

INTERNATIONAL BUSINESS COMPANIES

GUIDELINES ON PROCEDURES

1. Introduction

These guidelines have been prepared to ensure that licensed International Corporate Service Providers (“ICSPs”) are aware of the processes and procedures involved in their dealings with the Registrar in relation to International Business Companies (“IBCs”). These guidelines should be used as a guide only and should be read with the relevant provisions in the International Business Companies Act, 1994, as amended (“the Act”).

2. Submission of Requests

All requests from ICSPs must be formally made, in the English or French language, on the “IBC Request Forms” as designed and customized by the Registrar, or alternatively, in a similar format on the ICSP’s headed paper. All requests must be properly executed and signed by the ICSP. Requests may be submitted either by post, hand, fax or email. Requests or correspondences that are not in a typed format will not be accepted by SIBA.

3. Submission and collection of documents to the Registrar

Following a request for incorporation (or continuation), the Registrar will reserve and issue a unique Company Number to the proposed IBC. The ICSP will be expected, within 72 hours, to submit the Company’s Memorandum of Association for incorporation of the Company.

Upon submission of the Company’s Memorandum of Association for registration, the Registrar will incorporate and issue the Company’s Certificate of Incorporation. The Registrar will accept delivery of Memorandum of Associations for same day incorporation until 04:30pm each working day.

The Articles of Association must be submitted by the ICSP on or within 30 days following the date of Incorporation (for the avoidance of doubt, both the Memorandum and Article of Association may be submitted jointly upon incorporation).

The schedule below gives the earliest collection time at which an ICSP may collect the company’s certificate of incorporation, registered Memorandum and Articles of Association (if any), depending on the time at which delivery of the relevant documents was made to the Registrar. Note however that this schedule does not apply for the collection of other documents (e.g. Certificate of Good Standing, Certificate of Official Search and other transactions).

Delivery Time	Collection Time
8am-10am	1.30pm (same day)
10am-12pm	3:00 pm (same day)
12pm-3pm	9.30 am (next day)
After 3 pm	1.30pm (next day)

ICSPs must respect the above schedule and there must be no waiting at SIBA’s reception area.

However, only where special circumstances dictate (e.g. where an ICSP has submitted a large volume of documents for incorporation) the Registrar may require the ICSP to collect the documents at a specific time.

4. Verification of Documents

ICSPs must ensure that any documents submitted to the Registrar relating to particular transactions especially registration are error-free.

Additionally, upon the collection of documents from the SIBA reception, it is the duty of the relevant ICSP to ensure that the documents handed over are verified to ensure that they are in order. Moreover, ICSPs must ensure that documents received by their offices are duly verified to ensure that any matters that need to be brought to the attention of the Registrar are attended to within a 48 hour period or within 2 working days subsequent to the collection of the document at the reception area.

5. Payment of fees

All transactions requested by an ICSP must be accompanied by the relevant fee. No request shall be made with the assumption that payment will eventually be submitted. With regards to cheque payments, all cheques should be attached with the request. Cheques issued with the wrong amount will be returned to the ICSP and the request will be kept on hold.

Likewise, ICSPs maintaining an account (i.e. advanced payment) with the Registrar will need to authorize Registrar to deduct their respective accounts accordingly.

ICSPs choosing to maintain accounts must ensure that the account has sufficient funds to allow the transactions to go through. Transaction requests from ICSPs with insufficient credit will not be processed unless the account is replenished or an alternative payment method is specified.

The International Corporate Service Providers Act, 2003 requires the ICSP to pay business taxes on the following fees as follows:

Incorporation or Registration Fee – 15%
Renewal Fee – 7.5%
Other Fees – 5%

6. Name Approval

Section 11 of the Act relates to the names of IBCs. All intended names to be used as IBC names must be approved by the Authority.

Note that proposed names submitted at name approval stage will be the name (inclusive of punctuation marks) that appears on the Certificate of Incorporation/ Continuation. ICSPs must ensure that the proposed names submitted for name approval is the exact name that will ultimately appear on the Memorandum and Articles of Association.

6.1 Combination requirements of a company name

A proposed name must contain a word or combination of words set out in the first column of Part III of the Schedule, or the abbreviation of that word or combination of words set out in the second column of that Part, provided that a company incorporated under the laws of a jurisdiction outside Seychelles and continued as a company incorporated under the Act may use the name designated in the articles of continuation.

