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INTRODUCTION TO ECONOMIC, TRADE AND INVESTMENT LAWS OF SEYCHELLES

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Presented by Mr Divino Sabino at the Legal Seminar on issues arising from Economic, Trade and Investment Cooperation between China and African countries which was held in Xiangtan University at Hunan Province from the 16th to the 20th of September 2012.

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The Seychelles is a group of some 120 islands located in the Indian Ocean some 1,500km east of Kenya. It has a population of about 90,000. As Seychelles had no indigenous population, the current Seychellois are composed of people who have immigrated to the island. The largest ethnic groups are those of African, French, Indian, and Chinese descent. French and English are official languages along with Seychellois Creole, which is primarily based upon French. Its capital is Victoria which is located on the island of Mahé and over 75% of the population resides thereon. Seychelles is popularly known as an exclusive tourism destination, and in recent times, Prince William and Kate Middleton honeymooned in Seychelles. Seychelles has also come to the frontline of media attention due to the ongoing scourge of piracy within and close to its territorial waters.

Seychelles' economy has traditionally been based on agriculture and fishing. However, numerous business and financial legislation enacted in the past 15 years have projected Seychelles into the international limelight as a competitive and forward-looking offshore business centre and also attracted significant foreign direct investment ("**FDI**"), especially in the tourism and real-estate industry.

In 2010, the Gross Domestic Product ("**GDP**") of the country was Seychelles Rupees 11,621,300,000, which is equivalent to around USD 960 million at the time. Official figures have the GDP per capita at about SR 130,000, which is around USD 10,700.

Legal System & Profession

Seychelles was under successive French and British colonial administrations and became independent from Britain in 1976. It thus inherited a unique mixed legal system. Much of the private law is based on the French Napoleonic Codes, although the company law and other modern aspects of commercial law are inspired by English law. Public law is modeled on English law, as is much of the adjectival law. English is the language of legislation and the courts. The Seychelles legal profession is fused and lawyers are known as an attorney-at-law. There are a handful of law firms, but the majority of lawyers are sole practitioners. Most lawyers are trained in England, although the requirement of a two-year pupillage in Seychelles serves to ensure that they are also trained in the specificities of Seychelles law. Increasingly, Seychelles lawyers are outfitting their practice to service the growing needs of offshore business clients.

FDI

As a measure to encourage and facilitate FDI, the Government established the Seychelles Investment Board (formerly the Seychelles Investment Bureau) ("**SIB**"), as a first port of call and guide to potential onshore investors. Potential investors may make proposals to the SIB who may advise on the feasibility of the proposed projects and who may guide the investor on the next steps they should take for the project to come to fruition. Tax concessions to investors, has been decisive in attracting a number of international hotel chains, such as Four

Seasons, Le Meridien & Berjaya, and developers of integrated resorts scheme ("**IRS**") to Seychelles over the recent years. The IRS schemes target high net worth individuals from South Africa, Europe and the Middle East seeking a second or holiday home. The purchase of the luxury villas or apartments in the IRS is now the surest way for foreigners to acquire residential property in Seychelles, which is otherwise permitted sparingly by the Government. IRS residence purchasers and their families are entitled to Seychelles residency on fulfillment of certain formalities.

Investment Laws

Laws have also been enacted, such as the Seychelles Investments Act 2010 ("**SIA**") to ensure that foreign investors are given fair and equitable treatment. The SIA also ensures that investors' property rights are protected by ensuring that investments are never directly or indirectly nationalized or expropriated by the Government. The SIA also goes on to ensure that investors are freely able to transfer their profits out of the jurisdiction. Under the SIA an Investor is defined as any legal person who carries on or intends to carry on an investment. An investment is defined as any contribution made by a person to start or expand any economic activity in the country. And so the protection afforded by the SIA to Investors are not only limited to those who initiate or commence an Investment, but it also extends to those who later on decide to come in and help invest into the Seychelles economy. For example, Etihad airlines recently acquired a 40% stake in the Seychelles national air carrier - Air Seychelles. Accordingly, Etihad is now an Investor under the SIA. Etihad's Investment is therefore protected under the SIA. Other inherent and/or contractual rights and obligations which the Investor may have had would still remain in place, but the SIA provides an extra measure of protection for the Investor.

