INTERNATIONAL BUSINESS COMPANIES ACT, 2016

(Act 15 of 2016)

ARRANGEMENT OF SECTIONS

Sections

PART I - PRELIMINARY

1. Short title and commencement date
2. Interpretation
3. Associated companies
4. Application of this Act

PART II - COMPANY INCORPORATION

Sub-Part I – Types of international business companies

5. Definition of international business companies
6. Companies which may be incorporated or continued
7. Protected cell companies
8. Limited life companies

Sub-Part II – Incorporation of companies

9. Application to incorporate a company
10. Incorporation of a company
11. Effect of incorporation
12. Annual fee
13. Memorandum of association
14. Content of the memorandum of association
15. Memorandum of company with shares
16. Memorandum of company with guarantee members
17. Memorandum may specify objects
18. Memorandum or articles of limited life company
19. Language of memorandum
20. Articles of association
21. Language of articles

Sub-Part III – Amendment and restatement of memorandum or articles

22. Amendment of memorandum or articles
23. Registration of amendments to memorandum or articles
24. Restated memorandum or articles

**PART III - COMPANY NAMES**

25. Requirements as to names
26. Restrictions on company names
27. Rights and interests in names
28. Language of company names
29. Reservation of names
30. Change of name
31. Power to require change of name
32. Reuse of company name

**PART IV - COMPANY CAPACITY AND POWERS**

33. Capacity and powers
34. Validity of acts of company
35. Personal liability
36. Dealings between a company and other persons
37. Contracts generally
38. Pre-incorporation contracts
39. Powers of attorney
40. Company seal
41. Authentication or attestation

**PART V - SHARES**

***Sub-Part I - General***

42. Nature of shares
43. Share rights
44. Distinguishing numbers
45. Series of shares
46. Par value and no par value shares
47. Fractional shares
48. Bearer shares prohibited

***Sub-Part II - Issue of shares***

49. Issue of shares
50. Consideration for shares
51. Provision for different amounts to be paid on shares
52. Shares issued for consideration other than money
53. Time of issue
54. Consent to issue certain shares
55. Power to issue shares at a discount
56. Power of company to pay commissions
57. Pre-emptive rights
58. Share certificates

Sub-Part III – Transfer of shares

59. Transferability of shares
60. Transfer of deceased member’s share by personal representative
61. Transfer by operation of law
62. Transfer of shares —
63. Refusal to register transfer
64. Loss of instrument of transfer
65. Time of transfer of share
66. Transfer of securities through clearing agencies and securities facilities

Sub-Part IV – Distributions

67. Meaning of “solvency test”
68. Meaning of “distribution”
69. Meaning of “dividend”
70. Distributions
71. Cellular and non-cellular distributions by protected cell company
72. Recovery of distributions made when company did not satisfy solvency test

Sub-Part V - Redemption and purchase of own shares

73. Company may redeem or purchase its own shares
74. Process for redemption or purchase of own shares
75. Offer to one or more shareholders under section 74(1)(b)
76. Shares redeemed at the option of a shareholder
77. Redemptions or purchases deemed not to be a distribution
78. Treasury shares
79. Transfer of treasury shares

Sub-Part VI - Alteration of capital

80. Alteration of capital of par value companies
81. Alteration of capital of no par value companies
82. Forfeiture of shares
83. Reduction of share capital
84. Application to Court for order of confirmation
85. Court order confirming reduction
86. Registration of order and minute of reduction
87. Liability of members on reduced shares
88. Penalty for concealing name of creditor, etc.

**Sub-Part VII – Security over shares**

89. Interpretation
90. Right to pledge shares
91. Form of pledge of shares
92. Pledge of shares governed by Seychelles law
93. Exercising power of sale under a Seychelles law pledge of shares
94. Pledge of shares governed by foreign law
95. Application of enforcement monies
96. Annotating and filing of register of members

**Sub-Part VIII – Conversion of par value shares into no par value shares and vice versa**

97. Conversion of shares in par value companies
98. Conversion of shares in no par value companies

**PART VI - MEMBERSHIP**

**Sub-Part I – Members**

99. Minimum number of members
100. Requirement for company limited by shares and guarantee
101. Minors and incapacitated adults
102. Liability of members
103. Service on members

**Sub-Part II – Register of members**

104. Register of members
105. Nature of register
106. Register of members of listed companies
107. Inspection of register of members
108. Rectification of register of members

**Sub-Part III – Members Meetings and Resolutions**

109. Resolutions
110. Ordinary resolutions
111. Ordinary resolutions may be required to have a higher proportion of votes
112. Special resolutions
113. Special resolutions may be required to have a higher proportion of votes
114. Convening of members Meetings
115. Notice of meetings of members
116. Quorum
117. Attending meeting by telephone or other electronic means
118. Representation of body corporate at meetings
119. Jointly owned shares
120. Proxies
121. Demand for poll
122. Written consent resolutions of members
123. Court may order meeting
124. Resolution passed at adjourned meeting
125. Keeping of minutes and resolutions of members
126. Location of minutes and resolutions of members
127. Inspection of minutes and resolutions of members

PART VII - DIRECTORS

Sub-Part I – Management of companies

128. Management of company
129. Carrying out of company obligations by directors
130. Minimum number of directors
131. De facto directors
132. Delegation of powers

Sub-Part II – Appointment, Removal and Resignation of Directors

133. Eligibility of directors
134. Appointment of directors
135. Nomination of Reserve directors
136. Cessation of nomination of Reserve directors
137. Removal of directors
138. Resignation of directors
139. Appointment of alternate directors
140. Rights and duties of alternate directors
141. Emoluments of directors
142. Continuing liability
143. Validity of acts of director
Sub-Part III – Duties of Directors and Conflicts

144. Duties of directors
145. Directors of subsidiaries, etc
146. Avoidance of breach
147. Reliance on records and reports
148. Disclosure of interest
149. Avoidance by company of transactions in which director is interested

Sub-Part IV – Register of Directors

150. Register of directors
151. Inspection of register of directors
152. Filing of register of directors with Registrar

Sub-Part V – Directors Meetings and Resolutions

153. Meetings of director
154. Notice of meeting of directors
155. Resolutions of directors
156. Keeping of minutes and resolutions of directors
157. Location of minutes and resolutions of directors
158. Inspection of minutes and resolutions of directors

Sub-Part VI – Indemnification and insurance

159. Indemnification
160. Insurance

PART VIII – ADMINISTRATION

Sub-Part I – Registered Office

161. Registered office
162. Change of registered office
163. Change of registered office where registered agent changes address

Sub-Part II – Registered Agent

164. International business company to have registered agent
165. Appointment of registered agent
166. Deemed amendment of memorandum, where registered agent changes company name
Supplement of the Official Gazette

[10th August 2016]

167. Resignation of registered agent
168. Registered agent ceasing to be eligible to act
169. Change of registered agent

Sub-Part III - General Provisions

170. Company's name to appear in its correspondence, etc
171. Annual return
172. Service of documents
173. Furnishing of records