6.2 Language requirements of a company name

The name of a company may be expressed in any language (subject to Section 11 (1)). However, if the name is not in the English or French language then a translation or transliteration of the name in English or French must be provided.

6.3 Name Restriction

Some words are not allowed in company names. They are known as prohibited words whereas some words may only be used subject to special criteria or permission.

Section 11(3)(b) of the Act makes provision for prohibited words that should not feature in any company name. These words are "Assurance", "Bank", "Building Society", "Chamber of Commerce", "Chartered", "Cooperative", "Imperial", "Insurance", "Municipal", "Trust" and "Foundation".

The list extends further to any word conveying a similar meaning or any other word that, in the opinion of the Registrar, suggests or is calculated to suggest the patronage of or any connection with any country or the Government of that country. A company name may feature the name of a country provided that the ICSP makes a declaration that there is no affiliation with the patronage or government of that country. However, the Registrar will not be in position to accept "Seychelles" in the name of a company, regardless of any declaration.

The Registrar also has an internal list of words (restricted words) which are used when vetting company names. However, this list is not available for publication.

There are also restrictions on the use of registered Trademark. Note that the Registrar does not check company names against the trademarks registers. This responsibility relies on the ICSP or the company itself.

6.4 Exceptions

An IBC cannot trade under the same name as a domestic company registered with the local registrar. However, this may sometimes be allowed if the registered agent obtains the approval of the owner(s) of the domestic company. This approval has to be submitted to the Registrar for consideration.

Note that the responsibility of verifying whether a name has been registered with the local registrar relies on the ICSP.

6.5 Reservation period of company name

Upon the approval of a proposed company name by the Registrar, the proposed name will be reserved for a period of 30 days as of the date of approval. There is no charge for the initial 30 day reservation period. Names that have enjoyed their 30 days' reservation period, if not incorporated as IBCs during that period, will be available to any ICSP on a 'first come first served' basis.

Should an ICSP request to extend the reservation period of a proposed name prior to the relevant expiry date of the reservation period, the request must be submitted together with the prescribed fee of US\$25 per name.

Note that any request to reserve the same name within 60 days following the expiry date of the reservation period will be treated as a "continued reservation" by the Registrar and therefore the prescribed fee will also apply.

7. Incorporation and Continuation

Once the proposed company name has been approved by the Registrar, the ICSP may apply to the Registrar to incorporate or continue the company through a simple and straightforward process. That is, the ICSP must submit at least 3 copies of the company's Memorandum (including Articles of Association, if any) accompanied by the prescribed fee of US\$100. Upon receipt, the Registrar may register the Memorandum and issue a certificate of incorporation or continuation.

Note that this only applies to companies wishing to adopt the ICSP's standard Memorandum and Articles of Association, which has been previously vetted and approved by the Authority. If the Memorandum and Articles of Association are to be varied or new ones to be adopted, this must be brought to the Registrar's attention. Given that the Registrar will have to vet and approve the document, more time will be required for the company to be incorporated

Please be advised that prior to the submission of the proposed standard Memorandum and Articles of Association for SIBA's approval, ICSPs must ensure that these documents have been legally verified to ensure compliance with the law.

Should the Articles of Association be not submitted at the time of registration of the Memorandum of Association, it must be submitted within 30 days from the date of incorporation.

In the case of a continuation, the company must submit the following documents to the Registrar:

- An original or certified copy of the existing Memorandum and Articles of Association
- At least 3 copies the Memorandum and Articles of Association to be adopted by the company
- The Articles of Continuation
- Resolution giving effect to the change
- Evidence that the company is in good standing
- The prescribed fee of US\$100

Note: Given that most companies have the preference of having their unique company number being featured on their Memorandum and Articles of Association when they are registered by the Registrar upon incorporation or continuation, an ICSP may, prior to submission of the company's Memorandum and Articles of Association, submit to the Registrar a request for incorporation or continuation. Upon receipt of the request, the Registrar will issue a temporary unique IBC number to the proposed company and the ICSP will be notified accordingly.

8. Continuation outside Seychelles

Subject to limitations in its Memorandum and Articles of Association, an IBC may continue under the laws of a jurisdiction outside Seychelles in the manner provided under those laws. The company will not cease to be a company incorporated under the IBC Act, 1994 unless it has paid all its fees and all penalties due under the Act.

