



PORTCULLIS NEWS

MCI (P) 111/06/2016

28 Oct 2016

The International Business Companies Act, 2016

The International Business Companies Act, 2016 ("the IBC Act") shall come into operation on 1st November, 2016. You may access a copy of the IBC Act here <http://www.fsaseychelles.sc/index.php/legal-framework/fiduciary>

The major policy changes, amongst other changes, under the new IBC Act are as follows:

Register of Beneficial Ownership

Every IBC will be required to keep a beneficial ownership Register at its registered office in Seychelles (exemption applies for listed IBCs and subsidiaries of listed IBCs). You may access a template for the Register of Beneficial Owners here: <https://portcullis.box.com/s/s2l95ie2ertb29bt7urgg6mucbyar9d0>

Penalty for Contravention

A company and each director who knowingly permits contravention of their responsibility under subsections (1) to keep a register and (2) keep the information up to date shall be liable for a penalty of US\$500 and an additional penalty of US\$50 for each day of non-compliance with subsections (1) or (2)

Register of Directors

Every IBC will now be required to keep a Register of Directors at the registered office.

Every IBC incorporated prior to 1 November 2016, shall have to file the Register with the Registrar within 12 months from the commencement date of the IBC Act (i.e. before 30 October 2017). The first register of directors filed by a company with the Registrar need only contain particulars of its current directors as at the date of its filing. The filed register will be made publicly accessible after two years following the Act commencement date. Industry has requested that this provision to make the register public after 2 years be reconsidered and such proposal is currently under review.

Companies incorporated on and from 1 November will have 30 days to file their Register with the Registrar.

Any changes are to be filed with the Register within 30 days of the change.

As the IBC Act requires new information on directors, please complete a new Register of Directors and provide the same to us for filing and retention at the registered office. You may access a template of the Register of Directors here: <https://portcullis.box.com/s/9qjzsmbw0tadt2p4dkf7boi444d2qpt9>

Penalty for Contravention

A company and each director who knowingly permits contravention of their responsibility under subsections (1) to keep a register and (2) keep the information up to date shall be liable for a penalty of US\$500 and an additional penalty of US\$50 for each day of non-compliance with subsections (1) or (2)



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Register of Members

Every IBC will be required to keep a Register of Members at the registered office. The following information as appropriate for the company must be entered:-

- (a) The name and address of each person who holds any shares in the company
- (b) The number of each class and series of shares held by each shareholder
- (c) The name and address of each person who is a guarantee member of the company
- (d) The date on which the name of each members was entered into the register of members;
- (e) The date on which any person ceased to be a member

If your existing register does not provide for the information above, you may access a template of a Register of Members here:

<https://portcullis.box.com/s/29e6nm8n9q86ezxr50c6qarjlr6esz2l>

Penalty for Contravention

A company and each director who knowingly permits contravention of their responsibility under subsections (1) to keep a register and (2) keep the information up to date shall be liable for a penalty of US\$500 and an additional penalty of US\$50 for each day of non-compliance with subsections (1) or (2)

Register of Charges

An IBC must maintain at its registered office a register of charges containing in respect of each and every charge created by it:-

- (a) if the charge is a charge created by the Company, the date of its creation or, if the charge is a charge existing on property acquired by the Company, the date on which the property was acquired
- (b) a short description of the liability secured by the charge
- (c) a short description of the property charged
- (d) the name and address of the chargee, who may be acting as a trustee or security agent for other persons; and
- (e) details of any prohibition or restriction, if any, contained in the instrument creating the charge on the power of the company to create any future charge ranking in priority to or equally with the charge.

An IBC may apply to register a charge created after the commencement date of the IBC Act with the Registrar. Registration affects priority. You may access a template of the Register of Charges here:

<https://portcullis.box.com/s/2fge9ggadijn4n18wh8penm7dxxdxlgn>

Penalty for Contravention

A company and each director who knowingly permits contravention of their responsibility under subsection (1) to keep a register of charges at the registered office shall be liable for a penalty of US\$100 and an additional penalty of US\$25 for each day of non-compliance with subsections (1) or (2)



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Annual Return

Section 171 of the Act requires every IBC to furnish an annual return in a prescribed form of a declaration by no later than 31 December in every year after the year in which it is incorporated or continued, or converted into a company under the Act. The annual return must be furnished no earlier than 6 months of the date on which the company furnished its previous annual return. You may access the new prescribed form here: <https://portcullis.box.com/s/25pjhep0t0kmhh4ewgt2k679dwmoj0o2>

The Annual return requires Directors to confirm, amongst other things, that:-
The Company is keeping accounting records in accordance with the requirements of the Act.

Penalty for Contravention

A company that contravenes its obligation to file a return is liable for a penalty of US\$500. If the company provides a false or misleading return, it commits an offence and is liable on conviction to a fine not exceeding US\$5,000.