In addition to the protection afforded by the laws above-mentioned, the Investor may also obtain further benefits and/or protection if the Investor's country of origin has entered into any investment treaty with the Government of Seychelles. These investment treaties can provide further protection for the Investor and even additional benefits. For example, the Seychelles signed a reciprocal promotion and protection of investments treaty with the Government of the French Republic. This allows investors, as defined in the treaty as any legal person constituted in either of the contracting state, certain benefits such as Most Favoured Nation treatment, which means that French investors must not be less well treated than investors from any other country, for example, if a concession was allowed for Arab investors then the French investor must be afforded with the same level of concessions. This treaty goes on to state that any dispute that a French investor may have against the Government of Seychelles for its acts or omissions must be settled through arbitration through the International Centre for the Settlement of Investment Disputes ("**ICSID**"), of which both France and Seychelles are members. ICSID is a forum where investor disputes against states are handled and is considered as one of the more respected and independent forums for such arbitration. And so the treaty provides for disputes to be handled at ICSID and this applies even though the French investor and the Government of Seychelles may have an existing agreement that has differing provisions on how disputes must be settled.

The Government of Seychelles has shown an inclination to enter into more investment treaties with other countries in the hope that it can increase FDI into the country.

Settlement of Disputes

A prudent investors will look into the possibility of something going wrong when

they invest in anything. Inevitably, the investor will have to concern itself with the issue of where disputes will be heard. In general, most foreign investors decide not to allow disputes to be held in the courts of the country they invest in, this is because there is a perception that the host country's courts may be biased towards the host Government, to the detriment of the investor. Accordingly, it is increasingly common in most investment agreements that any dispute must be settled by arbitration and at an arbitral tribunal outside of the host country. An investor must therefore concern himself about the various avenues open to him and also on whether such foreign tribunals can bind the country and/or the entities of that country that it may have to litigate against. As mentioned earlier, Seychelles is a member of ICSID and so the state would be bound by any arbitral decisions that may come out of ICSID. However, an investor may also be contracting with Seychelles private entities, these private entities would be outside the reach of ICSID. The parties may agree to resolve any differences through arbitration, however, Seychelles is not a party to the New York Convention on the Enforcement of Foreign Arbitral Awards. Very briefly, this convention provides for arbitral awards from any of its member states to be enforceable in other members' states. As Seychelles is not a party to this convention then this would not apply to it. However, Seychelles own laws allows for arbitral awards from the UK to be enforceable in Seychelles, therefore it is not uncommon to find clauses in Seychelles agreements that provide for disputes to be heard at the London Court of International Arbitration as these decisions are easier to enforce in Seychelles. However, Seychelles law also allows foreign court judgments to be enforceable in Seychelles and arbitral awards from non-UK countries that may be registered as a foreign court judgment, and hence obtain the same status as a foreign court judgment, may be enforceable in Seychelles.

Offshore Industry

Offshore business has shown a robust and steady growth over the past 15 years. The Seychelles International Business Authority ("**SIBA**") is the regulator of the offshore business industry and also acts as the registrar of the various Seychelles offshore business entities. Of these, the Seychelles International Business Company ("**IBC**") has become very popular and in a particular with investment professionals worldwide, largely because of its tax exempt status, the anonymity it affords to its directors and members and also the speed at which it may be incorporated (generally within 24 hours). The IBC is used in tax mitigation structures and together with the Seychelles International Trust or Foundations, as a vehicle for wealth protection. Seychelles is party to an expanding network of double taxation avoidance agreements ("**DTAA**"). These include the much valued DTAA's with Indonesia and China. The tax-resident Companies with Special Licence ("**CSL**") created under the Companies (Special Licences) Act 2003 is the ideal vehicle to enable investors to benefit of the tax relief under these DTAA. The CSL are liable to Seychelles business tax at a flat rate of 1.5% on its taxable worldwide income. The CSL are popular as holding companies to businesses concerns in Indonesia and China. The agents for incorporating and maintaining IBCs, International Trusts and Foundations are called Corporate Service Providers ("**CSP**"), these are corporate entities that are licensed and regulated by SIBA. Presently there are around 50 CSPs.