Continuing a company outside Seychelles will require the submission of the following documents:

- Letter from ICSP confirming that all legal requirements in respect of the continuation have been met in the jurisdiction outside of Seychelles
- The resolution giving effect to the change (original or certified copy)

Upon satisfaction of the Registrar, the company will be struck off the Register and a notice of the striking off shall be published in the Official Gazette.

9. Renewals

Section 103 provides for a company, the name of which is on the Register on 31st December in any year to pay to the Registrar the annual fee of US\$100 before the date of the relevant anniversary of its incorporation.

Penalties will apply for late renewal and the penalty fees will also attract business tax at 7.5% in accordance with Schedule 2 of the International Corporate Service Providers Act, 2003.

10. Change of ICSP

The company can choose from two methods if it wishes to change ICSP.

Method 1: Filing done by the outgoing ICSP

The outgoing ICSP notifies the Registrar of the change by submitting the following documents:

- A consent letter from the outgoing ICSP
- The original or certified copy of the extract of the resolution giving effect to the change
- A declaration of acceptance from the incoming ICSP
- The prescribed fee
- The amended Memorandum and articles of association (optional)

Method 2: Filing done by the incoming ICSP

The prospective ICSP notifies the Registrar of the change by submitting the following documents:

- A covering letter from the prospective ICSP
- A consent letter from the outgoing ICSP (also clarifying the settlement of fees)
- The original or certified copy of the extract of the resolution giving effect to the change
- The prescribe fee
- The amended Memorandum and articles of association (optional)

Note: In cases where the outgoing ICSP refuses to consent to the transfer, the Authority expects to receive a letter from the outgoing ICSP setting out the reasons of such refusal.

11. Change of address of registered office

To encourage the growth of ICSPs in terms of expansion of their business, the Registrar will apply a concessionary fee in cases where an IBC must change the address of its registered office due to the change in the business premise of its registered agent. The fees will be applied as follows.

1. US\$ 5.00 per IBC (excluding taxes), for the first 500 IBCs,
2. US\$ 2.50 per IBC (excluding taxes) for the next 600 IBCs, and
3. No fee will be applied on the remaining IBCs (i.e. total fee is capped at US\$ 4,000)

Note that the fees referred to above are exclusive of taxes and that the applicable tax rate is 5%, in accordance with the International Corporate Service Providers Act, 2003 (as amended).

Documents required to be submitted are as follows:

- Letter from the ICSP informing of the change of registered office
- The resolution giving effect to the change (original or certified copy)
- The relevant fee
- The amended Memorandum and articles of association (optional)

In order to benefit from the concessionary rate above, the ICSP must ensure that all the necessary changes in relation to the IBCs are effected within a timeframe of 6 months. Should the changes not be effected within the timeframe provided, the concessionary rate will not apply.

Note: The Act requires the address of the registered office of an IBC to be similar to that of its registered agent. For clarification purposes, the registered address of the IBC must be similar to the address of the premise where the registered agent carries on business.

12. Changing the authorised share capital

Changing the authorised share capital of a company implies an amendment to the Memorandum of Association. Documents required to be submitted are as follows:

- Letter from ICSP informing of the change in authorised share capital
- The resolution giving effect to the change (original or certified copy)
- The prescribe fee
- The amended Memorandum and articles of association (optional)

13. Change of name

Should a company wish to change its name, the ICSP shall firstly reserve the new name with the Registrar in accordance with section 11. Once the new name has been reserved the ICSP may submit the following documents to the Registrar:

- Letter from ICSP
- The resolution giving effect to the change (original or certified copy)
- The prescribe fee
- The amended Memorandum and articles of association (optional)

Once the Authority has registered the change of name, the company shall be issued with a new Certificate of Incorporation indicating the change of name.

14. Voluntary Winding-up and Dissolution

In the event that a company decides to wind up voluntarily, the ICSP must firstly submit the following documents prior to publishing its intention to dissolve the company:

- Letter from ICSP
- The resolution giving effect to the dissolution (original or certified copy)
- Articles of Dissolution (original or certified copy)
- The prescribe fee

Once the Articles of Dissolution has been registered, the Registrar will inform the ICSP in writing so that the company may publish its intention in accordance with section 92(4).

