

Insolvency Framework for Seychelles International Business Companies (IBCs)

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Insolvency Framework for Seychelles International Business Companies (IBCs)

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International Business Companies (IBCs) in Seychelles are governed by a specific legal regime when it comes to insolvency, winding up, and dissolution. The laws and regulations provide distinct procedures for voluntary and involuntary liquidation, outline creditors' rights, involve regulatory oversight, and include mechanisms for asset protection and recovery. Recent legislative updates have further refined these processes. Below is a structured overview of how insolvency is handled for Seychelles IBCs.

1. Legal Framework Governing IBC Insolvency in Seychelles

Primary Legislation: The International Business Companies Act, 2016 (Act 15 of 2016) – often referred to as the IBC Act 2016 – is the cornerstone of the insolvency regime for IBCs. It repealed and replaced the older IBC Act of 1994 and introduced a comprehensive framework for corporate insolvency aligned with modern standards. Part XVII of the IBC Act 2016 is dedicated to “Winding Up, Dissolution and Striking Off” of IBCs, detailing procedures for voluntary and compulsory liquidations, as well as dissolution by administrative strike-off.

Other Insolvency Legislation: Seychelles also enacted an Insolvency Act, 2013, which consolidates laws on bankruptcy of individuals and winding up of companies. The Insolvency Act, 2013 likely influenced the drafting of the IBC Act 2016 to ensure offshore companies meet similar standards of creditor protection and fairness. However, it is important to note that the Insolvency Act, 2013 applies only to local companies and **not** IBCs.

2. Plan of Arrangement

A Plan of Arrangement under the IBC Act 2016 is an alternative to liquidation and allows for the reorganisation or compromise of a company's affairs in a way that can preserve business continuity. This mechanism is available when an IBC seeks to avoid insolvency or restructure its obligations outside of a formal winding-up process.

2.1. Legal Basis

Section 230 through 242 of the IBC Act 2016 outline the procedures and requirements for implementing a Plan of Arrangement. These provisions are designed to offer flexibility for

companies experiencing financial distress, enabling them to reorganise their business, restructure debt, or compromise with creditors through a court-supervised process.

2.2. Key Features

- **Court Approval:** A plan must be approved by the Supreme Court of Seychelles. The application is typically made by the company, but can also be brought by shareholders, creditors, or a liquidator if the company is in liquidation.
- **Stakeholder Involvement:** The court may order meetings of affected parties, such as shareholders or creditors, to vote on the proposed arrangement. The plan must receive approval by a majority in number representing at least 75% in value of the claims or shares in each class voting on the plan.
- **Contents of the Plan:** The plan must disclose all material facts and provide a clear explanation of how assets, liabilities, and ownership structures will change. It can involve share exchanges, debt forgiveness, mergers, or other structural changes.
- **Binding Effect:** Once approved by the court, the plan becomes binding on all stakeholders, including dissenting shareholders and creditors.

2.3. Use Cases

Plans of arrangement are particularly useful in the following scenarios:

- Restructuring debt to avoid formal insolvency
- Reorganising share capital and ownership
- Merging or consolidating with another entity
- Compromising with creditors to continue operations

2.4. Regulatory Oversight

The Financial Services Authority (FSA) must be notified of any plan of arrangement proceedings, especially if the IBC engages in regulated business. The court may also seek the FSA's input before approving the arrangement.

In practice, a Plan of Arrangement serves as a flexible and court-approved method to resolve financial difficulties or implement significant structural changes, while potentially preserving value for creditors and shareholders alike.

3. Voluntary Liquidation Procedures (Members' and Creditors' Voluntary Winding Up)

Seychelles law allows IBCs to be wound up voluntarily by their owners. The procedures differ depending on whether the company is solvent or insolvent at the time of liquidation.