Sub-Part IV – Accounting Records

174. Keeping of accounting records
175. Location and preservation of accounting records
176. Inspection of accounting records by directors

PART IX - CHARGES OVER COMPANY PROPERTY

177. Interpretation
178. Company may charge its assets
179. Register of charges
180. Inspection of register of charges
181. Registration of charges
182. Variation of registered charges
183. Satisfaction or release of charge
184. Priorities among relevant charges
185. Priorities relating to pre-existing charges
186. Exceptions with respect to priorities
187. Enforcement of charge governed by Seychelles law
188. Exercising power of sale under a Seychelles law charge

PART X - CONVERSIONS

Sub-Part I – General provisions

189. Interpretation
190. Declaration of compliance
191. Conversions not a default

Sub-Part II – Conversion of an ordinary company into an international business company and vice-versa

192. Conversion of ordinary company into international business company
193. Effect of conversion of ordinary company into international business company
194. Conversion of international business company into ordinary company
195. Effect of conversion of international business company into ordinary company

Sub-Part III – Conversion of non-cellular company into protected cell company and vice-versa

196. Conversion of non-cellular company into a protected cell company
197. Effects of conversion of non-cellular company into protected cell company
198. Conversion of protected cell company into non-cellular company
199. Effects of conversion of protected cell company into non-cellular company

PART XI - MERGERS, CONSOLIDATIONS AND ARRANGEMENTS

Sub-Part I – Mergers and Consolidations

200. Interpretation
201. Approval of merger or consolidation
202. Registration of merger or consolidation
203. Merger with subsidiary
204. Effect of merger or consolidation
205. Merger or consolidation with foreign company

Sub-Part II – Disposition of Assets

206. Approvals in respect of certain dispositions of assets

Sub-Part III – Forced Redemptions

207. Redemption of minority shares

Sub-Part IV – Arrangements

208. Arrangements
209. Arrangement where company in voluntary liquidation

Sub-Part V – Dissenters

210. Rights of dissenters
Sub-Part VI – Schemes of Compromise or Arrangement

211. Court application in respect of schemes of compromise or arrangement

PART XII - CONTINUATION

212. Continuation of foreign companies in Seychelles
213. Articles of continuation
214. Application to continue in Seychelles

215. Continuation
216. Effect of continuation under this Act
217. Continuation outside Seychelles
218. Effect of continuation outside of Seychelles

PART XIII - PROTECTED CELL COMPANIES

Sub-Part I – Interpretation

219. Interpretation of this Part

Sub-Part II – Formation

220. Companies which can be protected cell companies
221. Consent of Authority required
222. Determination of applications to and other decisions of Authority
223. Appeals from determinations and other decisions of Authority

Sub-Part III – Status, Cells and Cell Shares

224. Status of protected cell companies
225. Creation of cells
226. Demarcation of the core
227. Cell securities

Sub-Part IV - Assets and Liabilities

228. Cellular and core assets
229. Recourse agreements
230. Position of creditors
231. Recourse to cellular assets by creditors
232. Recourse to core assets by creditors
233. Liability of cellular assets
234. Liability of core assets
235. Disputes as to liability attributable to cells
236. Attribution of core assets and liabilities

Sub-Part V - Dealings with and Arrangements within Protected Cell Companies

237. Company to inform persons they are dealing with a protected cell company
238. Transfer of cellular assets from protected cell company
239. Arrangements between cells affecting cellular assets, etc

Sub-Part VI - Receivership Orders

240. Receivership orders in relation to cells
241. Applications for receivership orders
242. Functions of receiver and effect of receivership order
243. Discharge and variation of receivership orders
244. Remuneration of receiver
245. Information to be given by receiver

Sub-Part VII – Administration Orders

246. Administration order in relation to protected cell companies or cells
247. Application for administration order
248. Functions of administrator and effect of administration order
249. Discharge and variation of administration order
250. Remuneration of administrator
251. Information to be given by administrator

Sub-Part VIII – Liquidation of Protected Cell Companies

252. Provisions in relation to liquidation of protected cell company

Sub-Part IX – General

253. Liability to criminal penalties

PART XIV - INVESTIGATIONS OF COMPANIES

254. Definition of “inspector”
255. Investigation order
256. Court's powers
257. Inspector’s powers
258. Hearing in camera
259. Offences relating to false information
260. Inspector’s report to be evidence
261. Privilege

**PART XV - PROTECTION OF MEMBERS**

262. Power for member to apply to Court
263. Power for the Registrar to apply to Court
264. Powers of Court

**PART XVI - DISQUALIFICATION ORDERS**

265. Disqualification orders
266. Ground for making a disqualification order
267. Right of appeal to the Court of Appeal
268. Variation of disqualification orders
269. Revocation of disqualification orders
270. Consequences of breaking a disqualification order
271. Register of disqualification orders

**PART XVII - STRIKING OFF, WINDING UP AND DISSOLUTION**

**Sub-Part I – Striking off and dissolution**

272. Striking off
273. Appeal against striking off
274. Effect of striking off
275. Dissolution of company struck off the Register
276. Restoration of company to the Register by Registrar
277. Court application to restore company to Register
278. Appointment of liquidator of company struck off
279. Undistributed property of dissolved company
280. Disclaimer

**Sub-Part II - Voluntary Winding Up of Solvent Company**

281. Application of this Sub-Part
282. Voluntary winding up plan
283. Commencement of voluntary winding up of solvent company
284. Eligibility to be liquidator under this Sub-Part
285. Filing with Registrar
286. Notice of voluntary winding up
287. Effect of commencement of voluntary winding up
288. Duties of liquidator under this Sub-Part
289. Powers of liquidator in voluntary winding up under this Sub-Part
290. Vacancy in office of liquidator under this Sub-Part
291. Resignation of liquidator under this Sub-Part
292. Removal of liquidator under this Sub-Part
293. Rescission of voluntary winding up
294. Termination of voluntary winding up by the Court
295. Power to apply to Court for directions
296. Interim account of conduct of winding up
297. Dissolution

Sub-Part III - Voluntary Winding Up of Insolvent Company

298. Application of this Sub-Part
299. Meaning of “insolvent”
300. Where company found to be insolvent
301. Commencement of voluntary winding up of insolvent company
302. Application of certain provisions of Sub-Part II to this Sub-Part
303. Filing with Registrar
304. Notice of voluntary winding up
305. Liquidator to call first meeting of creditors
306. Examination of liquidator's accounts by creditors
307. Statement of account of the winding up prior to dissolution
308. Dissolution

Sub-Part IV - Compulsory Winding Up by Court

309. Application for compulsory winding up
310. Circumstances in which Court may wind company up
311. Authority may be heard on winding up application
312. Ground on which Registrar, Authority or Minister may make winding up application.
313. Power to restrain proceedings and appoint provisional liquidator
314. Powers of Court on hearing application
315. Appointment of liquidator in compulsory winding up
316. Liquidator's remuneration
317. Filing with Registrar
318. Notice of compulsory winding up
319. Liquidator to call first meeting of creditors
320. Consequences of appointment of liquidator and compulsory winding up order
Supplement of the Official Gazette