Upon completion of a winding-up and dissolution, the liquidator must submit to the Registrar a statement that the winding-up and dissolution has been completed. In addition, the ICSP will

be required to submit proofs of all publications made regarding the company's intention stated above, featuring the date of publication.

Once these documents have been received to the satisfaction of the Registrar, he will strike the company off the Register and issue a Certificate of Dissolution certifying that the company has been dissolved. Following the issue of the certificate, the liquidator shall publish a notice that the company has been dissolved and struck off in accordance with section 92(8).

15. Rescinding the Articles of Dissolution

In the event that a company decides to rescind the Articles of Dissolution, the ICSP will be required to submit the following documents:

- Letter from ICSP
- The resolution giving effect to the change (original or certified copy)
- The prescribe fee

Once the resolution has been registered to the Registrar, the company shall cause a notice stating that the company has rescinded its intention to wind-up and dissolve to be published in accordance with section 93(3).

16. Merger and Consolidation

In the event that 2 or more companies wish to merge or consolidate, the ICSP will be required to submit the following documents:

- Letter from ICSP
- The Articles of Merger or Consolidation
- The resolution giving effect to the change (original or certified copy)
- The amended memorandum and articles of association (optional)
- The prescribe fee

Upon registration of the Articles of Merger or Consolidation, the Registrar will issue a certificate certifying that the Articles of Merger or Consolidation has been registered.

17. Arrangements

Once the court has made an order approving a plan of arrangement and upon the confirmation of this plan of arrangement by directors and subsequent approval by those persons required by the order of the court to be given notice, the company shall execute the Articles of Arrangement.

This Articles of Arrangement shall be submitted to the Registrar accompanied by the prescribed fee. The Registrar will then issue a Certificate of Arrangement.

18. Certificate of Good Standing

Any person may, by making payment for the prescribe fee, request for a certificate of good standing from the Registrar certifying that a company incorporated under this Act is of good standing. The certificate will contain a statement as to whether –

- (a) the company has submitted to the Registrar articles of merger or consolidation that have not yet become effective
- (b) the company has submitted to the Registrar articles of arrangement that have not yet become effective;
- (c) the company is in the process of being wound-up and dissolved; or

- (d) any proceedings to strike the name of the company off the Register have been instituted.

Where a company is not in good standing, the Registrar will issue a Certificate of Official Search and no additional fee will be payable.

19. Certificate of Official Search

Any person may request the Registrar for a certificate of official search, in respect of any company incorporated under the International Business Companies Act, containing the following particulars –

- (a) the name and registration number of the company
- (b) the date of its incorporation
- (c) its authorised share capital
- (d) the name and address of its registered agent
- (e) the address of its registered office
- (f) the number of outstanding registered charges
- (g) the due date of annual fees
- (h) the status of the company (i.e. whether the company is in Good Standing and if not in Good Standing, the fact of any dissolution or striking off)

Note: A request for a certificate of official search is treated as an inspection of an entry in the Register of International Business Companies and therefore the prescribed fee under Part 1 of the Schedule of the Act will apply.

20. Registration of Charges

A company may, subject to the payment of the prescribe fee, apply to the Registrar for the registration of an instrument creating, amending, or discharging a hypothecation, mortgage or charge over some or all of its assets.

The instrument must be submitted in duplicate certified copies for registration (one copy will be retained by the Registrar). Enclosed with each instrument must be a summary, in tabular form, stating the following particulars:

- (a) the name and address of the company creating the hypothecation, mortgage or charge
- (b) the name and address of the other party to the hypothecation, mortgage or charge
- (c) the date of the instrument
- (d) the amount secured
- (e) the description of the assets affected by the instruments
- (f) other relevant features of the instrument as applicable (e.g. type of instrument, applicable rate of interest, date on which repayment is due, frequency of payments, value of repayments etc.)

The above summary will be featured on the Certificate of Official Search of the relevant company.

21. Register of directors and officers

Section 65(2)(c) of the Act requires the register of directors and officers to be kept in Seychelles. However, for practical purposes, the Registrar will accept a copy of the register to be kept in Seychelles.

22. Tax Exemption Certificates

The Seychelles Revenue Commission is responsible for issuing tax exemption certificates for International Business Companies.

23. All other Services

All other services such as inspections must be requested formally (i.e. by email or by fax) by the ICSP accompanied by their respective fees.