

# Application Guidelines for a Special License Company



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## 1. INTRODUCTION

This Guide to apply for a Special License under the Companies (Special Licenses) Act, 2003 has been prepared to ensure that information about the above license is readily available to those interested. As well as outlining the process of applying for a Special License, the guide specifies the criteria against which the Seychelles International Business Authority (SIBA) conducts its assessment of applicant companies.

The Guide provides a summary of the Act and also explanations to the application requirements expected from an applicant when providing the necessary information that has to be submitted in the following documents:

- An Application Form
- Declaration Certificates by the Directors and Secretaries and of Registered Address
- Due diligence and KYC Declaration
- The Company's Memorandum and Articles of Association duly signed and dated
- Certificate from a legal practitioner from within the jurisdiction declaring that the memorandum and articles of the company complies with the Companies Act 1972

Additional copies of Application forms, as well as the Companies (Special Licenses) Act, 2003 can be obtained by logging onto the SIBA website at [www.siba.net](http://www.siba.net).

Please direct any questions, or requests for documents, to:

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## 2. BACKGROUND

The Companies (Special Licences) Act (CSL) allows companies to be incorporated under the Companies Act 1972 with special provision providing a measure of confidentiality and a low tax status. The CSL satisfies disclosure requirements and have access to the country's double taxation agreements.

### 2.1. Administration and Regulation of the Act:

The Act is administered and regulated by SIBA described in the Act as the Authority. The incorporation is made by the Registrar of Companies appointed under the Companies Act 1972. Note: the difference from International Business Companies which are incorporated by the Registrar of International Business Companies created for that purpose by the International Business Companies Act 1994.

### 2.2. Scope of the Act

The Act may be used by those companies for the businesses stated in Schedule 1. However, the list is not restricted to only the types of companies specified in the Schedule, as there is provision for any other business to be conducted under a Special License as long as the intended business activity receives approval by SIBA.

This requires the Memorandum to be specific: a general trading type of objects clause is not enough. Furthermore, although the objects can be one or more of the specified activities, a mixture of specified and unspecified objects will not be allowed. The limitation is contained in Section 4.

### **2.3. Management of the company**

There shall be at least two individual directors. There is no provision for companies to be appointed as directors. The secretary must be a Corporate Service Provider in Seychelles who will be responsible for submitting and authenticating signatures on all documents which are submitted to the Authority. The ICSP is responsible to conduct all enquiries and due diligence checks under the KYC norms. Acceptance by the Secretary of any document is considered acceptance by the company.

### **2.4. Meetings and resolutions**

Meetings by shareholders and directors may be conducted by telephone or any other electronic means providing that each is able to hear and recognise each other. All resolutions may be consented to in writing, telex, cable or e-mail.

### **2.5. Annual return**

The annual returns and accounts must be sent to the Authority ONLY not more than 90 days at the end of each financial year.

### **2.6. Revocation of licence**

It is clear that the Authority is the responsible body as the Authority that has the ability in the event of any misconduct of any director, officer, manager or agent of a company, to serve notice of the Authority's intention to revoke the special licence issue under Section 9. This will mean that the company can no longer carry on business although it will remain incorporated. This revocation may also occur if the business is illegal or which is likely to harm the reputation of Seychelles or the company fails to comply with any condition which the Authority might attached upon the issuance of the licence. The company will be given one month to make representation to the Authority. The company may within 90 days of the notice make application to the Supreme Court for relief against that notice. If the Special License Company chooses to ignore the rights to appeal then its special licence will be revoked after 90 days.

### **2.7. Continuation**

An International Business Company (IBC) incorporated in Seychelles or a company incorporated outside of Seychelles may continue as a Special Licensed Company. The necessary documents that are required for this purpose are the following:

- The Articles of Continuation written either in English or French and certified by the Secretary shall contain:
  - The name of the company and the name under which it is to be continued
  - The jurisdiction under which it is incorporated
  - The date on which it was incorporated
  - The amendments to its memorandum and articles, or their equivalent, that are to be effective upon the registration of the articles of continuation.
- An application in the prescribed form. Please refer to the section Application Requirements for further detail.