Location of Minutes and Resolutions of Directors

An IBC is required to keep, at its Registered Office or such other 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 or any committees thereof. Such records shall be kept for at least 7 years from the date of the meeting or written resolution.

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.

Where the place at which an IBC's minutes and resolutions are kept is changed, the company must inform its 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. You may access a Notice of Location of Company records here: <https://portcullis.box.com/s/sbo7d5mw2rhle5y8bv0iu9w3d9k6udpp>

Penalty for Contravention

A company and each director who knowingly permits contravenes their responsibility under this section shall be liable for a penalty of US\$25 for each day of non-compliance.



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Keeping of Accounting Records

A Company shall keep reliable accounting records that (i) are sufficient to show and explain the company's transactions (ii) enable the financial position to the company to be determined with reasonable accuracy at any time and (iii) allow for accounts of the Company to be prepared (notwithstanding that a company is not required under the Act to prepare accounts). A company is required to keep such records for at least 7 years from the date of completion of the transaction or operations to which they relate.

"Accounting Records" means documents in respect of (i) the company's assets and liabilities (ii) the receipts and expenditure of the company and (iii) the sales, purchases and other transactions to which the company is a party (e.g. bank statements, receipts, title documents, agreements, vouchers etc.)

Accounting records are to be kept at the registered office or such other place as the directors think fit. The company must inform the Registered Agent where the company keeps its records and any change to the location must be notified within 14 days. You may access a Notice of Location of Company records here: <https://portcullis.box.com/s/sbo7d5mw2rhle5y8bv0iu9w3d9k6udpp>

Penalty for Contravention

A company and each director who knowingly permits contravention of their responsibility under subsection (1) to keep accounting records in compliance with the Act shall be liable for a penalty of US\$100 and an additional penalty of US\$25 for each day of non-compliance with subsections (1) or (2)

NOTE THAT THE IBC ACT PROVIDES FOR A TRANSITION PERIOD OF THREE MONTHS FROM 1 NOVEMBER 2016 TO COMPLY WITH THE PROVISIONS RELATING TO REGISTERS AND RECORDS AND THE FURNISHING OF ANNUAL RETURNS.

Prohibited Activities

The list of prohibited activities that an IBC shall not undertake has been extended to include carrying on securities business, mutual fund and gambling business as defined under the relevant Seychelles laws unless such activities are licensed or otherwise legally able to do so under the laws of each country in which the IBC carries on such business.

An IBC will no longer be able to hold bonds, treasury bills and other securities issued by the Government of Seychelles or the Central Bank of Seychelles and will no longer be permitted to hold a lease of property for use as an office from which to communicate with members or where books and records of the company are prepared or maintained.

The new Act clarifies that an IBC may own or manage a vessel registered in Seychelles under the Merchant Shipping Act and the vessel may visit or be situated in Seychelles waters, provided that the IBC shall not carry on any business in Seychelles including, without limitation, fishing, charter or tourism business involving the vessel.



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Abolition of Bearer Shares

Clear provisions have been introduced to prohibit an IBC from issuing bearer shares.

Aged Companies

New provisions have been introduced to discourage aged shelf companies. The new Act provides that the first director(s) must be appointed within 9 months of the date of the company's registration.

Striking Off

The striking-off process has been reduced from 180 days to 90 days.

Increased Penalties

The fine under the general offence provision and the fine for making false statements to the Registrar have been increased to US\$50,000. A new provision has also been included to require the Registrar, before imposing any penalty fees under the Act, to give the person concerned an opportunity of being heard.

Right of Appeal against decision of Registrar

A person aggrieved by a decision of the Registrar may, within 90 days of service of notice of the decision of the Registrar, appeal against the decision to the Appeals Board established under the Financial Services Authority (Appeals Board) Regulations, 2014.

Other Provisions

The new Act provides for Protected Cell Companies, reserve directors, optional registration of the company's register of members and beneficial owners, optional filing of annual financial statements with the Registrar and disqualification of a director by the Court.



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In summary, the changes will require the company to ensure the relevant records are maintained at the registered office.

Portcullis have provided here links to templates of the required registers and notifications. Please complete these in full and return them to us by no later than **27th January 2017**, thereafter penalties on the Company and Directors may apply.

Alternatively, should you wish us to assist you with review and preparation of the required records based on the Company's information we currently hold on your company, please contact your relationship manager or send enquiry to info.seychelles@portcullis.co.

We may:-

- Review Register of Members to ensure compliance. Prepare a Register of Members if necessary.
- Prepare and File Register of Directors. Send to RO for retention.
- Prepare Register of Beneficial Owners and send to RO for retention.
- Prepare a notice of Location of Records if required.
- Prepare a Register of Charges (entries beyond a single entry into the Register will be separately charged)

Our Fee will be US\$450

We may also:-

- Retain Accounting records and prepare management accounts
- Enter details of charges
- Our Fee will be subject to the volume and complexity of work required

Note: Identification and other documents may need to be provided.



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