- **Members' Voluntary Liquidation (Solvent IBC):** If an IBC is solvent (able to pay all its debts), the shareholders can initiate a voluntary dissolution. This typically requires a resolution of members (shareholders) approving the winding up. Before passing such a resolution, the directors often must ensure and declare that the company has no liabilities or that it can satisfy all its obligations – a safeguard to ensure the company is truly solvent. Key steps in a solvent voluntary liquidation include:
 1. **Shareholder Resolution:** The members sign a resolution or agreement to dissolve the company. The IBC Act (Section 282) refers to this as a “voluntary resolution plan” for dissolution.
 2. **Appointment of Liquidator:** A liquidator is appointed to wind up the company's affairs. Seychelles law was amended to broaden who may serve as liquidator – it can be an individual or a company, and the liquidator need not reside in Seychelles nor be a licensed insolvency practitioner, as long as they are not disqualified (e.g. for conflict of interest). This gives shareholders flexibility to appoint a trusted person or firm to handle the liquidation.
 3. **Notification and Filing:** The IBC Act requires filing of certain documents with the Registrar of Companies (through the FSA) when a voluntary liquidation begins. For a solvent liquidation, the shareholders' resolution and liquidator's appointment must be filed with the Registrar, and a notice of voluntary liquidation must be published (for example, in the Official Gazette or local newspaper). This public notice warns creditors that the company is dissolving and invites any claims.
 4. **Cessation of Business & Asset Liquidation:** Once liquidation commences, the IBC must cease carrying on business except as needed for the winding up process. The liquidator takes control of the company's assets, winds down operations, and uses the assets to pay any remaining debts. (In a purely solvent case, all creditors are paid in full; any surplus is distributed to the shareholders.) During this process, the company's records (certificate of incorporation, memorandum & articles, registers of shareholders/directors, accounting records for the last 7 years, etc.) must be made available to the liquidator. No share transfers or changes in member status

are allowed after the liquidation starts, preventing any shift in ownership during the process.

5. **Completion and Dissolution:** After settling debts and distributing any remaining assets, the liquidator prepares final accounts. If everything is in order, the liquidator will file a statement with the Registrar and request that the company be struck off and dissolved. The Registrar then issues a certificate of dissolution, formally ending the IBC's existence (in a voluntary solvent winding up, this typically happens fairly quickly once the liquidation is complete).

- **Creditors' Voluntary Liquidation (Insolvent IBC initiated by Members):** The IBC Act also permits a company to undergo voluntary liquidation even if it is insolvent, but with additional safeguards for creditors (this is akin to a “creditors' voluntary winding up” in other jurisdictions). In such cases, the process usually starts similarly – the shareholders decide to wind up the company – but because the company's assets are insufficient to pay all debts, creditors must be involved in the process. Key aspects of an insolvent voluntary liquidation include:

1. **Declaration of Insolvency:** Typically, the directors should recognise and declare that the company is insolvent or likely to become insolvent. Under Section 299 of the IBC Act, “insolvent” is defined to mean that the company is unable to pay its debts as they fall due, or that its liabilities exceed its assets (balance-sheet insolvency). If a members' voluntary liquidation is underway and it turns out the company cannot pay all debts, the law requires converting the process into an insolvent liquidation under this subpart.
2. **Appointment of Liquidator & Creditor Involvement:** The shareholders still appoint the initial liquidator, but that liquidator must then call a creditors' meeting promptly. Under the Act, in an insolvent voluntary winding up, the liquidator is obliged to convene a first meeting of creditors. At this meeting, creditors have the opportunity to ask questions, and they may choose to confirm or replace the liquidator. In fact, at the first creditors' meeting, the creditors can vote to appoint a different liquidator of their choice or to form a creditors' committee. This ensures creditors have a say in who manages the liquidation.
3. **Role and Duties of Liquidator:** In an insolvent liquidation, the liquidator's duties are to act in the best interests of all creditors. The liquidator will gather information on the company's assets and liabilities, realise (sell or collect) the assets, and distribute proceeds to creditors according to their legal priority. The liquidator must also furnish creditors with information on the company's affairs

upon request (such as a list of creditors or financial details). Throughout the process, the liquidator may be required to have their accounts examined and approved by the creditors or the court, providing transparency in how the liquidation is administered.

4. **Creditor Oversight:** Creditors in a voluntary liquidation of an insolvent IBC have rights to oversight. The IBC Act provides that a creditors' may examine the liquidator's accounts before the company is finally dissolved (Section 306). This gives creditors confidence that the liquidator has properly identified, marshalled and distributed the assets.
5. **Final Distribution and Dissolution:** Once the liquidator has realised all assets and settled as many liabilities as the available funds allow (paying creditors proportionally if debts exceed assets), the final steps are similar – filing the necessary documents and obtaining the Registrar's certificate of dissolution to formally end the company.

Voluntary liquidation, whether solvent or insolvent, is often initiated by the company's owners as a way to orderly wind down the company's affairs. It is generally a quicker and more cost-effective process than a court-supervised liquidation, provided creditors' interests are protected (which the law ensures by mandating creditor meetings in insolvent cases). It's worth noting that appointment of a qualified liquidator is mandatory for any winding up – even in a DIY solvent dissolution, the law requires a liquidator to oversee the process. In practice, licensed corporate service providers or accounting firms often act as liquidators for IBCs.

