 55**

**12.** The principal Act is amended, by repealing section 55 and substituting therefore the following section —

“**55.** A company may issue shares at a discount.”.

### **Amendment of section 73**

**13.** Section 73 of the principal Act is amended, by repealing the words “fully paid”, and substituting therefor the words “fully paid up, and if it is expressly authorised by its memorandum or articles to the contrary, in which case any redemption amount shall be paid on a pro rata basis proportionate to the amount paid up in respect of the share”.

### **Amendment of section 74**

**14.** Section 74(2)(b) of the principal Act is amended, by repealing the word “rateably”, and substituting therefor the words “pro rata”.

### **Amendment of section 104**

**15.** Section 104 of the principal Act is amended —

- (i) in subsection (5), by repealing the words “of US\$500 and an additional penalty fee of US\$50 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$10,000”;
- (ii) in subsection (6), by repealing the words “of US\$500 and an additional penalty fee of US\$50 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$10,000”.

**Amendment of section 106****16.** Section 106 of the principal Act is amended —

- (i) in subsection (6), by repealing the words “of US\$500 and an additional penalty fee of US\$50 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$10,000”;
- (ii) in subsection (7), by repealing the words “of US\$500 and an additional penalty fee of US\$50 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$10,000”.

**Amendment of section 107****17.** Section 107 of the principal Act is amended —

- (i) in subsection (1), by repealing the words “a company”, and substituting therefor the words “a company, in person or by attorney,”;
- (ii) in subsection (4), by repealing the words “a company”, and substituting therefor the words “a company, in person or by attorney,”;
- (iii) in subsection (4), in paragraph (b), by repealing the words “provided to him”, and substituting therefor the words “provided to him, within 90 days from the date of refusal”.

**Amendment of section 125****18.** Section 125 of the principal Act is amended —

- (i) in subsection (3), by repealing the words “of US\$25 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$5,000”;

- (ii) in subsection (4), by repealing the words “of US\$25 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$5,000”.

### **Amendment of section 126**

**19.** Section 126 of the principal Act is amended —

- (i) in subsection (4), by repealing the words “of US\$25 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$5,000”;
- (ii) in subsection (5), by repealing the words “of US\$25 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$5,000”.

### **Amendment of section 127**

**20.** Section 127 of the principal Act is amended —

- (i) in subsection (1), by inserting after the words “a company”, the words “in person or by attorney”;
- (ii) in subsection (2), by inserting after the words “a company”, the words “in person or by attorney”;
- (iii) in subsection (5), by inserting after the words “the aggrieved person may”, the words “within 90 days from the date of refusal”.

### **Substitution of section 131**

**21.** The principal Act is amended, by repealing section 131, and substituting therefor the following section —

#### **Deemed directors**

“**131.** If at any time a company does not have a director, any person who manages, or who directs or supervises the

management of the business and affairs of the company is deemed to be a director of the company for the purposes of this Act.”.

### **Substitution of sections 132**

**22.** The principal Act is amended, by repealing section 132, and substituting therefor the following section —

#### **Committee of directors**

**“132.(1)** Subject to the memorandum and articles of the company and to subsection (2), the directors may —

- (a) designate one or more committees of directors, each consisting of one or more directors; and
- (b) delegate to the committee one or more of their powers, including the power to affix the common seal of the company.

(2) Notwithstanding anything in the memorandum or articles of the company, the directors shall not delegate to a committee of directors any power to —

- (a) amend the memorandum or articles, including to change the registered agent or registered office of the company;
- (b) designate committees of directors;
- (c) delegate powers to a committee of directors;
- (d) appoint or remove directors;
- (e) appoint or remove an agent;
- (f) approve a plan or merger, consolidation or arrangement;

- (g) approve voluntary winding up of the company under Sub-Part II or Sub-Part III of Part XVII; or
- (h) approve distribution by the company, including to make a determination under section 70(1) or 71(1) that the company will, immediately after a proposed distribution, satisfy the solvency test.