On approval, the Authority forwards the documents, other than those containing the names and addresses of shareholders, together with a Certificate of Approval and the particulars required to be submitted under section 5, to the Registrar who will on registration, issue a Certificate of Continuation. Such a certificate is evidence in respect of continuation under the Companies (Special Licenses) Act, 2003 and a company may continue notwithstanding any laws to the contrary in the jurisdiction where it was first incorporated.

Upon receiving Certificate of Continuation, the company will cease to be an IBC or as a company incorporated elsewhere but property invested in it continues as does the company's liabilities. Further provisions are provided in connection with the shares and the Memorandum and Articles of Association of a company continued in Seychelles. Amendments must be made within two years.

## **2.8. Continuation outside Seychelles**

This is possible subject to the limitations in the Memorandum and Articles of Association. Continuation outside Seychelles does not absolve the company from its liabilities despite the fact that the Registrar should strike the name off the Company Register.

## **2.9. Taxation**

The rate of tax payable by a Special License Company in respect of its taxable income is 1.5%, assessed on global income. However, Section 19 and Part IV of the Business tax Act shall not apply to a Company Special License.

## **2.10. Exemptions**

A Special License Company is exempt from the following:

- Stamp duty
- Exchange control
- Import duty on furniture and equipment, excluding motor vehicles
- Social security payments
- Expatriate employees in respect of fulfilling the administrative requirements of the registered office are exempt from gainful occupation permit fees

These exemptions shall remain in force for a period of ten years from the date of incorporation and thereafter shall remain in force unless a written law in the future provides otherwise.

## **2.11. Secrecy**

An oath of secrecy in a prescribed form is required by every person with knowledge relating specifically to the shareholding of a Special License Company. No unauthorized persons shall disclose any information contained in any document relating to the performance and duties to be conducted under the Companies (Special Licenses) Act, 2003, except for proceedings under the Penal Code, Anti-Money Laundering Act or the Business Tax Act. Contravention of these provisions can result in a fine not exceeding SR 10,000 or three years imprisonment or both.

## **2.12. Name Reservation**

The ICSP shall make formal request directly to the Registrar of Companies for name reservation as per procedures under Companies Act, 1972. Upon submission of CSL license application, proof of the name approval must be enclosed.

## **2.13. Fees**

These are provided in Schedule 3, which are the following:

- |                                     |           |   |                           |
|-------------------------------------|-----------|---|---------------------------|
| ▪ An application for Incorporation: | US\$ 200  | + | 5% Tax                    |
| ▪ Annual License Fee:               | US\$ 1000 | + | 15% and upon renewal 7.5% |
| ▪ Annual return Filing fee:         | US\$ 200  | + | 5% Tax                    |

### 3. APPLICATION REQUIREMENTS

When making an application for a Special License under the Companies (Special Licenses) Act, 2003, the Applicant Company will have to submit the following documents and information:

- Covering Letter
- Due Diligence & KYC declaration
- The Company's Memorandum and Articles of Association duly signed and dated
- Certificate from a legal practitioner from within the jurisdiction declaring that the memorandum and articles of the company complies with the Companies Act 1972
- Name reservation certificate
- Application Form
- Declaration of consent by the Directors and Secretary.
- Declaration of Registered Address
- Fees
- Other Documents

**NOTE: Ensure that all blank spaces are filled out and are completed in INK and CAPITAL LETTERS. No question should be left unanswered**

#### 3.1. Covering Letter

For every application for a Special License, the documents listed below must be accompanied by a covering letter. This letter must specifically state the documents (and the number of copies) that have been submitted to the Authority.

