

of, or in any other capacity is or was acting for, another body corporate or a partnership, joint venture, trust or other enterprise, against any liability asserted against the person and incurred by the person in that capacity, whether or not the company has or would have had the power to indemnify the person against the liability under section 165.

PART VIII – SECRETARIES

Interpretation of specified entity

167. In this Part, “specified entity” means –

- (a) an international business company;
- (b) a CSL; or
- (c) a protected cell company.

Requirement for Secretary

168.(1) Every company shall have a secretary.

(2) Subject to the provisions of this Part, the secretary of a company may be an individual or a body corporate.

(3) Subject to subsection (4), anything required or authorised to be done by or to the secretary of a company may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by or to an assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or to an officer of the company authorised generally or specially in that behalf by the directors.

(4) Subsection (3) shall not apply in respect of the licensed secretary of a specified entity.

Persons disqualified from being a secretary

169. The following persons are disqualified from appointment as a secretary of a company –

- (a) an individual who –
 - (i) is a minor;
 - (ii) is an incapacitated adult; or
 - (iii) is an undischarged bankrupt;
- (b) a body corporate which is dissolved or has commenced winding up; and

- (c) a person who is disqualified, under this Act, any other written law or by an order of the Court, from being a secretary.

Seychelles residence requirement

170. The secretary of a company shall –

- (a) if an individual, have his principal or only place of residence in Seychelles; or
- (b) if a body corporate, have its registered office or a place of business in Seychelles.

Specified entities to have licensed secretary

171.(1) A specified entity shall at all times have a licensed secretary in Seychelles.

(2) No person shall be, or agree to be, the secretary of a specified company, unless that person is a licensed secretary.

(3) Except as otherwise provided in this Act, a document required or permitted to be filed by a specified entity, may only be filed –

- (a) by the licensed secretary of the company; or
- (b) if a liquidator is appointed by the Court in respect of the company, by that liquidator.

(4) The licensed secretary of a specified entity shall accept service on behalf of the specified entity of any notice by or other document from the Registrar and service of any such notice or other document accepted by its licensed secretary shall be deemed to have been accepted by the specified entity.

(5) A specified entity that does not have a licensed secretary in contravention of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding R.150,000.

(6) Subject to section 180(7), a person who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding R.150,000.

Qualifications of secretary of public company

172.(1) Subject to subsection (2), it is the duty of the directors of a public company to take all reasonable steps to ensure that the secretary (or each joint secretary) of the company is a person who appears to them to have the requisite knowledge and experience to discharge the functions of secretary of the company and who –

- (a) on the coming into force of this Act was the secretary or assistant or deputy secretary of the company; or
 - (b) is licensed as an accountant in Seychelles; or
 - (c) is licensed as an attorney-at-law in Seychelles; or
 - (d) is a member of the Institute of Chartered Secretaries and Administrators; or
 - (e) is a person who holds a degree in law or accountancy from an university approved for the purposes of this section by the Registrar; or
 - (f) is a person who, by virtue of holding or having held any other position or being a member of any other body, appears to the directors to be capable of discharging those functions; or
 - (g) is a member of such other professional association, or having such qualifications, as may be prescribed by regulations made by the Minister.
- (2) If a public company is a specified entity, the provisions of section 171 apply.

Acts done by person in dual capacity

173. A provision requiring or authorising a thing to be done by or to a director and the secretary of a company is satisfied by its being done by or to the same person acting both as director and secretary.

Consent to act as secretary

174. A person shall not be appointed as the secretary of a company unless he has consented in writing to be the secretary.

Appointment of secretaries

175.(1) Subject to the provisions of this Part –

- (a) the first secretary of a company shall be the person named as such in the incorporation application filed pursuant to section 12(1)(b) to incorporate the company or the continuation application filed pursuant to section 260(1)(b) to continue the company under this Act; and
 - (b) the person who was, immediately before the coming into force of this Act, the secretary of a company which was incorporated under the Companies Act 1972, shall continue to be the company's secretary with effect from the coming into force of this Act.
- (2) Subject to subsection (3), subsequent secretaries of a company may be appointed –

- (a) by the directors; or
 - (b) where permitted by the memorandum or articles, by the members.
- (3) The appointment of a subsequent licensed secretary of a specified entity is subject to the provisions of, and only takes effect in accordance with, sections 180 or 183.
- (4) A secretary holds office until his successor takes office or until his earlier death, resignation or removal.

Companies incorporated under the International Business Companies Act 1994

176. In respect of a company which was a company incorporated under the International Business Companies Act 1994, the person who was, immediately before the coming into force of this Act, the company's registered agent in Seychelles and being a person licensed to provide international corporate services under the International Corporate Service Providers Act, shall be deemed to be the company's licensed secretary with effect from the coming into force of this Act until –

- (a) the registration of a notice of change of licensed secretary has been registered by the Registrar under section 183; or
- (b) the person has resigned in accordance with section 179; or
- (c) the person has ceased to be the company's licensed secretary in accordance with section 180.