(3) Subsection (2)(b) and (c) shall not prevent a committee of directors, where authorised by the directors, from appointing a sub-committee and delegating powers exercisable by the committee to the sub-committee.

(4) The directors who delegate any power under subsection (1) shall be responsible for the exercise of the power by the committee as if the power had been exercised by the directors, unless the directors prove that the exercise of power by the committee was outside the scope of the delegated authority.”.

### **Insertion of new section 132A**

**23.** The principal Act is amended, by inserting after section 132, the following section —

#### **Agents**

“**132A.**(1) The directors may appoint any person, including a person who is a director, to be an agent of the company.

(2) Subject to the memorandum or articles of the company, an agent of the company has such powers and authority of the directors, including the power and authority to affix the common seal of the company, as are set forth in the articles or in the resolution of directors appointing the agent, except that no agent has any power or authority to —

- (a) amend the memorandum or articles,



including to change the company's registered agent or registered office;

- (b) designate committees of directors;
- (c) delegate powers to a committee of directors;
- (d) appoint or remove directors;
- (e) appoint or remove an agent;
- (f) approve a plan or merger, consolidation or arrangement;
- (g) approve voluntary winding up of the company under Sub-Part II or Sub-Part III of Part XVII;
- (h) approve distributions by the company, including to make a determination under section 70(1) or 71(1) that the company will, immediately after a proposed distribution, satisfy the solvency test;
- (i) fix emoluments of directors; or
- (j) authorise the company to continue as a company incorporated under the laws of a jurisdiction outside Seychelles.

(3) Where the directors appoint any person to be an agent of the company, they may authorise the agent to appoint one or more substitute or delegate to exercise some or all of the powers conferred on the agent by the company.

(4) The directors may remove an agent appointed under subsection (1) and may revoke or vary a power conferred on him or her under subsection (2).”.

**Amendment of section 134**

**24.** Section 134 of the principal Act is amended —

- (a) in subsection (3), by repealing the words “there solution”, and substituting therefor the words “the resolution”;
- (b) by inserting after subsection (6), the following subsections

“(7) A person shall not be appointed as a director or alternate director of a company, or nominated as a reserve director, unless the person has consented in writing to be a director or alternate director or to be nominated as a reserve director.

(8) Subsection (7) shall not apply to a director, alternate director or reserve director appointed or nominated prior to the commencement of the International Business Companies (Amendment) Act, 2020.”.

**Amendment of section 143**

**25.** Section 143(b) of the principal Act is amended, by repealing the words “section 132”, and substituting therefor the words “section 133”.

**Amendment of section 150**

**26.** Section 150 of the principal Act is amended —

- (i) in subsection (1) —
  - (A) in the chapeau, by repealing the words “A company”, and substituting therefor the words “Subject to subsection (1A), a company”;
  - (B) by inserting after paragraph (a), the following paragraphs —
    - “(aa) in the case of director, alternate director or

reserve director who is an individual, his date of birth and nationality;

(ab) in the case of a director, alternate director or reserve director that is a body corporate, its date of incorporation or registration and the place of incorporation or registration;”;

(ii) by inserting after subsection (1), the following subsection —

“(1A) For the purpose of subsection (1)(a), the address of a director, alternate director or reserve director shall —

(a) in the case of an individual —

(i) be his address for service of documents; and

(ii) be his usual place of residence if different from the address under subparagraph (i); and

(b) in the case of a body corporate, be its registered office.”;

(iii) by inserting after subsection (3), the following subsections —

“(3A) An entry relating to a former director, alternate director or reserve director of the company may be removed from the register after seven years from the date on which the person ceased to be a director, alternate director or reserve director.