321. Powers of a liquidator appointed by the Court
322. Resignation, removal or death of liquidator
323. Examination of liquidator’s accounts by creditors
324. Power to apply to Court for directions
325. Statement of account of the compulsory winding up prior to dissolution
326. Dissolution

Sub-Part V - Provisions of General Application in Winding Up

327. Interpretation
328. Liquidator to call meetings of creditors
329. Distribution of company assets
330. Expenses of winding up
331. Secured creditors
332. Preferential payments
333. No share transfers after commencement of winding up
334. Company to be notified of winding up application
335. Hearing in camera
336. Company not to undertake business once dissolved
337. Remedy against delinquent officers
338. Improper preferences in or prior to winding up

PART XVIII - FRAUDULENT AND WRONGFUL TRADING

339. Offence of fraudulent trading
340. Civil liability for fraudulent trading
341. Civil liability of directors for wrongful trading
342. Civil liability of directors for wrongful trading: cells of protected cell company
343. Proceedings under sections 340, 341 or 342

PART XIX–REGISTRAR

344. Registrar of International Business Companies
345. Official seal
346. Registers
347. Inspection of documents filed
348. Copies of documents filed
349. Optional registration of specified registers
350. Optional filing of annual financial statements by international business companies
351. Certificate of good standing
352. Certificate of official search
353. Form of documents to be filed
354. Penalty fees and the Registrar’s right to refuse to take action

PART XX – OBLIGATIONS RELATING TO BENEFICIAL OWNERS

355. Register of beneficial owners: definitions and interpretation
356. Register of beneficial owners
357. Inspection of register of beneficial owners
358. Rectification of register of beneficial owners
359. Company’s duty to seek beneficial ownership information
360. Disclosure of beneficial ownership information

PART XXI – MISCELLANEOUS PROVISIONS

361. Exemption from specified laws
362. Stamp duty
363. Minimum period of exemptions and concessions
364. Form of records
365. Delivery of electronic records generally
366. Deemed delivery by website publication
367. Delivery of electronic records to the Registrar
368. Offences
369. Accessories and abettors
370. Liability for false statements
371. Power of Court to grant relief
372. Declaration by Court
373. Judge in chambers
374. Appeals against Registrar’s decisions
375. Legal professional privilege
376. Immunity
377. Inspections
378. Non-disclosure obligation and permitted exceptions
379. Position with respect to other laws
380. Regulations
381. Repeal of law
382. Modification of Civil Code of Seychelles with respect to companies

PART XXII – TRANSITIONAL PROVISIONS

383. Former Act companies automatically re-registered under this Act
384. Certificate of re-registration where former Act company re-registered automatically
385. Effect of automatic re-registration under this Act
386. Restoration of former Act companies struck off the register maintained under the former Act
387. Restoration of dissolved former Act companies
388. Delivery of records
389. Transition for former Act companies
390. Transition for all companies
391. References to companies in other enactments

FIRST SCHEDULE – INCORPORATION OR CONTINUATION APPLICATION

SECOND SCHEDULE – FEES

THIRD SCHEDULE – RESTRICTED WORDS

FOURTH SCHEDULE – LANGUAGE OF COMPANY NAMES

FIFTH SCHEDULE – REUSE OF COMPANY NAMES

SIXTH SCHEDULE – ANNUAL RETURN CONTENT
INTERNATIONAL BUSINESS COMPANIES ACT, 2016

(Act 15 of 2016)

I assent

J.A. Michel
President

4th August, 2016

AN ACT to consolidate and modernise the law relating to the International Business Companies in line with the changes in the international field and for matters connected therewith or incidental thereto.

ENACTED by the President and the National Assembly

PART I-PRELIMINARY

1. This Act may be cited as the International Business Companies Act 2016 and shall come into operation of such date as the Minister may, by notice in the Gazette appoint.

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

“acceptable translator” means person who is —

(a) in respect of a language other than English or French, for the purposes of this Act capable of translating that language into English or French, as applicable; and
(b) acceptable to the Registrar as a translator in accordance with such requirements as may be specified in written guidelines issued by the Registrar;

“accounting records”, in relation to a company, means documents in respect of—

(a) the company’s assets and liabilities;

(b) the receipts and expenditure of the company; and

(c) the sales, purchases and other transactions to which the company is a party;

“Act commencement date” means the date on which this Act comes into force;

“Appeals Board” means the Appeals Board established under the Financial Services Authority (Appeals Board) Regulations 2014;

“approved form” means a form approved by the Registrar or the Authority in accordance with section 353;

“articles” means the original, amended or restated articles of association of a company;

“associated company” means as defined in section 3(2);

“authorised capital”, in relation to a company, means—

(a) in the case of a par value company, the maximum amount of share capital that the company is authorised by its memorandum to issue;

(b) in the case of a no par value company, the maximum number, if any, of no par value shares that the company is authorised by its memorandum to issue;

“Authority” means the Financial Services Authority as established by the Financial Services Authority Act;

“Authority’s Website” means the Authority’s principal public access internet website for the time being maintained by or on behalf of the Authority;
“bearer share” means a share represented by a certificate which—

(a) does not record the owner’s name; and

(b) states to the effect that the bearer of the certificate is the owner of the share;

“board”, in relation to a company, means—

(a) the board of directors, committee of management or other governing authority of the company; or

(b) if the company has only one director, that director;

“body corporate” includes a company, a corporation registered under the Companies Act and a body corporate incorporated outside Seychelles, but does not include an unincorporated association or an unincorporated partnership;

“business day” means any day other than a Saturday, Sunday or public holiday in Seychelles;

“cell” means a cell of a protected cell company;

“class of members”, in respect of a protected cell company, includes—

(a) the members of a cell of the company; and

(b) any class of members of a cell of the company;

“company” means—

(a) an international business company; or

(b) a former Act company;

“company limited by shares” means a company—

(a) whose memorandum limits the liability of all its members to the amount (if any) unpaid on the shares respectively held by its members; and
(b) which is —

(i) incorporated with a share capital comprising par value shares; or

(ii) authorised to issue no par value shares;

“company limited by guarantee” means a company whose memorandum limits the liability of all its members to a fixed amount which each member thereby undertakes, by way of guarantee and not by reason of holding any share, to contribute to the assets of the company if it is wound up;

“company limited by shares and guarantee” means a company —

(a) whose memorandum limits the liability of one or more of its members to a fixed amount which each member thereby undertakes, by way of guarantee and not by reason of holding any share, to contribute to the assets of the company if it is wound up;

(b) whose memorandum limits the liability of one or more of its members to the amount (if any) unpaid on the shares respectively held by its members; and

(c) which is —

(i) incorporated with a share capital comprising par value shares; or

(ii) authorised to issue no par value shares;

“Court” means the Supreme Court of Seychelles;

“director”, in relation to a company, a foreign company and any other body corporate, includes a person occupying or acting in the position of director by whatever name called;

“dissolved”, in relation to a company, means dissolved under this Act or any other written law of Seychelles;

