

Seychelles “Brand New for 2008”

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If you thought you knew everything there was to know about the Seychelles financial sector... well... you may want to take another look. The statistics prove the growing popularity of Seychelles but you will not find government officials and practitioners in the financial services sector popping champagne corks. The two groups have been hard at work building the framework from which to take Seychelles to the next level. To this end, several new and updated pieces of legislation are being introduced in 2008.

Seychelles initially built its brand in the “offshore” industry primarily off of price competition and its excellent Seychelles International Business Company (IBC). As a result, many fondly comment that Seychelles is “cheap and cheery”. There are certainly worse things to be labelled, but there is much more to Seychelles than its advantages in price and pleasantries.

For certain, the IBC and the low fixed government fees have proven an effective entry strategy for Seychelles. IBC incorporations have doubled in only a few years and, if early signs are any indication, 2008 is going to be a real banner year. IBC incorporations are up 70% over the same period in 2007 in the first five months and there is a growing interest in a variety of other products such as the increasingly popular Seychelles CSL. Now Seychelles is looking to utilise this momentum and growing international exposure to propel the country from a jurisdiction associated primarily as offshore jurisdiction into a modern international financial centre.

To accomplish this, Seychelles is primarily focusing on a two pronged strategy. One strategy is to continue to negotiate and expand the network of beneficial Double Taxation Avoidance

Agreements (DTA Agreements). The other is to provide a broad and modern legal and regulatory framework aimed at expanding the financial services sector.

Of the 12 current DTA Agreements signed and entered into force, those with China and Indonesia continue to be the most popular. The DTA with China is the best in the world regarding the treatment of dividends. Additionally, there is no capital gains withholding for alienation of shares representing a participation of less than 25% except where the shares are associated with immovable property holdings. The DTA with Indonesia is also particularly popular due to its superior terms regarding capital gains withholding. Seychelles continues to negotiate and enter into more DTA Agreements with the hopes of building upon the success of those currently in place.

These DTA Agreements are especially attractive when viewed in conjunction with the Seychelles CSL which qualifies as “resident” for the purpose of accessing these DTA Agreements. The Seychelles CSL pays only 1.5% income tax on its worldwide income and there is no further withholding for dividends, royalties, capital gains or interest paid to non-residents.

The second component of this strategy is the continual modernisation of existing laws and introduction of new complementary Acts and associated regulations. By the time 2008 has ended, Seychelles will have made modernising amendments to the International Business Companies Act, Companies (Special Licence) Act and International Corporate Service Providers Act. Additionally, several new pieces of legislation along with the accompanying regulatory framework will have been fully enacted. These are the Securities Act

2007, Mutual Fund and Hedge Fund Act 2008, Insurance Act 2008 and Foundations Act 2008 (being proposed, but will likely be in place by the end of 2008).

Securities Act 2007

The Securities Act 2007 was drafted in tandem with the new Mutual Funds and Hedge Funds Act 2008 and Insurance Act 2008. As with the other two aforementioned Acts, the aim is to provide a well regulated, but efficient framework in which to operate. Indeed the Securities Act prescribes a good balance.

The provisions of the Securities Act aim to instill confidence in investors by licensing and regulating all of the components of the market as well as providing internationally accepted guidelines to which participants must adhere. The Act accounts for offences such as insider trading, price rigging, market manipulation, use of deceptive statements and fraudulent transactions. For public securities there is a requirement that information be publicly known before it is acted upon or charges may be brought for insider dealing.

Simultaneously, companies and professionals working within the industry will enjoy working within a framework that is not overly cluttered with mountains of laws and regulations. Costs associated with compliance requirements of these laws and regulations in many jurisdictions have reached alarming levels and yet somehow those with bad intentions still find a way around them.

Seychelles Stock Exchange

Possibly the most important component of the new Securities Act was the enabling language for the creation of a new Seychelles Stock Exchange. A contract was awarded by the Securities Authority and the establishment of the physical stock exchange and IT backbone is

underway with everything anticipated to be completed by mid to late 2008. The Seychelles Stock Exchange will be a modern electronic stock exchange allowing companies, mutual funds and hedge funds from anywhere in the world an opportunity to be publicly listed.

Securities Authority

To oversee this new stock exchange, the Securities Act 2007 calls for the creation of a new Securities Authority within the Central Bank. The Authority is charged with regulating all licensable activities as set out in the new Act as well as licensing and oversight of the various collective investment schemes as outlined in the Mutual Funds and Hedge Funds Act 2008.

Licensed Activities

The Securities Act 2007 expressly addresses the licensing and oversight of several professions and components that tie in with the Seychelles Stock Exchange: clearing agencies, securities dealers, investment advisors, securities dealer's representatives, investment advisor's representatives, custodians of securities and auditors. Anyone carrying on business falling within the definition of one or more of the above licensable activities, whether carried on physically or electronically from Seychelles or otherwise through a company incorporated in Seychelles, requires licence by the Securities Authority.