(3B) Every company shall comply with the requirements of subsection (1)(aa) and (ab) and subsection (1A) within twelve months from the commencement of the International Business Companies (Amendment) Act, 2020.;

- (iv) in subsection (5), by repealing the words “of US\$500 and an additional penalty fee of US\$50 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$10,000”;
- (v) in subsection (6), by repealing the words “of US\$500 and an additional penalty fee of US\$50 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$10,000”.

### **Amendment of section 152**

**27.** Section 152 of the principal Act is amended —

- (i) in subsection (3), by repealing the words “of US\$250 and an additional penalty fee of US\$25 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$5,000”;
- (ii) in subsection (4), by repealing the words “of US\$250 and an additional penalty fee of US\$25 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$5,000”.

### **Amendment of section 156**

**28.** Section 156 of the principal Act is amended —

- (i) in subsection (3), by repealing the words “of US\$25 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$5,000”;
- (ii) in subsection (4), by repealing the words “of US\$25 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$5,000”.

**Amendment of section 157**

**29.** Section 157 of the principal Act is amended —

- (i) in subsection (4), by repealing the words “of US\$25 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$5,000”;
- (ii) in subsection (5), by repealing the words “of US\$25 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$5,000”.

**Amendment of section 162**

**30.** Section 162 of the principal Act is amended, by repealing subsection (1), and substituting therefor the following subsections —

“(1) Subject to section 23 and subsections (1A), (1B) and (2), a company may amend its memorandum to change the location of its registered office by resolution of members or resolution of directors as provided for in its memorandum or articles.

(1A) If the memorandum or articles of a company does not state the type of resolution that is required to amend its memorandum to change the location of its registered office, an ordinary resolution shall be sufficient.

(1B) An ordinary resolution shall be sufficient to amend the memorandum to change the location of its registered office, notwithstanding that the memorandum or articles of a company contains a provision prohibiting the change of the location of its registered office.”.

**Amendment of section 164**

**31.** Section 164(2) of the principal Act is amended, by repealing the

words, “Services Act”, and substituting therefor the words “Service Providers Act”.

### **Substitution of section 165**

**32.** The principal Act is amended, by repealing section 165, and substituting therefor the following section —

#### **Appointment of registered agent**

“**165.**(1) Subject to subsections (2), (3), (4) and (5), if at any time a company does not have a registered agent, it shall forthwith amend its memorandum to appoint a registered agent by resolution of members or resolution of directors as provided for in its memorandum or articles.

(2) If the memorandum or articles of a company does not state the type of resolution that is required to amend its memorandum to appoint a registered agent, an ordinary resolution shall be sufficient.

(3) An ordinary resolution shall be sufficient to amend the memorandum to appoint a registered agent, notwithstanding that the memorandum or articles of a company contains a provision prohibiting it from changing its registered agent.

(4) When a certified copy or extract of the resolution referred to in subsection (1) is filed with the Registrar in accordance with section 23, it shall be accompanied by a written consent signed by the registered agent stating his consent to act as registered agent.

(5) The appointment of the registered agent takes effect on the registration by the Registrar of the certified copy or extract of the resolution referred to in subsection (1) filed in accordance with section 23.”.

### **Amendment of section 167**

**33.** Section 167(4) of the principal Act is amended, by repealing the words “after that date the registered agent may”, and substituting therefor

the words “the registered agent may, within three months from the resignation date,”.

### **Amendment of section 169**

#### **34. Section 169 of the principal Act is amended —**

- (i) by repealing subsection (1), and substituting therefor the following subsections —

“(1) Subject to subsections (1A) and (2), a company may amend its memorandum to change its registered agent by resolution of members or resolution of directors as provided for in its memorandum or articles.

(1A) If the memorandum or articles of a company does not state the type of resolution that is required to amend its memorandum to change its registered agent, an ordinary resolution shall be sufficient.