“distribution” means as defined in section 68;
"dividend" means as defined in section 69;

"document" means a document in any form and includes —

(a) any writing on any material;

(b) a book, graph, drawing or other pictorial representation or image;

(c) information recorded or stored by any electronic or other technological means and capable with or without the aid of any equipment of being reproduced;

"electronic form" with reference to information means any information generated, sent, received or stored in any computer storage media such as magnetic, optical, computer memory or other similar devices;

"electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form and includes any electronic code or device necessary to decrypt or interpret the electronic record;

"executive", in relation to a company, means a person employed in an executive or managerial capacity;

"foreign company" means a body corporate that is incorporated or registered under the laws of a jurisdiction outside Seychelles;

"former Act" means the International Business Companies Act 1994 repealed by section 381;

"former Act company" means a company which was incorporated or continued under the former Act;

"guarantee member", in relation to a company, means a person—

(a) being a member whose liability in his capacity as such a member is limited by the company’s memorandum to the amount which he thereby undertakes, by way of guarantee and not by reason of holding any share, to contribute to the assets of the company if it is wound up, and
(b) whose name is entered in the register of members as a
guarantee member;

"international business company" means as defined in section
5(1);

"incapacitated adult" means a person, other than a minor, who
under the written law of Seychelles does not have legal capacity;

"limited company" means —
(a) a company limited by shares;
(b) a company limited by guarantee; or
(c) a company limited by shares and guarantee;

"limited life company" means a limited life company as defined
in section 8(1);

"member", in relation to a company, means a person whose
name is entered in the company's register of members as —
(a) a shareholder; or
(b) a guarantee member;

"memorandum" means the original, amended or restated
memorandum of association of a company;

"Minister" means the Minister responsible for Finance;

"minor" means an individual under the age of eighteen;

"non-cellular company" means an international business
company which is not a protected cell company;

"no par value company" means a company which is —
(a) authorised to issue no par value shares; and
(b) not authorised to issue par value shares,
whether or not it also has guarantee members;

"no par value share" means a registered share which is not expressed as having nominal value;

"officer", in relation to a company, means a director, executive, secretary or liquidator;

"Official Seal" means the official seal of the Registrar as provided for in section 345;

"ordinary company" means a company registered under the Companies Act;

"ordinary resolution" means an ordinary resolution of members as defined in section 110;

"parent", in relation to a company, foreign company or other body corporate, means as defined in section 3(1)(b);

"par value company" means a company which is—

(a) registered with share capital comprising par value shares; and

(b) not authorised to issue no par value shares,

whether or not it also has guarantee members;

"par value share" means a registered share which is expressed as having nominal value;

"personal representative" means the executor or administrator for the time being of a deceased person;

"protected cell company" means an international business company to which section 7 applies;

"records" means documents and other records however stored;

"registered agent" means, in relation to a company, the person who is the company's registered agent in accordance with section 164;
“registered share” means a share in a company which is issued to a named person, whose name is entered in the company’s register of members as the holder of that share;

“Register of Registered Charges” means the Register of Registered Charges maintained by the Registrar in accordance with sections 181(3) and 346(1)(b);

“Register” means the Register of International Business Companies maintained by the Registrar in accordance with section 346(1)(a);

“Registrar” means the Chief Executive Officer of the Authority appointed under section 9 of the Financial Services Authority Act;

“resident person” means —

(a) an individual who resides in Seychelles or who is present in Seychelles for a period of, or periods amounting in aggregate to, one hundred eighty-three days or more in any twelve-month period that commences or ends during a calendar year;

(b) a company registered under this Act;

(c) a body corporate registered under the Companies Act;

(d) a foreign company managed and controlled in Seychelles;

(e) a partnership in which one of the partners is a resident in Seychelles, including a limited partnership registered under the Limited Partnerships Act;

(f) a foundation registered under the Foundations Act; or

(g) a trust registered under the International Trusts Act;

“resolution of directors” means as defined in section 155;

“secured creditor” means as defined in section 327(c);
"securities" means as defined in section 2(1) of the Securities Act, including shares and debt obligations of every kind and options, warrants and other rights to acquire shares or debt obligations;

"share" means a par value share or a no par value share in a body corporate or a cell, in respect of which liability is limited to the amount (if any) unpaid on it;

"share capital", in relation to a company, means —

(a) in the case of a par value company, the sum of the aggregate par value of all the issued and outstanding par value shares of a company and shares with par value held by the company as treasury shares;

(b) in the case of a no par value company, the aggregate of the amounts designated by the directors as share capital of all issued and outstanding no par value shares of the company and no par value shares held by the company as treasury shares,

and the amounts as may be from time to time transferred from surplus to share capital by a resolution of the directors;

"shareholder", in relation to a company, means a person whose name is entered in the register of members as the holder of one or more shares, or fractional shares, in the company;

"solvency test" means a solvent test as specified in section 67;

"special resolution" means a special resolution of members as specified in section 112;

"subsidiary", in relation to a company, foreign company or other body corporate, means as defined in section 3(1)(c);

"surplus", in relation to a company, means the excess, if any, at the time of the determination, of total assets of the company over the sum of its total liabilities, as shown in the books of account plus its share capital;
“tax treaty” means a treaty or agreement between the Government of Seychelles and the government of one or more other countries—

(a) for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income; or

(b) on exchange of information on tax matters; and

“treasury share” means a share of a company that was previously issued but was repurchased, redeemed or otherwise acquired by the company and not cancelled.

3. (1) For the purposes of this section —

(a) “group”, in relation to a company (referred to in this paragraph as the “first company”), means the first company and any other company that is —

(i) a parent of the first company;

(ii) a subsidiary of the first company;

(iii) a subsidiary of a parent of the first company; or

(iv) a parent of a subsidiary of the first company;

(b) “parent”, in relation to a company (referred to in this paragraph as the “first company”), means another company that, whether acting alone or under an agreement with one or more other persons, —

(i) holds, whether legally or beneficially, a majority of the issued shares of the first company;

(ii) has the power, directly or indirectly, to exercise, or control the exercise of, a majority of the voting rights in the first company;

(iii) has the right to appoint or remove the majority of the directors of the first company;

(iv) has the right to exercise a dominant influence over the management and control of the first
company pursuant to a provision in the constitutional documents of the first company; or

(v) is a parent of a parent of the first company; and

(c) "subsidiary", in relation to a company (referred to in this paragraph as the "first company"), means a company of which the first company is a parent.

(2) For the purposes of this Act, a company is associated with another company if it is in the same group as the other company and references to an "associated company" shall be construed accordingly.

(3) For the purposes of subsections (1) and (2), "company" includes a foreign company and any other body corporate.

Application of this Act

4. This Act shall apply to—

(a) an international business company; and

(b) a former Act company.

PART II – COMPANY INCORPORATION

Sub-Part I – Types of international business companies

Definition of international business companies

5.(1) An "international business company" means a company incorporated or continued, or converted into a company, under this Act and whose memorandum states that it is subject to the restrictions referred to in subsection (2).