4. Involuntary Liquidation (Compulsory Winding Up by the Court)

In some situations, an IBC may be wound up against the will of its owners by an order of the Seychelles courts. This compulsory liquidation (judicial winding up) typically occurs on the petition of a creditor, a shareholder, or sometimes a regulator or the company itself, when there is cause to do so. The IBC Act 2016 (Section 309) spells out who may apply for a compulsory winding up, and Section 310 lists the grounds on which the Court may order the company to be wound up.

Grounds for Compulsory Winding Up: A Seychelles court can order an IBC to be liquidated for several reasons, including:

- **Insolvency:** The most common ground is that the IBC is insolvent (unable to pay its debts). Under Section 310(e) of the IBC Act, a company may be wound up by the court if “the company is insolvent within the meaning given in section 299”. As noted, insolvency is determined by an inability to pay debts as they fall due, or having liabilities exceeding assets. Evidence of unpaid creditors, unsatisfied judgments, or an excess of debts over assets can demonstrate this ground.
- **Just and Equitable Grounds:** Even if a company is solvent, the court may liquidate it on “just and equitable” grounds (Section 310(g)). This is a broad residual category. For example, in [2024] SCSC 90 (Atom Holdings v. AAX Ltd.), the Seychelles Supreme Court considered a petition where one ground was that it was just and equitable to wind up the company due to “lack of visibility over the true financial position” of the group and concerns that assets invested by users might have been misappropriated. Such lack of transparency and potential misconduct justified winding up so a liquidator could untangle the company's affairs. Generally, just-and-equitable winding up can cover scenarios like deadlock in management, loss of substratum (the company's purpose can no longer be achieved), or serious fraud or mismanagement warranting the company's termination.
- **Breach of Law or Inactivity:** The law also permits winding up if the company has acted beyond its authorised business (ultra vires the IBC Act) or violated certain laws. Additionally, if an IBC is defunct (for example, has ceased business and is unlikely to resume), a stakeholder might seek a winding up.
- **Regulatory Action:** Specific provisions allow the Registrar, the FSA (“Authority”), or the Minister to petition for winding up in certain cases. Section 312 of the Act outlines reasons they may do so – for instance, if the company has persistently violated the IBC Act, failed to maintain a registered agent, or if winding up is in the public interest due to fraudulent or unlawful activities. This ensures regulators can step in to liquidate an IBC that is being used for illicit purposes or posing risks.

4.1. Procedure for Court Liquidation

1. **Filing a Petition:** A compulsory liquidation begins with a formal petition to the Supreme Court of Seychelles. Eligible petitioners include the company itself, any director or shareholder, a creditor (including contingent or prospective creditors), a liquidator (if the company is already in voluntary liquidation but needs to go to court), or an “interested party”. In practice, unpaid creditors frequently file such petitions when an IBC has defaulted on obligations. The petition cites one or more of the statutory grounds (e.g. insolvency).

2. **Notice to the Company and Regulators:** The petition must be served on the company, giving it an opportunity to respond or oppose. Importantly, the IBC Act requires that the Financial Services Authority (FSA) – as the regulatory Authority – be notified of any application to wind up an IBC. Section 311 mandates that notice of the winding-up application be served on the FSA at least 7 days before the hearing. This allows the regulator to appear and be heard in the proceedings. In practice, the FSA will assess if it has any regulatory interest in the case (for example, if the IBC was involved in supervised financial services or if there are concerns of money laundering). In one recent case, the FSA, after being notified, informed the court that it did not wish to intervene (“the FSA has no say in the matter”), allowing the court to proceed unopposed by the regulator. However, the requirement of notification underscores the FSA’s oversight role.
3. **Court Hearing and Order:** At the hearing, the court considers the evidence. If the court is satisfied that a statutory ground is met (e.g., the company is insolvent, or other grounds like just and equitable exist), it will issue a winding-up order. The court has discretion – even if insolvency is shown, the court could give the company time to pay or consider alternate remedies, but typically a clear insolvency leads to a winding-up order. Upon making the order, the court will usually also appoint a liquidator to take charge of winding up the company (often an independent professional). If there was a prior voluntary liquidator, the court may confirm that person or appoint someone else. The liquidator in a compulsory winding up acts as an officer of the court.
4. **Consequences of Winding-up Order:** Once a winding-up order is made, the company’s status changes drastically. The liquidator takes custody and control of all the company’s assets. The directors’ powers cease – directors remain in office in name, but they can no longer exercise any powers or functions unless authorised by the liquidator or the court. In short, the liquidator replaces the board in managing the company’s affairs. Any attempt by directors to act without approval is illegal. Additionally, the company must cease business operations except as needed for the liquidation process.
5. **Creditor Meetings and Claims:** Similar to a creditors’ voluntary liquidation, the liquidator in a compulsory case must convene a creditors’ meeting (often called the “first meeting of creditors”) soon after appointment. Notice of this meeting is sent to all known creditors and advertised publicly. At the meeting, creditors may form a committee and can provide input on the liquidation. Creditors then submit their claims (proof of debt) to the liquidator. The liquidator will acknowledge and adjudicate these claims, determining how much each creditor is owed and their priority. Secured creditors can enforce their security directly against collateral, as their rights over secured assets are not affected by the winding-up order (secured creditors are