Duties and responsibilities of secretary

177.(1) The duties of the secretary of a company shall be as provided for –

- (a) in this Act;
 - (b) in the company's memorandum or articles; and
 - (c) in any written agreement under which a secretary is engaged by a company.
- (2) The duties of a secretary of a public company shall include (without limitation) –
- (a) providing the board with general guidance as to its duties, responsibilities and powers;
 - (b) informing the board of the provisions of this Act and of any other written law relevant to or affecting –

- (i) meetings of members and directors and reporting at any meetings;
 - (ii) the company's record-keeping obligations; and
 - (iii) the filing of any documents required of the company;
 - (c) taking all reasonable steps to ensure that all statutory registers of the company are properly maintained;
 - (d) taking all reasonable steps to ensure that minutes of all meetings of members and directors are properly recorded in accordance with this Act;
 - (e) taking all reasonable steps to ensure that, where applicable, the company send its members a copy of its accounts or reports in accordance with section 204(1); and
 - (f) taking all reasonable steps to ensure that, where applicable and subject to subsection 119(3) to (6), the company holds an annual general meeting of its members in accordance with section 119(2).
- (3) Subject to subsection (2) and the provisions of –
- (a) a company's memorandum or articles; and
 - (b) any written agreement under which a secretary is engaged by a company,
- the secretary of the company –
- (c) is not responsible for the company or the company's directors complying with their obligations under this Act;
 - (d) shall not be liable, under this Act or pursuant to a claim by the company, any director or member of the company or by any third party, for the failure by the company or its directors to comply with their obligations under this Act; and
 - (e) may, but is not required to, attend meetings of the company's members or directors.

Resignation of secretaries of companies other than specified entities

178.(1) Subject to section 179, a secretary of a company may resign his office by giving written notice of his resignation to the company and the resignation has effect from the date the notice is received by the company or from such later date as may be specified in the notice.

(2) Subject to section 180, a secretary of a company shall resign forthwith if he is, or becomes, disqualified to act as a secretary under this Part.

Resignation of licensed secretaries of specified entities

179.(1) A person may resign as the licensed secretary of a specified entity only in accordance with this section.

(2) A person wishing to resign as the licensed secretary of a specified entity shall give not less than 30 days written notice to the company of his resignation as licensed secretary of the company on the date specified in the notice to a person specified in subsection (3)(d).

(3) A notice under subsection (2) shall –

(a) state that it is a requirement under this Act that the company have a licensed secretary in Seychelles;

(b) state that the company must appoint a new licensed secretary by the resignation date specified in a notice;

(c) contain or attach a list of the names and addresses of all persons authorised by the Authority to provide licensed secretary services in Seychelles; and

(d) be sent –

(i) to a director of the company at the director's last known address; or

(ii) if the licensed secretary customarily received his instructions concerning the company from a person other than an officer, employee or member of the company, to the person from whom the licensed secretary last received instructions concerning the company.

(4) If a specified entity does not change its licensed secretary in accordance with section 183 on or before the resignation date specified in a notice given under subsection (2), after that date the licensed secretary may file with the Registrar a copy of the notice of resignation.

(5) Unless the specified entity has previously changed its licensed secretary, the resignation of a licensed secretary is effective as from the day on which the notice of resignation is registered by the Registrar.

Licensed secretary ceasing to be eligible to act

180.(1) For the purposes of this section, a person ceases to be eligible to act as a licensed secretary if the person ceases to hold a licence to provide international corporate services under the International Corporate Service Providers Act.

(2) Where a person ceases to be eligible to act as a licensed secretary, that person shall, with respect to each company of which he was, immediately before ceasing to be eligible to act, the licensed secretary, give notice to the company in accordance with subsection (3).

- (3) A notice under subsection (2) shall –
- (a) state that the person giving the notice has ceased to be eligible to be the company's licensed secretary;
 - (b) state that it is a requirement under this Act that the company have a licensed secretary in Seychelles;
 - (c) state that the company must appoint a new licensed secretary within 60 days of the date of service of the notice;
 - (d) state that on the expiration of 60 days of the date of service of the notice, the person giving the notice will cease to be the licensed secretary of the company, if the company has not by then changed its licensed secretary;
 - (e) contain or attach a list of the names and addresses of all persons authorised by the Authority to provide licensed secretary services in Seychelles; and
 - (f) be sent –
 - (i) to a director of the company at the director's last known address; or
 - (ii) if the licensed secretary customarily received his instructions concerning the company from a person other than an officer, employee or member of the company, to the person from whom the licensed secretary last received instructions concerning the company.
- (4) A person who has served a notice under subsection (2) shall within 7 days file a copy thereof with the Registrar.
- (5) A company that receives a notice under subsection (2) shall, within 60 days of the date of service of the notice, appoint a new licensed secretary.
- (6) A person who contravenes subsection (2) and a company that contravenes subsection (5) commits an offence and is liable on summary conviction to a fine not exceeding R.150,000.
- (7) A person does not commit an offence under section 171(6) by reason only of the fact that –
- (a) it ceases to be eligible to act as a licensed secretary; and
 - (b) after ceasing to be eligible to act, it continues to be the licensed secretary of a company during the period from the date it ceases to be eligible to act to the date that the company appoints a new licensed secretary.