(2) A company shall not—

(a) subject to subsection (3), carry on business in Seychelles;

(b) own an interest in immovable property situated in Seychelles, or a lease of immovable property situated in Seychelles otherwise than as referred to in subsection (3)(f);

(c) carry on banking business (as defined in the Financial Institutions Act) in or outside Seychelles;
(d) carry on insurance business (as defined in the Insurance Act)—

(i) in Seychelles; or

(ii) outside Seychelles unless it is licensed or otherwise legally able to do so under the laws of each country outside Seychelles in which it carries on such business;

(e) carry on business providing international corporate services, international trustee services or foundation services (as defined in the International Corporate Service Providers Act (Cap 275)) except—

(i) to the extent permitted under the International Corporate Service Providers Act (Cap 275); and

(ii) in the case of carrying on such business outside Seychelles, if the company is licensed or otherwise legally able to do so under the laws of each country outside Seychelles in which it carries on such business;

(f) carry on securities business (as defined in the Securities Act)—

(i) in Seychelles; or

(ii) outside Seychelles unless it is licensed or otherwise legally able to do so under the laws of each country outside Seychelles in which it carries on such business;

(g) carry on business as a mutual fund (as defined in the Mutual Fund and Hedge Fund Act) unless it is licensed or otherwise legally able to do so under the Mutual Fund and Hedge Fund Act or under the laws of a recognized jurisdiction (as defined in the Mutual Fund and Hedge Fund Act); or

(h) carry on gambling business (as defined in the Seychelles Gambling Act), including interactive gambling business,—
(i) in Seychelles; or

(ii) outside Seychelles unless it is licensed or otherwise legally able to do so under the laws of each country outside Seychelles in which it carries on such business.

(3) For the purposes of subsection (2)(a), a company shall not be treated as carrying on business in Seychelles by reason only that —

(a) it opens and maintains an account with a bank licensed under the Financial Institutions Act;

(b) it engages the services of or otherwise deals with counsel, attorneys-at-law, accountants, book-keepers, international corporate service providers, international trustee service providers, foundation service providers, mutual fund administrators or managers, securities dealers, investment advisers or other similar persons carrying on business in Seychelles;

(c) it prepares or maintains its books and records within Seychelles;

(d) it holds meetings of its directors or members, or passes written consent resolutions of its directors or members, in Seychelles;

(e) it concludes or signs contracts in Seychelles, and exercises in Seychelles all other powers, so far as may be necessary for the carrying on of its business outside Seychelles;

(f) it holds shares, debt obligations or other securities in a company incorporated under this Act or in a body corporate registered under the Companies Act;

(g) it has any interest or entitlement as a beneficiary of a foundation registered under the Foundations Act;

(h) it has any interest or entitlement as a beneficiary of a trust registered under the International Trusts Act;

(i) it has any interest in a partnership registered under the Limited Partnerships Act;
Supplement of the Official Gazette

(j) it operates as a licensed mutual fund under the Mutual Fund and Hedge Fund Act;

(k) shares, debt obligations or other securities in the company are owned by a resident person;

(l) it is listed on a licensed securities exchange under the Securities Act;

(m) it holds a licence under the International Trade Zone Act; or

(n) subject to the provisions of the International Corporate Service Providers Act (Cap 275), any of its directors are resident persons.

(4) A company may own or manage a vessel registered in Seychelles under the Merchant Shipping Act and the vessel may visit or be situated in Seychelles waters, provided that the company shall not carry on any business in Seychelles in contravention of section 5(2)(a), including, fishing, charter or tourism business involving the vessel.

6.(1) An international business company shall be incorporated or continued, or converted into a company, under this Act as —

(a) a company limited by shares;

(b) a company limited by guarantee; or

(c) a company limited by shares and guarantee.

(2) Subject to the provisions of this Act, an international business company may be —

(a) a protected cell company; or

(b) limited life company.

7. A company is a protected cell company if —

(a) it has been incorporated or continued under this Act in accordance with Part XIII including having obtained the
Authority's written consent under section 221 which has not been revoked; and

(b) its memorandum provides that it is a protected cell company.

8. A company is a limited life company if its memorandum includes a provision that the company shall be wound up and dissolved upon —

(a) the expiration of a fixed period of time; or

(b) the bankruptcy, death, expulsion, insanity, resignation or retirement of any member of the company; or

(c) the happening of some other event which is not the expiration of a fixed period of time.

Sub-Part II – Incorporation of companies

9.(1) Subject to subsection (2), an application may be made to the Registrar for the incorporation of a company under this Act by filing with the Registrar —

(a) a memorandum and articles which comply with the requirements of this Act, signed by or on behalf of each subscriber in accordance with sections 13 and 20;

(b) an incorporation application in the approved form in accordance with Part I of the First Schedule, signed by or on behalf of each subscriber to the memorandum and articles;

(c) if the company is to be incorporated as a protected cell company, the written consent of the Authority given under section 221;

(d) the applicable incorporation fee as specified in Part I of the Second Schedule; and

(e) such other documents as may be prescribed.

(2) An application for the incorporation of a company shall only be filed by its proposed registered agent.
(3) For the purposes of this section, the "proposed registered agent" means the person named in the memorandum as the first registered agent of the company.

10.(1) If the Registrar is satisfied that the requirements of this Act in respect of incorporation of a company have been complied with, the Registrar shall upon receipt of the documents filed under section 9(1), —

(a) register the documents;

(b) allot a unique registration number to the company; and

(c) issue a certificate of incorporation to the company in the approved form.

(2) The certificate of incorporation shall be signed by the Registrar and sealed with the Official Seal.

11.(1) A certificate of incorporation issued under this Act is conclusive evidence of the following matters —

(a) that the company is incorporated under this Act; and

(b) that the requirements of this Act have been complied with in respect of the incorporation of the company.

(2) Upon incorporation of a company under this Act —

(a) the company is a legal entity in its own right separate from its members and continues in existence until it is dissolved;

(b) the memorandum and articles are binding as between —

(i) the company and each member of the company; and

(ii) each member of the company.

(3) The company, the board, each director and each member of a company has the rights, powers, duties and obligations set out in this Act except
to the extent that they are negated or modified, as permitted by this Act, by the memorandum or the articles.

(4) The memorandum and articles of a company have no effect to the extent that they contravene or are inconsistent with this Act.

12.(1) Each company which is on the Register shall pay to the Registrar on or before the date of each anniversary of its incorporation, continuation or conversion under this Act, the annual fee set out in Part I of the Second Schedule.

(2) Payment under subsection (1) shall be made by the company through its registered agent.

(3) Where the annual fee referred to in subsection (1) is not paid by the date set out in that subsection, the amount of the annual fee shall increase by ten percent.

(4) Where the company fails to pay the amount due as an increased annual fee under subsection (3) within 90 days of the date when it becomes due, then the amount of the annual fee shall increase by fifty percent.

13.(1) The memorandum of a company shall —

(a) state the full name and address of each subscriber; and

(b) be printed and signed by or on behalf of each subscriber in the presence of at least one witness who shall attest the signature and insert his own name and address.