(1B) An ordinary resolution shall be sufficient to amend its memorandum to change its registered agent, notwithstanding that the memorandum or articles of a company contains a provision prohibiting it from changing its registered agent.”;

- (ii) by inserting after subsection (3), the following subsection —

“(3A) Where a company changes its registered agent due to resignation of the registered agent under section 167 —

- (a) subsection (3) shall not apply; and
- (b) the company shall file with the Registrar a copy of the written notice received by it under section 167(2) along with the change of registered agent resolution in accordance with subsection (2).”.

**Insertion of new section 169A**

**35.** The principal Act is amended, by inserting after section 169, the following section —

**Preservation of records**

**“169A.(1)** A registered agent shall, in respect of each company (including a dissolved company or a company whose name has been struck off the Register or a company which has continued outside Seychelles) to which it was or is acting as registered agent, preserve for at least seven years —

- (a) 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;
- (b) 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.

(2) Where a registered agent ceases to hold a licence to provide international corporate services under the International Corporate Service Providers Act (*Cap 275*), that person shall handover all the records specified under subsection (1) to the Registrar or any other person authorised by the Registrar.

(3) All records handed over under subsection (2) shall be preferably in the digital form or in such form as agreed upon between the Registrar and the registered agent.

(4) If the registered agent fails to comply with the requirements of this section, the registered agent shall be liable to a penalty not exceeding US\$10,000”.

**Amendment of section 171**

**36.** Section 171 of the principal Act is amended —



- (i) by inserting after subsection (1), the following subsection —
- “(1A) An annual return, in the case of a former Act company, to be furnished —
- (a) for any year before 2018 shall contain either the information referred to in the Sixth Schedule or the information referred to in section 119 of the former Act; and
- (b) for the year 2018 and onwards shall contain the information referred to in the Sixth Schedule.”;
- (ii) in subsection (4), by repealing the words “of US\$500”, and substituting therefor the words “not exceeding US\$5,000”.

### **Amendment of section 173**

**37.** Section 173 of the principal Act is amended —

- (i) in subsection (2), —
- (A) in the chapeau, by inserting after the words “Where a company” the words “or a registered agent”;
- (B) in paragraph (a), by repealing the words “to meet a request for information under a tax treaty”;
- (C) by repealing paragraph (b) and substituting thereof the following —
- “(b) the Financial Services Authority under the Anti-Money Laundering and Countering the Financing of Terrorism Act; or”;
- (D) in the proviso, by inserting after the words “the company” the words “or the registered agent”;

(ii) by inserting after subsection (2), the following subsection —

“(2A) Where a record is not in the English or French language, the party requesting the record may request a translation of the records in the English or French language.

(iii) in subsection (3), —

(A) by repealing the words “subsection (2)” and substituting thereof the words “this section”;

(B) by repealing the words “of US\$500 and an additional penalty fee of US\$50 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$5,000”;

(iv) in subsection (4), —

(A) by repealing the words “subsection (2)” and substituting thereof the words “this section”;

(B) by repealing the words “of US\$500 and an additional penalty fee of US\$50 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$5,000”.

### **Amendment of section 174**

**38.** Section 174 of the principal Act is amended —

(i) in subsection (1)(c), by repealing the word “accounts”, and substituting therefor the words “financial statements”;

(ii) in subsection (3), by repealing the words “of US\$100 and an additional penalty fee of US\$25 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$10,000”;

- (iii) in subsection (4), by repealing the words “of US\$100 and an additional penalty fee 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 175**

#### **39. Section 175 of the principal Act is amended —**

- (i) by repealing subsection (1), and substituting therefor the following subsections —

“(1) For the purpose of this section, the term —

- (a) “large company” means a company which meets the annual turnover threshold specified for a “large business” under the Revenue Administration Act;
- (b) “holding company” means company with no trade or business operations of its own but holding interests in other companies or assets.

(1A) In the case of a company which is —

- (a) a holding company; and
- (b) not a large company,

the company shall keep, on a bi-annual basis, its accounting records at the company's registered office in Seychelles.