Removal of secretaries

181.(1) Subject to section 183, a secretary of the company may be removed from office –

- (a) unless the memorandum or articles provide otherwise, by resolution of the directors of the company; or
- (b) notwithstanding any provision to the contrary in the memorandum or articles, by resolution of the members of the company.

Duty to notify of change of secretary of a company other than a specified entity

182.(1) This section shall not apply to a specified entity.

(2) A company shall, within the period of 21 days from the occurrence of any change –

- (a) in its secretary; or
- (b) in the name or address of its secretary,

give notice in the approved form to the Registrar of the change and of the date on which it occurred.

(3) A company that contravenes subsection (2) is liable to a penalty of R.50 for each day or part thereof which the contravention continues.

Change of licensed secretary of a specified entity

183.(1) A resolution to change a specified entity's licensed secretary may be passed –

- (a) unless the memorandum or articles provide otherwise, by the directors of the company; or
- (b) notwithstanding any provision to the contrary in the memorandum or articles, by the members of the company.

(2) Subject to subsection (3), a specified entity that wishes to change its licensed secretary shall file with the Registrar a notice in the approved form which shall be filed on the specified entity's behalf by –

- (a) the company's existing licensed secretary; or
- (b) the company's proposed new licensed secretary.

(3) Where a notice of change of licensed secretary is filed by –

- (a) the company's existing licensed secretary, the notice shall be endorsed by the new licensed secretary with its consent to act as licensed secretary; or
 - (b) the company's proposed new licensed secretary, the notice shall be endorsed by the company's existing licensed secretary with its consent to the change of licensed secretary.
- (4) A change of licensed secretary takes effect on the registration by the Registrar of the notice filed under subsection (2).
- (5) As soon as reasonably practicable after registering a notice of change of licensed secretary, the Registrar shall send a copy of the notice endorsed by the Registrar with the time and date of registration to –
- (a) the company's new licensed secretary; and
 - (b) the company's former licensed secretary.
- (6) A change of licensed secretary of a specified entity is deemed not to constitute an amendment of the company's memorandum.

Register of secretaries

184.(1) Every company shall keep a register to be known as a register of secretaries containing with respect to the secretary, or, where there are joint secretaries, with respect to each of them –

- (a) the name and address of the person;
 - (b) the date on which each person whose name is entered in the register was appointed as a secretary of the company;
 - (c) the date on which each person named as a secretary ceased to be a secretary of the company;
 - (d) such other information as may be prescribed by regulations made by the Minister.
- (2) The register of secretaries may be in such form as the directors approve, but if it is in magnetic, electronic or other data storage form, the company must be able to produce legible evidence of its contents.
- (3) The register of secretaries is *prima facie* evidence of any matters directed or permitted by this Act to be contained therein.
- (4) A company that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding R.50,000.

Location of register of secretaries

185.(1) A company shall keep its register of secretaries at its registered office or, if the register is made up at another place in Seychelles, at that place.

(2) Subject to subsection (3), a company shall give written notice to the Registrar of the place where its register of secretaries is kept, and of any change of that place.

(3) The notice under subsection (2) need not be given if the register of secretaries has at all times since it came into existence (or, in the case of a register in existence when this Act comes into force, at all times since then) been kept at the company's registered office.

(4) If a company fails for 14 days to comply with subsection (2), the company is guilty of an offence and is liable on summary conviction to a fine not exceeding R.50,000.

Inspection of register of secretaries

186.(1) A director or member of a company is entitled without charge to inspect the company's register of secretaries.

(2) A person's right to inspection under subsection (1) is subject to such reasonable notice or other restrictions as the company may by its articles or by resolution of directors impose, but so that not less than 2 hours in each business day be allowed for inspection.

(3) A person with the right to inspection under subsection (1) is entitled without charge to request a copy of the company's register of secretaries or an extract of it.

(4) If an inspection under subsection (1) is refused, or if a copy document requested under subsection (3) is not made available within 21 days of the request –

(a) the company is liable to a penalty of R.75 for each day or part thereof that the contravention continues; and

(b) the aggrieved person may apply to the Court for an order that he should be permitted to inspect the register or that a copy of the register or an extract of it be provided to him.

(5) On an application under subsection (4), the Court may make such orders as it considers just.

PART IX ADMINISTRATION

Registered office