essentially outside the liquidation for the secured portion of their debt). Unsecured creditors will receive distributions from the remaining assets in accordance with statutory priorities (costs of liquidation and any preferential debts are paid first, and ordinary unsecured debts next on a *pari passu* basis).

6. **Liquidation Process:** The liquidator’s job in a compulsory winding up mirrors that in a voluntary one, but under court supervision. The liquidator may apply to the court for directions if needed (IBC Act Section 324 provides that the liquidator can seek the Court’s guidance on any matter). The court can also appoint a provisional liquidator (Section 313) to take interim control of the company’s assets before a final winding-up order if there’s an urgent need to protect assets. Throughout, the liquidator must report to the court and eventually submit final accounts of the liquidation for the court’s approval.
7. **Dissolution:** Once the liquidator has realised all assets and distributed funds to creditors, they will apply to the court for the company to be dissolved. The court may issue an order of dissolution and direct the Registrar to strike the company off the register. At that point, the IBC is formally dissolved and ceases to exist as a legal entity. The Registrar will usually publish notice of the dissolution (e.g., in the Official Gazette).

Compulsory liquidation is a more formal process, often used when the company or its management are not cooperating (or not existent), when there are disputes among stakeholders, or when creditors want a court-sanctioned process to investigate the company’s affairs. The involvement of the court and the FSA provides an additional layer of oversight, which can be crucial in complex insolvencies.

5. Rights of Creditors in the Insolvency Process

Creditors of a Seychelles IBC enjoy several rights and protections during insolvency proceedings, whether in a voluntary or compulsory liquidation. The framework aims to ensure that creditors have a fair chance to recover what they are owed and to oversee the process that affects their interests.

- **Right to Initiate Insolvency Proceedings:** Perhaps most critically, a creditor has the right to petition the court to wind up an IBC that is unable to pay its debts. Under Section 309 of the IBC Act, a creditor (including a contingent or prospective creditor) is explicitly empowered to apply for a compulsory winding up. This means if a creditor’s demands for payment are unmet, they need not wait indefinitely – they can ask the court to liquidate the company and distribute its assets. Even in the case of a foreign creditor or

parent company, as seen in the *Atom Holdings v. AAX* case, the creditor can be recognised and allowed to file for winding up the Seychelles IBC.

- **Notice and Participation:** Creditors must be given notice of key events. In a voluntary liquidation, known creditors should receive notice of the company's decision to wind up (often via the published public notice of liquidation). In a compulsory liquidation, after the court's order, the appointed liquidator is required to notify creditors of their appointment and call a creditors' meeting. Creditors have the right to attend these meetings (either in person or by proxy) and to vote on resolutions such as appointing a different liquidator or choosing members of a creditors' committee. This ensures creditors can collectively decide on matters affecting their interests.
- **Information Rights:** Creditors are entitled to information about the debtor company's financial condition. The IBC Act provides that before the first creditors' meeting, the liquidator must provide to any requesting creditor a list of all known creditors and other pertinent financial information. During the liquidation, creditors can ask for updates and even demand an audit or account of the liquidator's management of assets. In an insolvent voluntary liquidation, Section 306 allows creditors to audit the liquidator's accounts, and in compulsory liquidation, the liquidator's accounts may be subject to creditor or court approval. This transparency helps creditors trust the process.
- **Priority and Security Rights:** Seychelles follows standard insolvency priority rules: secured creditors have first claim over assets subject to their security. The law explicitly states that a secured creditor's right to take possession of and realise their collateral is not affected by the liquidation proceedings. In other words, if a creditor has a mortgage, charge, or lien on specific assets of the IBC, they can enforce that security and be paid from those asset proceeds before other creditors. The IBC Act's optional charge registration system reinforces this by allowing secured creditors to register their charges and thus establish priority among multiple security interests. After secured claims and costs of liquidation, any remaining assets are distributed to unsecured creditors *pari passu* (proportionally). Certain preferential debts (for example, any employee wages or taxes owed, if applicable) would rank ahead of ordinary unsecured claims; the IBC Act refers to "special payments" which likely cover such priorities. Unsecured creditors share equally in whatever is left. If there are surplus assets after all debts, those go back to shareholders; conversely, if assets are insufficient, creditors absorb the loss (shareholders get nothing in insolvency).
- **Right to Challenge and Apply to Court:** Creditors can approach the court during the liquidation if they believe the process is not being conducted properly. For instance, a creditor could apply for the removal of a liquidator who is not performing their duties or is biased. The IBC Act allows creditors to apply to court for directions or relief on any