#### 3.2. Application Form

The application form has been designed in such a way as to fulfil the information that is requested to be submitted in accordance with the application procedures set out in section 5 of the Companies (Special Licenses) Act, 2003. The information requested is the following:

- a) Name and contact details of the Secretary
- b) Registered address of the Applicant Company
- c) Names and addresses of Directors
- d) Name and contact details of Company's auditors
- e) Name and contact details of Company's legal advisor
- f) Name and contact details of the beneficial owners and / or shareholders of the Company. If the shares are held by nominee, please provide the name(s) and address(es) of the person(s) on whose behalf the shares are held by the nominee.

### 3.3. Declaration Certificate by the Directors, Secretary and of Registered Address

In accordance with section 6 of the Companies (Special Licenses) Act, the directors and the secretary have to consent in writing that they are to act in the capacity of directors and secretary to the Special Licence Company. Furthermore, the directors and secretary have to consent that they are not disqualified to conduct their duties and responsibilities, as per section 165 of the Companies Act.

A form has been created which directors and the secretary can fill out to fulfil their obligation to provide written consent. Please note that the Declaration Certificates have to be completed in full.

### 3.4. Application Fees

When making an application for a Special License, **the Application for Incorporation Fee of US\$200 + 5% Tax** has to be submitted. The Authority will not process any application documents if that fee has not been received.

### 3.5. Memorandum and Articles of Association

The objects as stated in the Memorandum shall be limited to the carrying out of any one or more of the activities specified in Schedule 1 of the Companies (Special Licenses) act, 2003. These, together with the Articles of Association have to be submitted to the Authority in **triplicate**.

### 3.6. Other Documents

Further to the above, the applicant company will have to submit the following document:

- A Declaration of Compliance by a notary practicing in Seychelles certifying that the Memorandum and Articles of Association comply with the Companies Act, 1972.
- Articles of Continuation (If applicable)
- If the company intends to operate its own physical office in Seychelles then a detailed business plan will have to be submitted to the authority. The Business Plan should include the following information:
  - Company background
  - Objectives of the company
  - Type of activity the company will engage in
  - Targeted clients, Market details, Marketing strategy, etc.
  - Capital investment details
  - Office Furniture, Office equipments, Vehicles
  - Logistic requirements, Employment requirements, etc.
  - Operating costs
    - Utilities, Communications (Telephones, Facsimile, Modem)
    - Administrative Costs, Salaries and Wages
    - Finance Charges, Insurance, Training Costs, Consultancy, General Overheads, etc.
  - Audited accounts for past the last financial year
  - Detailed 3 year cash flow forecasts
  - Date of proposed commencement of business

## 4. APPROVAL PROCESS

### 4.1. Submission of documents to Registrar of Companies

Once all the information has been received, the Authority will issue a Certificate of Approval, confirming that all the documentation submitted is to the Authority's satisfaction. Thereafter, SIBA will send the following documents in triplicate to the Registrar of Companies for processing:

- The memorandum and articles of association,
- Compliance Certificate of Attorney at Law
- Certificate of Approval issued by the Authority
- Declaration Certificate of Registered Address
- The name reservation certificate (if applicable)
- Declaration Certificate of Directors
- Declaration Certificate of Secretary
- Articles of Continuation (where applicable)

PLEASE NOTE THAT INFORMATION RELATING TO THE BENEFICIAL OWNERSHIP SHAREHOLDING OF THE COMPANY WILL **NOT BE SUBMITTED** TO THE REGISTRAR OF COMPANIES. THIS INFORMATION WILL BE RETAINED BY THE AUTHORITY AND IS PRESERVED IN SECRECY AS PER SECTION 22 OF THE COMPANIES (SPECIAL LICENSES) ACT, 2003.

Under section 7(1) of the Companies (Special Licences) Act, 2003, the Registrar of Companies may retain and register the memorandum and articles of the Applicant Company. Upon registration of these, the Registrar will issue a Certificate of Incorporation. This certificate will be picked up from the Registrar by a member of SIBA staff.

### 4.2. Issuing of Special License

When the Registrar of Companies has issued the certificate of incorporation, SIBA will thereafter issue a Special License under section 9(1) of the Companies (Special Licences) Act, 2003.