Securities Dealer Representative Investment Advisor Representative

Applicants for a Securities Dealer Licence or Investment Advisor Licence are required, at a minimum, to have a local "Securities Dealer Representative" or "Investment Advisor Representative" in association with the respective licence. The representatives are themselves licensed by the Authority.

"Recognised Jurisdictions"

The Securities Act 2007 specifies several "recognised jurisdictions" in association with application for "exempt" status. These jurisdictions include Austria, Australia, Bahamas, Bahrain, Belgium, Bermuda, British Virgin Islands, Canada, Cayman Islands, Cyprus, Denmark, France, Germany, Gibraltar, Guernsey, Holland, Hong Kong, Ireland, Isle of Man, Japan, Jersey, Luxembourg, Malaysia (including Labuan), Mauritius, New Zealand, Singapore, South Africa, Switzerland, United Arab Emirates, United Kingdom and the United States of America.

Recognised Foreign Accounting Bodies

Members in good standing of any of the following foreign accounting bodies are recognised by the Securities Authority for the purposes of this Act:

- Institute of Chartered Accountants in England and Wales
- Association of Chartered Certified Accountants (United Kingdom)

- Institute of Chartered Accountants in Ireland
- Institute of Certified Public Accountants in Ireland
- Institute of Chartered Accountants in Scotland
- Institute of Chartered Accountants in Australia
- Institute of Certified Public Accountants in Singapore
- Hong Kong Institute of Certified Public Accountants
- South African Institute of Chartered Accountants
- American Institute of Certified Public Accountants
- Canadian Institute of Chartered Accountants

Auditors

The Authority recognises auditors licensed by the Seychelles Licensing Authority. The Act also allows for foreign accountants to be recognised as auditors for the purposes of this Act if granted express approval in writing by the Authority.

Securities & Futures

The Act includes within the definition of "Securities" the following:

- Shares of stock of any company in Seychelles or elsewhere, shares or units of a hedge fund or mutual fund as defined in the Mutual Fund and Hedge Fund Act, debentures, debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness. There are several exclusions to this last category that are widely understood to be carrying out normal business and banking functions.
- Warrants entitling the holder to subscribe for securities, certificates or other instruments which confer contractual or proprietary rights in respect of any securities falling within the previous categories held by a person other than the person on whom the rights are conferred by the certificate or instrument and the transfer of which may be effected without the consent of that person.
- Options to acquire or dispose of a security, any currency, any precious metal or an option to acquire or an option to acquire or dispose of a security falling within these options categories. It is important to note that spot trading of currencies and precious metals is included within this definition of "options" and as such will be regulated by the Securities Authority.

Futures are regulated if recognised on the Seychelles Securities Exchange, a recognised overseas exchange or if generally understood to be for investment purposes and not for normal commercial purposes.

Contracts for Differences (CFD)

The Act also allows for the listing and live trading and regulation of Contracts for Differences. CFDs are an increasingly popular investment product where investors can take advantage of leverage to increase returns. The only other known exchange offering live trading of CFDs is Australia which obviously gives the Seychelles Exchange a unique category of products to market.

Contracts for Differences include rights under a CFD or any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property of any description or an index or other factor designated for that purpose in that contract other than:

- a) Rights under a contract if the parties intend that the profit is to be secured or the loss is to be avoided by one or more of the parties taking delivery of any property to which the contract relates, or
- b) Rights under a contract under which money is received by way of deposit on terms that any interest or other return to be paid on the sum deposited will be calculated by reference to fluctuations in an index or other factor.

Tax Incentives

Professionals licensed under the Act will enjoy several tax breaks aimed at attracting professionals to Seychelles. Licence holders are exempt from the provisions of the Business Tax Act instead paying only a low 1.5% income tax on worldwide income. The licence holder will also be exempt from the Trades Tax Act meaning that there will be no duty charged on items such as office furniture, office supplies, office equipment and even a vehicle brought in for business use. The licence holder is exempt from the provisions of the Goods and Services Tax Act and lastly, there is no additional withholding on dividends, interest, capital gains or royalties paid to a non-resident.

Insurance Act 2008

The Insurance Act 2008 modernises the insurance industry in Seychelles and importantly adds provisions for captive insurance, reinsurance, life insurance products (including life insurance annuities) as well as a variety of categories falling under the general insurance business category. Permitted insurance business under the Act includes the following:

Long Term Insurance Business – Life insurance (including life insurance annuities), Pension Business, Permanent Health Insurance Business and Linked Long-Term Insurance Business.

General Insurance Business – Accident and Health Insurance, Engineering Insurance, Guarantee Insurance, Liability Insurance, Motor Insurance, Property Insurance, Marine, Aviation, Inland Transit and Goods-in-Transit Insurance and Miscellaneous Insurance.

Non-Domestic Insurance

The Act provides for licensure relating to “non-domestic” insurance business. As regulations continue to mount in other parts of the world, the Seychelles Insurance Act and its many enticing provisions should present an increasingly popular option.