(1B) In the case of a company other than a company not specified under subsection (1A), the company shall —

- (a) prepare an annual financial summary to be kept at its registered office in Seychelles within 6

months from the end of the company's financial year; and

(b) on a bi-annual basis, keep its accounting records at its registered office in Seychelles.

(1C) The financial year of a company shall be the calendar year, unless it is changed by a resolution of directors and notified to the company's registered agent within 14 days of the passing of the resolution.

(1D) The Registrar may issue written guidelines regarding the implementation of the obligations relating to accounting records.”

(ii) by repealing subsection (2), and substituting therefor the following subsections —

“(2) It shall be sufficient compliance with subsection (1A) and (1B), if a copy of the accounting records and financial summary is kept at the company's registered office in electronic form.

(2A) Where a company keeps a copy of its accounting records at its registered office, the company shall inform its registered agent in writing of the physical address of the place where the original accounting records are kept.”;

(iii) in subsection (3), by repealing the word “company's accounting records” and substituting therefor the words “company's original accounting records”;

(iv) by repealing subsection (5), and substituting therefor the following subsections —

“(5) A company that contravenes this section shall be liable to a penalty fee not exceeding US\$10,000.

(6) A director who knowingly permits a contravention under this section shall be liable to a penalty fee not exceeding US\$10,000.”.

### **Amendment of section 179**

**40.** Section 179 of the principal Act is amended —

- (i) in subsection (3), by repealing the words “of US\$100 and an additional penalty fee of US\$25 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$5,000”;
- (ii) in subsection (4), by repealing the words “of US\$100 and an additional penalty fee of US\$25 for each day or part thereof during which the contravention continues”, and substituting therefor the words “not exceeding US\$5,000”.

### **Amendment of section 217**

**41.** Section 217 of the principal Act is amended —

- (i) in subsection (2) —
  - (A) by repealing paragraph (c), and substituting therefor the following paragraph —
    - “(c) the filings required under subsections (2A) and (3) have been made to the Registrar's satisfaction; and”;
  - (B) by repealing paragraph (d);
- (ii) by inserting after subsection (2), the following subsections —
  - “(2A) A company that continues as a foreign company shall file with the Registrar —
    - (a) a notice of the company's continuation outside Seychelles in the approved form;

- (b) a certified copy of the certificate of continuation or equivalent document issued in respect of the company by the appropriate authority of the foreign jurisdiction in which the company has been continued;
- (c) where applicable, the declaration under subsection (3) ; and
- (d) for the purposes of establishing compliance with subsection (2)(b), a written certificate or extract thereof certified by the company's registered agent addressed to the Registrar by a majority of the company's directors or a lawyer qualified and entitled to practice law in the jurisdiction outside Seychelles in which the company is to be continued, certifying that the laws of the foreign jurisdiction permit such continuation and that the company has complied with those laws.

(2B) If a company has commenced an application under this section to continue as a company outside Seychelles and confirmation thereof is required by a foreign registrar for the purposes of enabling the company to continue as a foreign company, the Registrar may issue a letter confirming that the company has commenced an application to continue as a company outside Seychelles, provided that such letter shall also state that the company's discontinuance in Seychelles will only be completed on filing with the Registrar the documents required under subsections (2) (2A) and (3), including a certified copy of the certificate of continuation or equivalent document issued in respect of the company by the foreign registrar.”;

(iii) by repealing subsection (4).

**Amendment of section 272**

**42.** Section 272 of the principal Act is amended —

- (i) in subsection (1)(a), by repealing in subparagraph (iii) the word “or” appearing at the end, and by inserting after subparagraph (iii), the following subparagraph —

“(iv) has failed to comply with section 5(2); or”;

- (ii) in subsection (3), by inserting after the words “unless the company”, the word “or any other person”.

**Amendment of section 275**

**43.** Section 275 of the principal Act is amended, by repealing the words “seven years, and substituting therefor the words “one years”.