question arising in the winding up (similar to Section 324, allowing reference to court for directions). Creditors can also oppose the release of the liquidator (the formal discharge when the liquidation is over) if they have objections to the accounts. Moreover, if the company was dissolved and a creditor later finds undisclosed assets or has other reasons, they may apply to restore the company to the register (within the statutory time limits) in order to pursue those assets – recent amendments allow restoration applications within 5 years of dissolution or strike-off.

- **Claw-back of Pre-Liquidation Transactions:** Creditors indirectly benefit from provisions that allow a liquidator to recover assets lost through suspicious pre-insolvency transactions. The IBC Act enables the liquidator or creditors to challenge "illegal preferences" or undervalued transactions made by the company before liquidation. For example, if an IBC paid one particular creditor or an insider shortly before insolvency in a way that unfairly prejudiced other creditors, the liquidator can ask the court to set aside that transaction and claw back the money into the estate for equitable distribution. Similarly, if assets were fraudulently transferred out of the company to avoid creditors, those can be recovered. These rights ensure that the pool of assets available to creditors is maximised and distributed fairly, rather than allowing last-minute transfers to defeat creditor claims.
- **Directors' Liability for Insolvent Trading:** While not a direct "creditor right," it is relevant that the law imposes accountability on those in charge of an IBC if they misuse the company to creditors' detriment. Part XVIII of the IBC Act creates offenses and civil liabilities for fraudulent trading (carrying on business with intent to defraud creditors) and wrongful trading (directors continuing to incur debts when they knew the company was insolvent). Creditors (or the liquidator on their behalf) may pursue directors or officers for losses caused by such conduct. This can lead to additional recovery for creditors from the personal assets of at-fault directors, and it serves as a deterrent against management behaving recklessly at creditors' expense.

In summary, creditors of Seychelles IBCs have robust rights: they can initiate insolvency, actively participate in the process, expect transparency, enforce their security interests, and benefit from legal mechanisms to undo prejudicial transactions. The law aims to treat creditors equitably and prevent any one creditor or insider from gaining an unfair advantage in the twilight of insolvency.

6. Role of the Seychelles Financial Services Authority (FSA) and Other Regulators

The Financial Services Authority (FSA) of Seychelles is the principal regulator overseeing IBCs. Its role in insolvency of IBCs is both administrative and, when necessary, participatory in legal proceedings:

- **Registrar of IBCs:** The FSA acts as the Registrar of International Business Companies. In this capacity, it is responsible for maintaining the official register of IBCs, recording their status, and processing filings. All key insolvency-related filings – notices of liquidation, appointment of liquidator, court orders, dissolution certificates – go through the Registrar (FSA). For instance, when an IBC commences a voluntary liquidation, the resolution and liquidator’s appointment must be filed with the FSA by the Registered Agent. Upon completion of any liquidation (voluntary or compulsory), it is the Registrar who issues the Certificate of Dissolution, officially terminating the company’s existence. The FSA ensures that dissolved or liquidated status is reflected in the register, and it will note if a company is “in liquidation” (which is important for third parties dealing with the entity).
- **Enforcement via Strike-Off:** Separately from formal liquidation, the FSA has authority to strike off an IBC from the register for regulatory non-compliance – most commonly, failure to pay annual license fees or maintain a registered agent. Strike-off is an administrative act, but it effectively dissolves the company (with some ability to restore it later). In the past, an IBC that was struck off would be deemed dissolved after one year if not restored. However, a recent change in law (effective December 2024) provides that now a company is “dissolved with effect from the date the Registrar strikes [its] name off the Register” for non-payment of fees. In other words, there is no longer a one-year grace period – a prolonged failure to pay fees can lead to swift dissolution. Currently, if an IBC is 180 days late on its annual fee, the FSA may strike it off immediately, and the company is considered dissolved at that moment. This change was introduced to encourage compliance and clear defunct entities more efficiently. (Importantly, creditors or interested parties can apply to restore a struck-off company within 5 years, but the new rule closes the gap where a company lingered in limbo while struck off.) The FSA periodically publishes notices of struck-off or dissolved IBCs in the Official Gazette, underscoring its active role in winding down non-compliant IBCs.
- **Oversight and Intervention in Court Liquidations:** As noted, the IBC Act grants the Authority (FSA) the right to be involved in court-led insolvency cases. When a winding-up petition is filed with the court, the petitioner must serve notice on the FSA. The FSA can choose to appear and make representations at the hearing. For example, if an IBC is involved in regulated activities (like insurance or securities) or if there are concerns about money laundering, the FSA might support the winding-up petition or provide

