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Seychelles – Amendments to International Business Companies Act 1994

Dear Valued Clients

We wish you a Happy 2012!

As a start to the New Year, we append a summary of recent amendments to the Seychelles International Business Companies Act 1994 which entered into force on 27 December 2011 (“IBC Amendments Summary”).

In summary, the key amendments are:

- An IBC is now required to keep its share register (register of members) and register of directors in Seychelles. The registers may be in electronic or other data storage form (i.e. an emailed PDF or Word copy is sufficient). A company may (in addition) keep a copy of the registers outside Seychelles.
- An IBC must notify its Seychelles Registered Agent of the physical address (which may be outside Seychelles) where its minutes and resolutions are kept;
- An IBC must notify its Seychelles Registered Agent of the physical address (which may be outside Seychelles) where its accounting records are kept (although there remains no requirement for IBCs to prepare or file accounts).

Government was prompted to make the Amendments in response OECD’s Phase 1 Peer Review Report on Seychelles. The requirements are in line with other jurisdictions, such as BVI.

If you have a Seychelles entity, there is a grace-period of 3 months (i.e. until 27 March 2012) to comply with the new requirements. You will need to ensure that the following is provided to your registered agent (unless already supplied) by 27 March 2012:

- A Word or PDF version of the company’s register of directors and register of member;
- The physical address of where the company’s accounting records are kept;
- The physical address of where the company’s minutes & resolutions are kept.

Please do contact our professional consultants if you have any queries.

SUMMARY OF AMENDMENTS TO THE INTERNATIONAL BUSINESS COMPANIES ACT 1994 (IBC ACT)

The amendments to the IBC Act were made pursuant to the International Business Companies (Amendment) Act 2011 (effective 27 December 2011). A summary of the amendments is as follows:

1. LOCATION OF IBC REGISTERS – Amendment to sections 28(3) & 65 of the IBC Act

- 1.1 An IBC is now required to keep its share register (register of members) and register of directors in Seychelles. The registers may be in electronic or other data storage form (ie. a PDF or Word copy is sufficient). A company may (in addition) keep a copy of the registers outside Seychelles.
- 1.2 An IBC's share register must contain (at minimum) the name and address of each registered shareholder as well as the name and address of each holder of bearer shares; the number of each class and series of shares held by each shareholder; the date on which the name of each member was entered in the register; and the date on which any person ceased to be a member.
- 1.3 An IBC is required to keep its share register (register of members) at its registered office or such other place in Seychelles as the directors determine. Unless its share register is kept at its registered office, the IBC shall give written notice to its Seychelles Registered Agent of the address of the place where its share register is kept and of any change of that place.
- 1.4 An IBC's register of directors must contain (at minimum) the name and address of each director and other officer of the company, their date of appointment and the date on which each such person ceased to a director or other officer.
- 1.5 An IBC is required to keep its register of directors at its registered office or such other place in Seychelles as the directors determine. Unless its register of directors is kept at its registered office, the IBC shall give written notice to its Seychelles Registered Agent of the address of the place where its register of directors is kept and of any change of that place.
- 1.6 The Amendment (registers in Seychelles) must be complied with within 3 months of the coming into force of the IBC Amendment Act 2011. That is, the compliance deadline is 7 March 2012. The penalty payable by an IBC for contravention of the requirement to keep registers in Seychelles in accordance with the IBC Act remains unchanged, ie. US\$25 for each day during which a contravention continues. A director of an IBC who knowingly permits the contravention is also liable for a penalty of US\$25 for each day during which a contravention continues.

2. KEEPING OF FINANCIAL RECORDS – Amendment to sections 65(1) of the IBC Act

- 2.1 Strengthening of IBC accounts-record keeping requirements is a requirement under the OECD’s Phase 1 Peer Review Report on Seychelles. The Amendments do not require IBCs to either prepare or file annual accounts. However, under section 65(1) of the IBC Act (as amended), IBCs must keep or cause to be kept proper accounting records that:
- are sufficient to show and correctly explain the company’s transactions;
 - enable the financial position of the company to be determined with reasonable accuracy at any time; and
 - allow for accounts of the company to be prepared (notwithstanding that an IBC is not required under the IBC Act to prepare accounts).
- 2.2 “Accounting records”, in relation to an IBC, means documents relating to or evidencing the company’s assets and liabilities, company receipts and expenditure and sales, purchases and other transactions to which the company is a party (for example, bank statements, receipts, title documents, agreements, etc).
- 2.3 A company’s accounting records shall be kept at the company’s registered office or such place inside or outside of Seychelles as the directors think fit. Where an IBC does not keep its accounting records at its registered office, it is required to notify in writing its Seychelles Registered Agent of the address of the place at which its accounting records are kept.
- 2.4 Where the place at which a company’s accounting records are kept is changed, the company shall inform its Seychelles Registered Agent in writing of the physical address of the new location of the records within 14 days of the change of location.
- 2.5 The accounting records that a company is required to keep must be preserved by it for at least 7 years from the completion of the transactions or operations to which they each relate.
- 2.6 The penalty payable by an IBC for contravention of the account record-keeping requirements is US\$25 for each day during which a contravention continues. A director of an IBC who knowingly permits the contravention is also liable for a penalty of US\$25 for each day during which a contravention continues.

3. KEEPING OF MINUTES AND RESOLUTIONS – section 65 of the IBC Act

- 3.1 An IBC is required to keep, at such place inside or outside of Seychelles as the directors shall determine, minutes of all meetings, and copies of all written consent resolutions, of directors and members (“minutes and resolutions”).
- 3.2 Where an IBC does not keep its minutes and resolutions at its registered office, it is required to notify in writing its Seychelles Registered Agent of the address of the place at which its minutes and resolutions are kept.

- 3.3 Where the place at which a company's minutes and resolutions are kept is changed, the company shall inform its Seychelles Registered Agent in writing of the physical address of the new location of the minutes and resolutions within 14 days of the change of location.
- 3.4 The penalty payable by an IBC for contravention of the minutes and resolutions record-keeping requirements remains unchanged, ie. US\$25 for each day during which a contravention continues. A director of an IBC who knowingly permits the contravention is also liable for a penalty of US\$25 for each day during which a contravention continues.

4. EXTENDED RESERVATION OF COMPANY NAMES

The Registrar will reserve a proposed company name (if available and not objectionable) for a period of 30 days on a free-of-charge basis. However, on the expiry of the 30 day "free" period, a payment of US\$25 to the Registrar is now required, for the continued reservation of a name, in respect of each 30 day period thereafter.

Please note that the information contained herein is intended to provide general information to the clients and professional contacts of Kaizen Corporate Services Limited. It does not purport to be comprehensive and is in no way intended and should not be relied upon as legal or tax advice.