**Amendment of section 276**

**44.** Section 276 of the principal Act is amended —

- (i) in subsection (1), by repealing the words “Subject to subsections (1A), (2), (3) and (4), where a company is not dissolved but its name has been struck off the Register”, and substituting therefor the words “Subject to subsections (1A), (1B), (1C), (1D), (2) (3) and (4), where the name of a company has been struck off the Register”;

- (ii) in subsection (1A), by repealing the words “section 272(1)(a)(ii) or (iii)”, and substituting therefor the words “section 272(1)(a)(ii), (iii) or (iv)”;

- (iii) by inserting after subsection (1A), the following subsections —

“(1B) The Registrar shall not restore the name of a company if the Registrar is not satisfied that the company is in compliance with its obligations —

- (a) under this Act relating to accounting records, register of members and register of director; and
- (b) under the Beneficial Ownership Act, 2020 (*Act 4 of 2020*) relating to register of beneficial owners.

(1C) An application to restore the name of a struck off or dissolved company to the Register under subsection (10) may be made to the Registrar —

- (a) within one year of the date of the striking off notice published in the Gazette under section 272(4); or
- (b) within five years of the date of dissolution under Sub-Part II, III or IV of Part XVII.

(1D) In the case of a company whose name was struck off the Register —

- (a) for failing to have members due to all its shares becoming void under the former Act; or
- (b) for any other reason and all its shares becoming void under the former Act,

the Registrar shall only restore the name of the company if he is satisfied that the new member is similar to a member registered in the register of members as an owner of the shares at the date prior to the shares becoming void:

Provided that the Registrar shall not restore a company if he is satisfied that there is no member registered in the register of members as an owner of the shares at the date prior to the shares becoming void.”;



(iv) by inserting after subsection (6), the following subsection —

“(7) Where a company —

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

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

### **Amendment of section 277**

**45.** Section 277 of the principal Act is amended —

(i) in subsection (2) —

- (A) in paragraph (a), by repealing the words “twelve years”, and substituting therefor the words “one year”;
- (B) in paragraph (b), by repealing the words “five years”, and substituting therefor the words “three years”;

(ii) in subsection (4), in the chapeau, by repealing the words “subsection (5)”, and substituting therefor the words “subsections (4A), (4B) and (5)”;

(iii) by inserting after subsection (4), the following subsection

“(4A) 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 —

- (a) under this Act relating to accounting records, register of members and register of director; and
- (b) under the Beneficial Ownership Act, 2020 (*Act 4 of 2020*) relating to register of beneficial owners.

(4B) In the case of a company whose name was struck off the Register —

- (a) for failing to have members due to all its shares becoming void under the former Act; or
- (b) for any other reason and all its shares becoming void under the former Act,

the Court shall only restore the name of the company if it is satisfied that the new member is similar to a member registered in the register of members as an owner of the shares at the date prior to the shares becoming void:

Provided that the Court shall not restore a company if it is satisfied that there is no member registered in the register of members as an owner of the shares at the date prior to the shares becoming void.”.

### **Amendment of section 283**

**46.** Section 283(1)(a) of the principal Act is amended, by repealing subparagraph (ii), and substituting therefor the following subparagraphs —

- “(ii) an ordinary resolution that it be wound up voluntarily, if so permitted by its memorandum or articles; or

- (iii) a unanimous resolution of members that it be wound up voluntarily, if so required by its memorandum or articles; or”.