information to the court. In cases where public interest is at stake, the FSA (or even the Minister) might itself initiate the winding up (Section 312, as mentioned, allows the regulator to petition the court under certain circumstances). However, if the matter is purely a private commercial insolvency with no regulatory breaches, the FSA may opt to take no active role, as it did in one 2024 case by indicating “FSA has no say in the matter”. Still, the statutory requirement for notification ensures the FSA is aware of and can intervene in any significant IBC insolvency.

- **Investigation and Regulatory Action:** The FSA’s role is not limited to formal proceedings. It has broad regulatory powers to investigate IBCs’ compliance with the law. If an IBC is suspected of fraudulent activity, the FSA could, independent of any liquidation, investigate and even share information with law enforcement. During a liquidation, a court-appointed liquidator might coordinate with the FSA if, for instance, issues of financial crime or sanctions arise. The presence of Part XVIII (fraudulent trading provisions) in the IBC Act means that if a liquidator suspects wrongdoing, those findings could be reported to the authorities (FSA or Attorney General) for further action. The FSA can also apply administrative penalties or revoke licenses (if the IBC had any special license) in parallel to insolvency proceedings.
- **Protection of Stakeholders:** As the regulator, the FSA aims to ensure that creditors and stakeholders are treated fairly and that the winding up is not used to evade laws. For example, if an IBC attempts to dissolve while under investigation or while owing money to creditors, the FSA might object to a voluntary dissolution and insist on a full liquidation process. The law gives the court power to cancel or postpone a voluntary liquidation on application of an interested party (which could be the FSA or a creditor), if it’s being abused. Moreover, the Registrar (FSA) will not issue a dissolution certificate if the company has outstanding penalties or fees owed to the FSA; interestingly, a 2024 amendment now allows a company in liquidation to obtain a certificate of good standing provided it has no outstanding fees or penalties. This means the FSA ensures all its statutory fees are paid as part of the process and also signals to the world that a liquidating company that is up-to-date on compliance can be considered “in good standing” during the wind-down.

In short, the FSA acts as both gatekeeper and facilitator in the insolvency of IBCs. It maintains the legal formalities of dissolution, safeguards compliance by striking off defaulters, and has the right to step into court insolvency cases if needed. This regulatory oversight adds an extra layer of integrity to the insolvency process, complementing the roles of directors, liquidators, and the courts.

7. Asset Recovery and Protection Mechanisms

When an IBC faces insolvency or liquidation, preserving and recovering the company's assets for the benefit of creditors is a top priority. Seychelles law provides several mechanisms to protect assets from dissipation and to claw back assets that may have been improperly removed before liquidation:

- **Stay of Proceedings and Asset Freezing:** Upon the commencement of liquidation (whether by a members' resolution in a voluntary winding up or by a court order in a compulsory winding up), the company's assets essentially "freeze" in place. The company must cease carrying on business except as necessary for the liquidation, preventing further trading that could deplete assets. Any attempt to transfer shares or divert assets after the start of liquidation is void without court or liquidator approval. In a compulsory liquidation, once a provisional liquidator or liquidator is appointed by the court, they can take immediate control of all assets. Creditors are generally barred from separately suing the company or enforcing judgments once liquidation begins – instead, they must claim within the liquidation. This creates an orderly process and stops a race to grab assets.
- **Liquidator's Powers to Recover Assets:** The appointed liquidator has broad powers to retrieve and realise the company's property. This includes taking possession of all books and records, collecting debts owed to the company, and selling or disposing of assets. The liquidator can overturn certain transactions made before the liquidation. For example, if the company sold an asset at an undervalue or gave an improper preference to a particular creditor when insolvent, the liquidator can apply to court to have that transaction set aside ("clawed back"). Section 338 of the IBC Act addresses "illegal preferences in or before settlement", targeting transactions that unfairly favour one party when the company was insolvent. By unwinding such transactions, assets that left the company can be recovered into the liquidation estate, increasing the pool available for all creditors.
- **Asset Tracing and Investigations:** In complex cases, especially where fraud is suspected, the court-appointed liquidator can conduct in-depth investigations. The liquidator may examine past directors and service providers under oath to discover any hidden assets or improper dealings. In the *Atom Holdings v. AAX* case, the court acknowledged the need for liquidators to carry out a "substantive and independent investigation into the company's business and affairs to determine its true financial position" and to take action to recover assets that have been misappropriated. This reflects the liquidator's role in asset tracing. If an IBC was part of a larger group, as in that case, the liquidator may need to coordinate cross-border efforts (e.g., working with liquidators in other jurisdictions, since IBCs often hold assets or operate bank accounts abroad). Seychelles