(2) For the purposes of subsection (1) the sole subscriber who signs the memorandum of a company may be its proposed registered agent, who shall not be required to become a member of the company upon its incorporation.

14. The memorandum of a company shall state —

(a) the name of the company;

(b) the address in Seychelles of the company’s registered office as at the date of the memorandum;

(c) whether the company is —

(i) a company limited by shares;
(ii) a guarantee company; or

(iii) a company limited by shares and guarantee;

(d) the name and address of the company's registered agent as at the date of the memorandum;

(e) the restrictions set out in section 5(2) of this Act; and

(f) otherwise as may be required by this Act.

15. In the case of a company limited by shares or otherwise authorised to issue shares, the memorandum shall state —

(a) if it is a par value company, the authorised capital with which the company is to be registered and the number of shares of a fixed nominal value in each class comprising the authorised capital;

(b) if it is a no par value company, the authorised capital with which the company is to be registered and the limit (if any) on the number of shares of each class which the company is to be authorised to issue;

(c) that the liability of a member arising from the member's holding of any share is limited to the amount (if any) unpaid on it; and

(d) the classes of shares that the company is authorised to issue and, if the company is authorised to issue two or more classes of shares, the rights, privileges, restrictions and conditions attaching to each class of shares.

16.(1) Where a company is to be registered with a memorandum which provides for guarantee members, the memorandum shall state that each guarantee member is liable to contribute to the assets of the company, if it should be wound up while he is a member or within 12 months after he ceases to be a member, such fixed amount as may be required for the purposes specified in subsection (2) but does not exceed a maximum amount to be specified in the memorandum in relation to that member.

(2) The purposes to which subsection (1) refers are —
(a) payment of the debts and liabilities of the company contracted before he ceases to be a member;

(b) payment of the costs, charges and expenses of winding up; and

(c) adjustment of the rights of the contributories among themselves.

(3) In the case of a company limited by shares and guarantee, the memorandum or articles may —

(a) require a guarantee member also to be a shareholder; or

(b) prohibit a guarantee member from also being a shareholder.

(4) If the memorandum or articles of a company limited by shares and guarantee do not make provision under subsection (3), a guarantee member may also be a shareholder.

(5) A company limited by shares shall not amend its memorandum under Sub-Part III of this Part to change its status into a company limited by guarantee or company limited by shares and guarantee unless —

(a) there is no unpaid liability on any of its issued shares; and

(b) the company's proposed amended memorandum and change of status, including any proposed cancellation of shares, has been approved by unanimous resolution of members or, if permitted by its memorandum, by ordinary resolution.

17.(1) The memorandum may specify objects of the company and may provide that the activities of the company shall be restricted to the attainment or furtherance of the specified objects.

(2) If —

(a) no objects of the company are specified in the memorandum;
objects are specified but the activities of the company are not restricted to the attainment or furtherance of those objects; or

c. the memorandum contains a statement, either alone or with other objects, that the object of the company is to engage in any act or activity that is not prohibited under any law for the time being in force in Seychelles,

the company's objects shall be deemed to include, and the company shall have full power and the authority to carry out or to engage in, any act or activity that is not prohibited under any law for the time being in force in Seychelles, subject to any limitations in the memorandum.

18. Where a company is to be wound up and dissolved upon —

(a) the expiration of a period of time; or

(b) the happening of some other event,

that period or event shall be specified in the memorandum or articles of the company.

19.(1) Subject to subsection (2), the memorandum of a company shall be in English or French or in any other official language of any country.

(2) Where the language of the memorandum of a company is a language other than English or French, the memorandum shall be accompanied by a translation of it, in the English or French language, certified as true and accurate by the company's proposed registered agent.

(3) The registered agent shall not give a certificate under subsection (2), unless the translation has been obtained from or confirmed by an acceptable translator.

20.(1) A company's articles shall set out regulations for the company.

(2) The articles of a company shall be printed and signed by or on behalf of each subscriber in the presence of at least one witness who shall attest the signature and insert his own name and address.
(3) For the purposes of subsection (2) the sole subscriber who signs the articles of a company may be its proposed registered agent, who shall not be required to become a member of the company upon its incorporation.

21.(1) Subject to subsection (2), the articles of a company shall be in English or French or in any other official language of any country.

(2) Where the language of the articles of a company is a language other than English or French, the articles shall be accompanied by a translation of it, in the English or French language, certified as true and accurate by the company's proposed registered agent.

(3) The registered agent shall not give a certificate under subsection (2), unless the translation has been obtained from or confirmed by an acceptable translator.

Sub-Part III – Amendment and restatement of memorandum or articles

22.(1) Subject to this section and section 23, the memorandum or articles of a company may be amended by —

(a) an ordinary resolution; or

(b) a resolution of directors.

(2) The memorandum or articles of a company may not be amended—

(a) by a resolution of directors alone, if this Act requires that the proposed amendment be approved by resolution of members; or

(b) by a resolution of directors or members alone, if this Act requires that the proposed amendment also be approved by the Court.

(3) Subject to subsection (4), the memorandum of a company may include one or more of the following provisions —

(a) that specified provisions of the memorandum or articles may not be amended;
that the memorandum or articles, or specified provisions of the memorandum or articles, may be amended only if certain specified conditions are met;

c) that all or any provisions of the memorandum or articles may only be amended by a resolution of members;

d) that a resolution passed by a specified majority of members representing in excess fifty per cent of the votes of those members entitled to vote, is required to amend the memorandum or articles or specified provisions of the memorandum or articles.

(4) Subsections (3)(a) and (b) do not apply to any provision in the memorandum of a company that restricts the objects of that company.

(5) Notwithstanding any provision in a company's memorandum or articles to the contrary, the directors of the company shall not have the power to amend the memorandum or articles —

(a) to restrict the rights or powers of the members to amend the memorandum or articles;

(b) to change the percentage of members required to pass a resolution to amend the memorandum or articles; or

c) in circumstances where the memorandum or articles cannot be amended by the members,

and any resolution of the directors of a company is void and of no effect to the extent that it contravenes this subsection.

23.(1) Where a resolution is passed to amend the memorandum or articles of a company, the company shall file for registration a certified copy or extract of the resolution approving the amendment to its memorandum or articles in accordance with subsection (2).

(2) In respect of the certified copy or extract of the resolution referred to in subsection (1), an extract of the resolution shall be certified as a true copy and signed by the registered agent of the company.
(3) An amendment to the memorandum or articles only has effect from the date that the certified copy or extract resolution referred to in subsection (1) is registered by the Registrar.

24. (1) A company may at any time file with the Registrar a restated memorandum or articles.

(2) A restated memorandum or articles filed under subsection (1) shall incorporate only such amendments that have been registered under section 23.

(3) Where a company files a restated memorandum or articles under subsection (1), the restated memorandum or articles has effect as the memorandum or articles of the company with effect from the date that it is registered by the Registrar.

(4) The Registrar is not required to verify that a restated memorandum or articles filed under this section incorporates all the amendments, or only those amendments, that have been registered under section 23.