### **Amendment of section 284**

**47.** Section 284 of the principal Act is amended —

- (i) in subsection (1), by repealing the words “an individual”, and substituting therefor the words “a person, who may be an individual or a body corporate”; and by repealing the words “the individual”, and substituting therefor the words “the person”;
- (ii) in subsection (2) —
  - (A) in the chapeau, by repealing the word “individuals”, and substituting therefor the word “persons”;
  - (B) in paragraph (a), by repealing the words “an individual” and substituting therefor the words “a person”;
  - (C) by inserting after paragraph (d), the following paragraph —

“(da) a body corporate which is insolvent or in the process of winding up or other dissolution;”;
  - (D) in paragraph (e), by repealing the words “an individual”, and substituting therefor the words “a person”;
  - (E) in paragraph (f), by repealing the words “an individual”, and substituting therefor the words “a person”;
  - (F) in paragraph (g), by repealing the words “an individual”, and substituting therefor the words “a

person”; and by repealing the word “and” appearing at the end;

- (G) by repealing paragraph (h), and substituting therefor the following paragraphs —

“(h) an individual who is a spouse, child, parent or other close family member of a person specified in paragraph (e), (f) or (g); and

(i) a body corporate —

(i) owned or controlled wholly or partly by a person specified in paragraph (e), (f), (g) or (h); or

(ii) that is a subsidiary or parent entity of a body corporate specified in paragraph (e), (f) or (g).”;

- (iii) by inserting after subsection (2), the following subsection —

“(3) A body corporate appointed as liquidator of a company under this section before the commencement of the International Business Companies (Amendment) Act, 2020 shall be deemed to have been appointed under this section as amended by the said Act.”.

### **Amendment of section 285**

**48.** Section 285 of the principal Act is amended, in the chapeau, by repealing the words “21 days”, and substituting therefor the words “40 days”.

### **Amendment of section 286**

**49.** Section 286 of the principal Act is amended —

- (i) in paragraph (a), by inserting after the word “published”, the words “in physical or electronic form”;

- (ii) in paragraph (b), by inserting after the word “published”, the words “in physical or electronic form”.

### **Amendment of section 287**

**50.** Section 287(1)(b) of the principal Act is amended, by inserting after the words “the company”, the word “may”.

### **Amendment of section 336**

**51.** Section 336(1)(a) of the principal Act is amended, by repealing the word “continued”, and substituting therefor the words “continued, or converted into a company”.

### **Amendment of section 344**

**52.** The principal Act is amended, by renumbering section 344 as subsection (1) of that section and by inserting after subsection (1) so renumbered, the following subsections —

“(2) The President may appoint one or more Deputy Registrars and one or more Assistant Registrars on such terms and conditions as the President may consider appropriate.

(3) The Registrar may delegate to the Deputy Registrar or to such other officer, his powers, duties and functions, on such terms and conditions as he deems fit.”.

### **Amendment of section 345**

**53.** Section 345 of the principal Act is amended, by repealing the word “continued”, and substituting therefor the words “continued, or converted into a company”.

### **Amendment of section 351**

**54.** Section 351(2) of the principal Act is amended —

- (i) in paragraph (a), by repealing the words “that have not yet become effective”;

- (ii) in paragraph (b), by repealing the words “that have not yet become effective”.

### **Insertion of new sections 352A and 352B**

**55.** The principal Act is amended, by inserting after section 352, the following sections —

#### **Duplicate certificates**

**“352A.** 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.

#### **Registered agent may request list of companies**

**352B.** A registered agent may, on payment of the fee specified in Part II of the Second Schedule, request the Registrar for a list of all companies on the Register of which it is a registered agent, containing the name, registration number and the due date of the annual fee for each company on the list and the Registrar may thereupon issue such list.”.

### **Amendment of section 354**

**56.** Section 354(3) of the principal Act is amended by repealing the words “US\$2,500”, and substituting therefor the words “US\$5,000”.

### **Amendment of section 377**

**57.** Section 377 of the principal Act is amended,

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

“(1A) Without prejudice to section 173, a notice given under subsection (1) may require the company to produce

all or any of its records as defined in section 173 or copies thereof kept at the company's registered office or in a jurisdiction outside Seychelles, including —

- (a) accounting records;
- (b) minutes and resolutions of members kept under section 125; and
- (c) minutes and resolutions of directors kept under section 156.”.

