

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 A CSL, in the past, used to be taxed on its worldwide income at a business tax rate of 1.5%, but this is no longer applicable.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**

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”.