(5) It is not obligatory that a restated memorandum or articles filed under subsection (1) be signed by the original subscriber.

PART III - COMPANY NAMES

25. (1) Subject to subsection (2), the name of a company shall end with —

(a) the word "Limited", "Corporation" or "Incorporated"; or

(b) the abbreviation "Ltd", "Corp" or "Inc".

(2) The name of a protected cell company shall end with the words "Protected Cell Company" or with the abbreviation "PCC".

(3) A company may use, and be legally designated by, either the full or the abbreviated form of any word or words required as part of its name under this section.

(4) Where the abbreviation "Ltd", "Corp", "Inc" or "PCC" is used as part of a company's name, a full-stop may be inserted at the end of the abbreviation.
(5) A protected cell company shall assign a distinctive name to each of its cells that —

(a) distinguishes the cell from any other cell of the company; and

(b) ends with the words “Protected Cell” or with the abbreviation “PC”.

(6) Subject to subsection (7) and notwithstanding subsection (1), a former Act company may retain any name, including any suffix denoting limited liability, which was permissible under the former Act.

(7) If a former Act company changes its name on or after the Act commencement date, it shall comply with subsection (1).

26. A company shall not be registered, whether on incorporation, continuation, conversion, merger or consolidation, under a name that —

(a) is identical to the name under which another company is registered under this Act;

(b) is so similar to the name under which another company is registered under this Act that the use of the name would, in the opinion of the Registrar, be likely to confuse or mislead;

(c) includes a prohibited word, phrase or abbreviation referred to in Part I of the Third Schedule;

(d) includes a restricted word, phrase or abbreviation referred to in Part II of the Third Schedule, unless the prior written consent to the use of the word, phrase or abbreviation has been given by the Registrar and any other regulatory body whose consent thereto is required under Seychelles law; or

(e) in the opinion of the Registrar —

(f) suggests or is calculated to suggest the patronage or any connection with the Government of Seychelles or the government of any other country; or
(ii) is in any way offensive, misleading, objectionable or contrary to public policy or to the public interest.

Rights and interests in names

27.(1) Nothing in this Part requires the Registrar, when determining whether to incorporate, continue or convert a company under a name, to register a change of name or to direct a change of name, to—

(a) make a determination of any person's interest in a name, or the rights of any person concerning a name or the use of a name, whether the interest or rights are alleged to arise under Seychelles law or any law in a jurisdiction other than Seychelles; or

(b) to take account of any trademark, or equivalent right, whether registered in Seychelles or in a jurisdiction other than Seychelles.

(2) Subsection (1) does not prevent the Registrar taking into account any matter specified in that subsection when determining whether, in his opinion, the registration of a company name is, or would be, objectionable or contrary to public policy or to the public interest.

(3) The registration of a company under this Act with a company name does not give the company any interest in, or rights over, the name that it would not have, apart from this Part.

Language of company names

28. Subject to sections 25, 26 and 31 of this Act and to the requirements set out in the Fourth Schedule—

(a) the name of a company may be expressed in any language; and

(b) where the name of a company is in the English or French language, it may have an additional foreign character name.

Reservation of names

29.(1) Subject to this section, the Registrar may upon a request made by a person licensed to provide international corporate services under the International Corporate Service Providers Act (Cap 275), reserve for 30 days a name for future adoption by a company under this Act.
(2) The Registrar may refuse to reserve a name if he is not satisfied that the name complies with Part in respect of the company or proposed company.

(3) On the expiry of the 30 day period referred to in subsection (1), the Registrar may, on payment of the fee specified in Part II of the Second Schedule, for each 30 day period thereafter, continue reserving the name for future adoption by a company under this Act.

30. Subject to its memorandum and articles, a company may apply to the Registrar to change its name or its foreign character name by way of an amendment to its memorandum and articles in accordance with sections 22 and 23.

2 Where a company proposes to change its name or its foreign character name, section 26 shall apply to the name by which the company proposes to change its name.

3) Where a company applies to change its name or its foreign character name, the Registrar shall, on compliance by the company with sections 22 and 23, and if it is satisfied that the proposed new name or new foreign character name of the company complies with section 26 —

(a) enter the new name in the Register in the place of the former name; and

(b) issue a certificate of change of name to the company.

4) A change of the name of a company under this section or section 31 —

(a) takes effect from the date of the certificate of change of name issued by the Registrar; and

(b) does not affect any rights or obligations of the company or render defective any legal proceedings by or against it, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.
31. (1) If a company has been incorporated, continued or converted into a company under this Act with, or has changed its name to, a name which, in the opinion of the Registrar, does not comply with sections 25 or 26 the Registrar may—

(a) within 2 years of that time direct the company by written notice to make an application to change its name or its foreign character name on or before a date specified in the notice, which shall be not less than 30 days after the date of the notice; or

(b) apply to the Court for, and the Court may grant, an order changing the company’s name or its foreign character name, or requiring the company to change such name, to a name acceptable to the Registrar on such terms as the Court thinks fit.

(2) If a company that has received a notice under subsection (1)(a) fails to file an application to change its name to a name acceptable to the Registrar on or before the date specified in the notice, the Registrar may revoke the name of the company and assign it a new name acceptable to the Registrar.

(3) Where the Registrar assigns a new name to a company under subsection (2) or pursuant to an order made by the Court under subsection (1)(b), it shall—

(a) enter the new name in the Register in the place of the former name;

(b) issue a certificate of change of name to the company; and

(c) publish the change of name in the Gazette.

(4) A company that fails to comply with a direction given under this section within the period of time specified by the Registrar under subsection (1)(a) commits an offence and is liable on conviction to a fine not exceeding US$10,000.

32. The Registrar may permit the reuse of company names as provided for in the Fifth Schedule.
PART IV – COMPANY CAPACITY AND POWERS

33.(1) Subject to this Act, any other written law and its memorandum and articles, a company has, irrespective of corporate benefit—

(a) full capacity to carry on or undertake any business or activity, do any act or enter into any transaction; and

(b) for the purposes of paragraph (a), full rights, powers and privileges.

(2) Without limiting the generality of subsection (1), subject to its memorandum and articles, subsection (3) and section 48 (Bearer shares prohibited), the powers of a company include the power to do any of the following—

(a) issue and cancel shares and hold treasury shares;

(b) grant options over unissued shares in the company and treasury shares;

(c) issue securities that are convertible into shares;

(d) give financial assistance to any person in connection with the acquisition of its own shares;

(e) issue debt obligations of every kind and grant options, warrants and rights to acquire debt obligations;

(f) guarantee a liability or obligation of any person and secure any obligations by mortgage, pledge or other charge, of any of its assets for that purpose; and

(g) protect the assets of the company for the benefit of the company, its creditors and its members and, at the discretion of the directors, for any person having a direct or indirect interest in the company.

(3) Paragraphs (a), (b), (c) and (d) of subsection (2) shall not apply to company limited by guarantee.