(1B) For the purposes of sub-section (1), where a document is not in the English or French language, the Registrar may request a translation of the records in the English or French language from the company or from the registered agent.”;

- (ii) in subsection (2), by inserting after the words “this section” the words “, or fails to comply with subsection (1A) or (1B),”.

### **Amendment of Second Schedule**

**58.** The Second Schedule of the principal Act is amended, in Part II —

- (i) in paragraph (e), by inserting at the end in column 2, relating to fee, the following —

“(No fee will apply under this paragraph for filing of a copy of register of directors of a company within 12 months prepared pursuant to section 150(1) as amended by the International Business Companies (Amendment) Act, 2020)”;

- (ii) in paragraph (g), by inserting at the end in column 2, relating to fee, the following note —

“Provided that the notice is filed within 12 months of a change of the registered agent's principal place of business.”;

- (iii) in paragraph (i), by inserting at the end in column 2, relating to fee, the following note —

“Provided that the notice is filed within 12 months of a change of change of name of registered agent.”;

- (iv) in paragraph (j), by repealing in column 2, relating to fee, the word “NIL”, and substituting therefor the words “US\$10”;
- (v) in paragraph (k), by repealing in column 2, relating to fee, the words “US\$25”, and substituting therefor the word “NIL”;
- (vi) in paragraph (p), in paragraph (p), by repealing the words “US\$100”, and substituting therefor the words “US\$130”;
- (vii) in paragraph (t), by repealing the words “US\$100”, and substituting therefor the words “US\$130”;
- (viii) by repealing paragraph (q), and substituting therefor the following paragraph —

<p>“(section 198)</p> <p>(q) For filing an application for conversion of a protected cell company into a non-cellular company</p>	<p>US\$200”;</p>
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- (ix) in paragraph (ee), by repealing in column 1, relating to description, the words “Per page”; and by repealing in column 2, relating to fee, the words “US\$1”, and substituting therefor the words “US\$25”;



- (x) by renumbering paragraph “(pp)” as paragraph “(ll)” and inserting after the paragraph (ll) so renumbered the following paragraphs —

<p><i>“(section 162)</i></p> <p>(mm) For filing a certified copy or extract of the resolution of change of the location of the registered office of a company whose registered agent has ceased to be eligible to act as a registered agent under the Act, provided that such resolution is filed within 6 months from the date the registered agent ceased to be eligible to act as registered agent.</p>	US\$5
<p><i>(section 165(3))</i></p> <p>(nn) For filing a notice of appointment of registered agent of a company whose registered agent has ceased to be eligible to act as a registered agent under the Act, provided that such notice is filed within 6 months from the date the registered agent ceased to be eligible to act as registered agent.</p>	US\$5
<p><i>(section 352A)</i></p> <p>(oo) For a duplicate certificate of incorporation, continuation, conversion, re-registration or dissolution.</p>	US\$200

<p>(section 352B)</p> <p>(pp) For a list of companies on the Register with the same registered agent.</p>	<p>US\$500”.</p>
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### **Amendment of Sixth Schedule**

**59.** The Sixth Schedule of the principal Act is amended —

- (i) by repealing in the first sentence the words “shall be in such form as the Registrar directs or approves and”;
- (ii) in paragraph 2, by repealing the words “in accordance with the requirements of the Act (together referred to as “minutes and resolutions””, which minutes and resolutions are kept”.

### **Commencement of certain provisions of this Act**

**60.(1)** Section 4, (amending section 12), shall be deemed to have come into operation on the date of the commencement of the International Business Companies Act, 2016 (*Act 15 of 2016*).

(2) Sections 43 (*amending section 275*), 44 (*amending section 276*) except paragraph (iii), and 45(i) (*amending section 277*) shall come into operation on 01 January, 2022.

(3) A company incorporated, continued or converted as a company under the International Business Companies Act, 2016 (*Act 15 of 2016*), before the commencement of this Act, shall comply with the provisions of section 175 of the International Business Companies Act, 2016, as amended by this Act, within 6 months from such commencement