law would support such cooperation, and the court can issue letters or orders to assist in repatriating assets from foreign jurisdictions.

- **Fraudulent Trading and Director Liability:** Part XVIII of the IBC Act provides that those who were involved in fraudulent trading – carrying on the company's business with intent to defraud creditors – can be held personally responsible for the company's debts. If a liquidator finds evidence of such conduct, they can bring proceedings against the culpable directors or officers (with court approval). Successful actions might result in court orders requiring those individuals to contribute money to the company's assets, effectively enlarging the estate for creditors. Similarly, if directors engaged in wrongful trading (continuing business when they knew the company couldn't avoid insolvency), the court can impose civil liability on them. These provisions act as a deterrent and a remedy: they discourage asset stripping or reckless trading and provide a path to recover assets from insiders who abuse the corporate form.
- **Protection of Secured Assets:** For creditors holding security interests (like charges or mortgages on the IBC's property), Seychelles law protects their rights. A secured creditor can generally take possession of and sell the collateral if the company defaults, without needing court permission, even during liquidation. However, the liquidator will often liaise with secured creditors to coordinate sales for maximum value. If a secured asset is worth more than the debt, the surplus goes to the liquidator for the estate; if it's worth less, the secured creditor can claim as an unsecured creditor for the shortfall. The optional registration of charges system (introduced in the 2016 Act) means that if the company had multiple secured debts, the registered charges determine priority. This clarity helps in asset recovery because the liquidator can quickly identify which assets are encumbered and which are free for general creditors.
- **Administration of Asset Distribution:** The IBC Act's liquidation provisions detail how recovered assets are distributed. After converting assets to cash, the distribution of assets follows a waterfall: liquidation costs and expenses (including the liquidator's fees) get paid first, then any preferential claims (if applicable), followed by secured creditors (from their collateral) and then unsecured creditors from the general pool. If any money remains, shareholders receive a distribution. The law also allows interim distributions to creditors if sufficient funds are recovered early, rather than waiting until the very end, which helps creditors get at least partial recovery in a timely manner.
- **Asset Protection during Dissolution:** In cases of administrative strike-off (not a formal liquidation), asset recovery can be more complicated because a struck-off company is considered dissolved. To protect creditors in such scenarios, the law permits restoration of dissolved companies. If an IBC was struck off (and thus dissolved) while still owning assets, a creditor or interested party can apply to the court to restore the company to

the register for the purpose of dealing with those assets (for example, to liquidate them properly and distribute to creditors). There is a 5-year time limit for such restoration requests in most cases. This ensures that dissolution is not abused to abandon assets or debts; the company can be resurrected to face its creditors if needed. Recent amendments in 2024 clarified and streamlined this restoration process for both struck-off and formally liquidated companies.

In essence, Seychelles' insolvency framework for IBCs contains strong asset recovery and protection measures. Once liquidation begins, asset dissipation halts and a qualified liquidator steps in to marshal resources. Transactions that unfairly depleted the estate can be reversed. Investigatory powers help uncover hidden assets or wrongdoing. Those who contributed to the company's collapse through fraud can be pursued, adding to the estate for creditors. These mechanisms collectively serve to maximise the value returned to creditors and ensure fairness in the winding up of an IBC.

8. Updates to Insolvency Laws Affecting IBCs

Seychelles has kept its IBC legislation up-to-date with international standards and evolving needs. The insolvency-related provisions for IBCs have seen notable changes in the last several years:

- **Introduction of the IBC Act 2016:** The most significant overhaul came with the enactment of the International Business Companies Act, 2016, which took effect in late 2016. This modernised the insolvency regime for IBCs compared to the old 1994 Act. It added detailed procedures for both solvent and insolvent voluntary liquidations, which previously were less clear. It also incorporated provisions on fraudulent trading, directors' liability, and allowed for more creditor-friendly processes (like optional registration of charges to establish creditor priorities). These changes in 2016 were part of Seychelles' effort to comply with international best practices, including anti-money-laundering (AML) standards and financial transparency. For example, the new Act shortened the time for striking off defunct companies (from 120 days to 90 days of non-compliance originally) and required more record-keeping, which indirectly aids insolvency processes by ensuring better records exist. The 2016 Act also empowered the courts with greater oversight in insolvencies, such as the ability to disqualify directors for misconduct in an IBC's collapse.
- **Amendments in 2021:** In August 2021, the International Business Companies (Amendment) Act, 2021 was enacted. The 2021 amendments were not as focused on insolvency procedure as on compliance, but they did have relevant effects. Key changes included requirements for IBCs to maintain accounting records in Seychelles and expanded the ability to appoint corporate liquidators. Specifically, Section 284 of the IBC Act was amended to broaden liquidator eligibility – allowing a corporate body to act as a liquidator for a members' voluntary winding up (where previously only an individual might have been contemplated). This acknowledges that specialised firms can serve as liquidators. Additionally, the timeline for striking off companies in default was tightened (companies now struck off after 90 days of non-compliance instead of 120 days), which indirectly means quicker dissolution of companies that are inactive or not meeting obligations. The 2021 law changes also reduced the list of permissible company name suffixes and reinforced penalties for non-compliance, indirectly improving the environment for proper dissolutions.
- **Amendments in 2024:** The International Business Companies (Amendment) Act, 2024 brought targeted changes that affect how insolvency and dissolutions are handled. Transparency and record-keeping saw further enhancement: for instance, IBCs with nominee shareholders must now record the nominators (true owners) in the register of members, which can be crucial information in insolvency to identify who controls the company. This amendment links with the enhancements brought about by the Beneficial Ownership Act, 2020 and Beneficial Ownership Regulations, 2020.
- From an insolvency standpoint, two changes stand out:
 - **Immediate Dissolution upon Strike-Off:** As discussed, a struck-off IBC is now deemed dissolved immediately on strike-off. Previously, the company lingered in a struck-off but not yet dissolved state for up to a year, which sometimes created confusion (creditors had to wait or apply to court to consider it dissolved). Now, the registry is cleaner – if an IBC doesn't rectify its default within 180 days and is struck off, it is gone. This emphasises to IBC owners the importance of maintaining good standing, and it also means creditors must be vigilant; if a debtor IBC is struck off for non-payment of fees, creditors should move to restore it within 5 years if they need to pursue assets.
 - **Good Standing Certificates for Companies in Liquidation:** The 2024 amendments allow an IBC that is in the middle of liquidation to obtain a Certificate of Good Standing, provided all government fees and penalties are paid up. Normally, a

company in liquidation might be considered not in good standing due to its pending closure. This change facilitates certain practical needs – for example, it might help the liquidator close bank accounts or sell assets by proving the company's status is officially recognised and compliant at the time of liquidation. It is a minor but useful update for those administering the insolvency.

Additionally, the 2024 Act clarified the process for restoring dissolved companies. It specified that applications to the Registrar (for administrative restoration) must be made within five years of strike-off/dissolution, and similarly, court restoration for any dissolution (whether voluntary, compulsory, or strike-off) is limited to five years. This uniform 5-year cap replaces any prior uncertainty and ensures finality after a reasonable period.

- **Regulatory and Policy Developments:** Outside pure legislation, the Seychelles FSA and other authorities have been keen on enhancing the reputation of the Seychelles offshore sector. The enhancements in insolvency law go hand-in-hand with Seychelles' commitments to global standards on financial stability and AML/CFT (Anti-Money Laundering/Countering Financing of Terrorism). For example, the 2016 Act changes were partially driven by recommendations from international bodies. As of 2025, the Seychelles authorities continue to issue guidance and enforce compliance, which indirectly impacts insolvency. For instance, there have been public notices (such as the one in late 2024) warning IBC owners to pay outstanding fees to avoid dissolution, and the FSA actively struck off hundreds of defaulting IBCs as a cleanup measure. This proactive stance means that the insolvency framework is not just theoretical – it's being used to cull non-compliant companies and deal with troubled ones.

In conclusion, the insolvency regime for Seychelles IBCs has evolved significantly in recent years, becoming more robust and clear-cut. The legal framework is up-to-date, including principles to handle cross-border and complex cases. Voluntary and compulsory liquidation processes are well-defined, creditors' rights are protected, and the FSA provides oversight to ensure orderly conduct. Asset recovery tools are in place to combat fraud and maximise creditor returns. Moreover, ongoing legislative refinements (as seen in 2021 and 2024) demonstrate Seychelles' commitment to maintaining an efficient and internationally respected insolvency system for its International Business Companies.

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