(4) For the purposes of subsection (2)(g), the directors may cause the company to transfer any of its assets in trust to one or more trustees, each of
which may be an individual, company, association, partnership, foundation or similar entity and, with respect to the transfer, the directors may provide that the company, its creditors, its members or any person having a direct or indirect interest in the company, or any of them, may be the beneficiaries of the trust.

(5) The rights or interests of any existing or subsequent creditor of the company in any assets of the company are not affected by any transfer under subsection (4), and those rights or interests may be pleaded against any transferee in any such transfer.

34.(1) Subject to subsection (2), no act of a company and no transfer of an asset by or to a company is invalid by reason only of the fact that the company did not have the capacity, right or power to perform the act or to transfer or receive the asset.

(2) The lack or alleged lack of capacity, right or power of a company to perform an act or to transfer or receive an asset may be asserted —

(a) in proceedings by a member or a director against the company to prohibit the performance of any act, or the disposition of property by or to the company; and

(b) in proceedings by the company, whether acting directly or through a liquidator or other legal representative or through members of the company in a representative capacity, against the incumbent or former directors or other officers of the company for loss or damage through their unauthorised act.

(3) This section applies to companies incorporated before, on or after the Act commencement date, but this section does not affect the capacity of a former Act company in relation to anything done by it before this section came into force.

35.(1) Subject to subsection (2) and except in so far as he may be liable for his own conduct or acts, no director, agent or liquidator of a company is liable for any debt, obligation or default of the company, unless —

(a) it is proved that he acted fraudulently or otherwise in bad faith; or

(b) specifically provided in this Act or in any other written law of Seychelles.
(2) If at any time there is no member of a company, any person doing business in the name of or on behalf of the company is personally liable for the payment of all debts of the company contracted during such time and the person may be sued in respect thereof without joinder in the proceedings of any other person.

36.(1) A company or a guarantor of an obligation of a company may not assert against a person dealing with the company or with a person who has acquired assets, rights or interests from the company that—

(a) this Act or the memorandum or articles of the company has not been complied with;

(b) a person named as a director in the company’s register of directors—

(i) is not a director of the company;

(ii) has not been duly appointed as a director of the company; or

(iii) does not have authority to exercise a power which a director of a company carrying on business of the kind carried on by the company customarily has authority to exercise;

(c) a person held out by the company as a director, employee or agent of the company—

(i) has not been duly appointed; or

(ii) does not have authority to exercise a power which a director, employee or agent of a company carrying on business of the kind carried on by the company customarily has authority to exercise;

(d) a person held out by the company as a director, employee or agent of the company with authority to exercise a power which a director, employee or agent of a company carrying on business of the kind carried on by the company does not customarily have authority to exercise, does not have authority to exercise that power; or
A contract may be entered into by a company as follows —

(a) a contract that, if made between individuals, would by law be required to be in writing and made by deed or under seal, is validly entered into by a company as a deed or an instrument under seal if it is either —

(i) sealed with the common seal of the company and witnessed by a director of the company or such other person who is authorised by the memorandum and articles to witness the application of the company’s seal; or

(ii) expressed to be, or is executed on behalf of the company and expressed to be executed as, or otherwise makes clear on its face that it is intended to be, a deed and it is signed by any person acting under the express or implied authority of the company;

(b) a contract that, if made between individuals, would be required by law to be in writing and signed by the parties thereto, may be entered into by or on behalf of the company in writing and signed by any person acting under the express or implied authority of the company; and
(c) a contract that, if made between individuals, would be valid although entered into orally and not reduced to writing, may be entered into orally by or on behalf of the company by any person acting under the express or implied authority of the company.

(2) Any contract made according to this section may be varied or discharged in the same manner as it is authorised by this section to be made.

(3) A contract entered into in accordance with this section is valid and is binding on the company and its successors and all other parties to the contract, their heirs, executors or administrators.

38.(1) A person who enters into a contract in the name of or on behalf of a company before the company is incorporated, is personally bound by, liable under and entitled to the benefits of the contract, except where —

(a) the contract specifically provides otherwise; or

(b) subject to any provisions of the contract to the contrary, the company ratifies the contract under subsection (2).

(2) A company may, by any action or conduct signifying its intention to be bound by a contract entered into in its name or on its behalf before it was incorporated, ratify the contract after the company's incorporation.

(3) When a company ratifies a contract under subsection (2) —

(a) the company is bound by, liable under and entitled to the benefits of the contract as if the company had been incorporated at the date of the contract and had been a party to it; and

(b) subject to any provisions of the contract to the contrary, the person who acted in the name of or on behalf of the company ceases to be personally bound by, liable under or entitled to the benefits of the contract.

39.(1) Subject to its memorandum and articles, a company may by an instrument in writing appoint a person as its attorney either generally or in relation to a specific matter.
(2) An act of an attorney appointed under subsection (1) in accordance with the instrument under which he was appointed binds the company.

(3) An instrument appointing an attorney under subsection (1) may either be—

(a) executed as a deed; or

(b) signed by a person acting under the express or implied authority of the company.

Company seal

40.(1) A company may have a common seal.

(2) A company which has a common seal shall have its name in legible characters on that seal.

(3) A company which has a common seal may have duplicate common seals.

Authentication or attestation

41. A document requiring authentication or attestation by a company may be signed by a director, a secretary or by an authorised agent of the company, and need not be under its common seal.

PART V - SHARES

Sub-Part I - General

Nature of shares

42. A share in a company is movable property.

Share rights

43.(1) Subject to subsections (2) and (3), a share in a company confers on the holder—

(a) the right to one vote at a meeting of the members of the company or on any resolution of the members of the company;

(b) the right to an equal share in any dividend paid in accordance with this Act; and

(c) the right to an equal share in the distribution of the surplus assets of the company.
(2) Where expressly authorised by its memorandum in accordance with section 15 but subject to section 48 (Bearer shares prohibited), a company—

(a) may issue more than one class of shares; and

(b) may issue shares subject to terms that negate, modify or add to the rights specified in subsection (1).

(3) Without limiting the generality of subsection (2)(b) but subject to section 48 (Bearer shares prohibited), shares in a company may—

(a) subject to the provisions of this Act, be redeemable;

(b) confer no rights, or preferential rights, to distributions;

(c) confer special, limited or conditional rights, including voting rights;

(d) confer no voting rights;

(e) participate only in certain assets of the company;

(f) where issued in, or converted to, one class or series, be convertible to another class or series, in the manner specified in the memorandum or articles.

44. The shares in a company having a share capital divided into shares shall each be distinguished by an appropriate number except that if at any time all the issued shares in the company or all the issued shares in the company of a particular class are fully paid up and carry the same rights in all respects, none of those shares need to have a distinguishing number.

45. Subject to its memorandum and articles, a company may issue a class of shares in one or more series.

46.(1) Subject to the memorandum and articles of a company and subsection (2), a share may be issued as a par value share or a no par value share.

(2) A company shall not have a share capital consisting of shares which include par value shares and no par value shares.

(3) Subject to the memorandum and articles of a company, a par value share may be issued in any currency.