Non-domestic insurance businesses are afforded many special exemptions including exemptions from the Business Tax Act, the Immovable Property Act, Social Security Act, the Stamp Duty Act, Trades Tax Act, Goods and Services Act, Exchange Control Act, Foreign Earnings Act and the Immigration Decree as insurance businesses are able to employ up to 50% expatriate employees.

The Act allows for the licensure and regulation of insurance actuaries, auditors, brokers, agents and managers. As with the Mutual Funds and Hedge Funds Act 2008 and Securities Act 2007, foreign components are allowed in relation to insurance business in Seychelles. Foreign auditors and foreign actuaries are permitted provided that they are approved by the Insurance Authority after demonstrating adequate qualifications including relevant educational background, membership in relevant professional bodies in recognised jurisdictions, etc.

Principal Insurance Representative

The Act provides for licensing of a local “principal insurance representative” which is a minimum requirement for a local presence of a non-domestic insurer. This principal insurance representative is charged with maintaining the records of the company, filing returns and liaising with the Insurance Authority.

Recognised Foreign Bodies

The Act recognises accountants from the following foreign bodies for the purposes of auditing and actuarial services:

- Institute of Chartered Accountants in England and Wales
- Institute of Chartered Accountants in Ireland
- Institute of Certified Public Accountants in Ireland
- Institute of Chartered Accountants in Scotland
- Institute of Chartered Accountants in Australia
- American Institute of Certified Public Accountants
- Canadian Institute of Chartered Accountants

or a person in good standing with some other accountancy qualification that

is recognised by the Authority as such for the purposes of this Act.

Tax Incentives

Companies licensed under the Act will enjoy several tax breaks. License holders are fully exempt from the provisions of the Business Tax Act. The license holder will also be exempt from the Trades Tax Act meaning that there will be no duty charged on items such as office furniture, office supplies, office equipment and even a vehicle brought in for business use. The license holder is exempt from the provisions of the Goods and Services Tax Act and lastly, there is no additional withholding on dividends, interest, capital gains or royalties paid to a non-resident.

Seychelles International Business Company (IBC)

The Seychelles IBC is the structure that put Seychelles on the map as a young international financial centre in 1994. The popularity of the IBC has grown steadily and incrementally in recent years, with a total of 10,200 new IBCs formed in 2007.

As previously mentioned, 2008 is proving to be a breakout year in a number of ways for Seychelles and the International Business Company is a big part of this equation. In the first five months of 2008, IBC incorporations were up 70% in Seychelles over the same period last year. What is driving this sudden growth? It is fair to say that there are a number of internal and external factors that are driving this growth, but a large portion of the growth can surely be attributed to the favourable characteristics of the IBC:

- Government fees are a low USD 100 which is fixed for the life of the company. There is no maximum number of shares or maximum authorised share capital at this fee which is especially important in relation to funds.
- Only one director and shareholder are required either of which may be foreign and a legal or natural person.
- The same natural person or legal entity can be the sole director and shareholder.
- The Seychelles IBC is 100% tax free. There is absolutely no tax whatsoever due from operations of the IBC, sale of any assets, transfer of shares, etc.
- Bearer shares are allowed and there is no increase in government fees as in the BVI (USD 1,100 government fees for a bearer share company).
- One day incorporation time.

Seychelles is also unique in that there are no restrictions on Seychelles residents owning and operating a Seychelles IBC. Furthermore, the Seychelles IBC may be a shareholder of a Seychelles domestic company. This fact allows Seychelles to successfully defend claims of “ring-fencing”

by the international community.

All of these provisions continue to make the structure popular. Proposed amendments to the IBC Act expected to be adopted in some form this year may increase this momentum even further.

New for 2008

- Members Limited by Guarantee – one of the proposed amendments to the International Business Companies Act adds the possibility of members limited by guarantee. A company with both guarantee members and shareholding members is often referred to as a “hybrid company”.
- Increase in the striking off period – another proposed amendment to the IBC Act increases the period from three to ten years before a company is struck off of the register.
- Updates are also expected to clarify the order of priority for creditors of an IBC as well as registration of mortgages.
- And more...

Seychelles Foundations Act

Legislation is being proposed regarding introduction of the concept of both private and charitable foundations in Seychelles. Having had the benefit of reviewing foundation laws and the resulting popularity in other jurisdictions, the Seychelles Foundation Act aims to gather and build upon the best components of each while potentially adding a few new twists that should prove popular if they remain in the final version of the Act:

- Only one Council Member required which may be a natural person or legal entity.
- USD 1 minimum assets.
- Founder defined as the subscriber.
- Founder’s rights may be transferred.
- Assets placed into the foundation become the legal and beneficial property of the foundation.
- Two year window for creditors to challenge (in Seychelles) transfers to the foundation.
- Foundation may own equity interest in a Seychelles Mutual Fund or Hedge Fund.

Much more... the private foundation continues to grow in popularity as an alternative to the trust and if passed into law, Seychelles aims to capitalise on this through the introduction of its own Foundations Act in 2008. The chances are very good that there will be a new Foundations Act in place by the end of the calendar year.



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