## 5. FILING OF ANNUAL RETURNS

### 5.1. Filing of Annual Returns

In accordance with the Companies (Special Licences) Act, 2003, every company that has been issued with a Special Licence will have to submit annual returns ONLY to the Authority, therefore removing such information out of the public domain if the accounts were registered annually with the Registrar of Companies. The Special Licence Company will have to make the annual returns in the form prescribed in the Fifth Schedule of the Companies Act, 1972.

Section 119 of the Companies Act 1972 stipulates that as long as a company holds its first AGM within 18 months of its incorporation it need not hold an AGM in the first year of its incorporation or in the following year. Therefore a CSL shall be allowed to submit its first annual returns 90 days after its first AGM given that its AGM is held within 18 months from the date of its incorporation. After the second year of incorporation Section 15(1) of the CSL Act 2003 shall apply allowing a CSL company 90 days after the end of each of its financial year to submit its annual returns.

### 5.2. Failure to file annual returns

When a Special Licence Company to do submit its annual returns hence contravening Section 15 (1) of the CSL Act 2003; Section 114 (3) of the Companies Act and the appropriate penalties shall apply under the said section. Section 117 of the Companies Act, 12972 (relating to offences in connection to annual returns) will apply. In this section where it concerns a CSL company the word "Registrar" shall be replaced by the word "Authority".

## 6. Administration of CSL's

### 6.1 Alteration to the Memorandum and Articles

Under the Companies Act 1972, the CSL is obliged to inform the Registrar of Alterations to its Memorandum and Articles and consequently procedures as per the Companies Act must be followed. In addition as a matter of record keeping the Authority must be notified of such changes.

- Change of Registered Address
- Increase of share capital
- Decrease of share capital
- Change of name of company\*
- Change of Directors\*\*

\*Name approval procedures must be followed as per the Companies Act 1972 and upon confirmation of name approval by the Registrar Director's Resolution of Change of name can be submitted.

\*\*ICSP must submit to the Authority Due diligence and KYC Declaration together with application form in reference to the new director being appointed.

### 6.2 Other Changes

- Change of Beneficial Owner
- Transfer of shares

The Authority must be informed of such changes together with Due diligence & KYC Declaration.

### 6.3 Documents issued by the Registrar

- Incorporation Certificate
- Certificate of Good standing \*\*\*
- Change of Name Certificate
- Dissolution Notices to the Gazette

\*\*\*Certificate of Good Standing: Shall not be issued to 3<sup>rd</sup> parties. Information found on the Register is public. It shall be issued by the Companies Registrar confirming whether the CSL is on the Register of Seychelles, Date of incorporation, details of Secretary and Registered address. Whether the license fees are up to date and that there are or no adverse findings on the CSL. Please note that all matters relating to the shareholding or of a shareholder of a CSL should not be disclosed as per S 22 (1) of the CSL Act.

## 7. Renewal of Licence

As Special Licences are only granted for a period of one year, licences will have to be renewed annually. In order to ensure that a company does not operate without a valid licence, the Authority will send the Secretary of the Special Licence Company a reminder. Where a CSL fails to renew its license within the prescribed time a notice will be issued. Should the company fail to adhere to the notice; the CSL will by default lose its status together with privileges of that of a CSL company and it shall be treated as a local company whereby all the relevant authorities shall be informed.

## 8. TAX CERTIFICATES AND TAX RETURNS

The Taxation division within the Ministry of Finance is responsible for issuing tax certificates and assessing the taxable income of a Special Licence company. For enquiries relating to taxation issues, please forward to:

**The Tax Commissioner**

Taxation Division  
Ministry of Finance  
Liberty House  
P.O. Box 313  
Victoria, Mahe  
Seychelles

Tel: +248 382 000  
Fax: +248 225 565  
Email: [taxation@seychelles.net](mailto:taxation@seychelles.net)