Securities and Funds Industry

The Securities Act 2007 and the Mutual Fund and Hedge Fund Act 2008 have laid down the foundations for Seychelles to tap into the equities and securities markets, including rigorous regulatory control of such activities. For the past 5 years the Government of Seychelles has privatized a number of previously state-owned enterprises. It is hoped that the continuing process of privatization will contribute to the securities trading industry within the country.

The Securities Act 2007 creates a regulatory authority whose function is to license and facilitate the market players in the securities industry. Therefore the planned stock exchange would be run by a private entity licensed by the regulator. The clearing agents, securities dealers and investment advisers are the other licensable players in the securities industry. To date, the regulator has only granted a few applicants with licenses, however, the stock exchange is expected to commence its activities late in 2012 and it is expected that the number of applicants would increase to cater for this up and coming industry. Licensing exemptions also exist for foreign securities dealers from recognized jurisdictions.

The Mutual Fund and Hedge Fund Act 2008 provides for the creation, licensing and regulation of funds. Funds may take the form of a company, unit trust or partnership and must be run by a licensed Fund Administrator. Licensing exemptions may apply to foreign fund administrators. Such funds may trade outside of Seychelles and benefit through being licensed and regulated in Seychelles. These funds may also be used by multiple individuals and entities to pool their resources together and can be used as a vehicle for investments both locally and abroad.

Deregulation & Consumer Protection

The Licences Act 2010 has sought to deregulate several areas of trade which were previously the subject of stringent licensing requirement with a view to increase open market competition. However, to ensure high standards, fair competition and trading laws coupled with tougher consumer protection legislation has placed an onus on businesses to be more transparent in their dealings with the public especially in relation to the quality of goods and services on offer. To ensure compliance, the law provides for rigorous enforcement mechanism. The Government has been moving towards making it easier for entities to enter into the business environment. To that end, the Government has been working for Seychelles to join the World Trade Organization and has now reached an advanced stage of negotiations and compliance.

Infrastructure

The Seychelles communications infrastructure has improved significantly over the past few years. There are direct air links to Abu Dhabi, Doha, Dubai, Addis Ababa, Kenya, South Africa and Mauritius. And there are plans to open direct routes to China. Port Victoria is a forward looking sea port and caters to re-fueling services for vessels en-route to south east asia from the west and vice-versa. Already, a large area of land has been dredged close to the current port location to cater for vast expansion plans. Seychelles has therefore been continuously improving upon both its sea and air links.

In May 2012, Seychelles was connected to global fibre optic submarine cable system. Seychelles was already connected to high speed internet through satellite technology but the recent connection to undersea fibre optic increases not only the internet speeds available locally but also vastly increase the bandwidth available locally, finally positioning Seychelles at the forefront of high-speed internet technology.

The University of Seychelles was set up in 2009 to meet the country's growing demand for skilled labour. The courses offered at the University closely follow the programmes available from the University of London, Pantheon 1 of Paris and Curtin University of Perth, Australia. Inter alia, the University offers courses in business administration, accounting, finance, banking, law and computing. It is hoped that the University, by offering these courses will help train the locals in

the areas most needed by the country and it is also hoped that the University can eventually attract foreign students to study in Seychelles. The University has also been working on preparing its undergraduate degree courses in tourism management and environmental sciences. The University continues to seek co-operation agreements with other educational institutions with the aim of increasing its links and also with the hope that more established educational centres can help it prepare suitable degree programmes for its students.

Conclusion

With the SIB, the Seychelles has provided investors with a first point of contact with regards to investing in the country. Laws have been put in place for the protection of investors and there is room for economic growth in numerous sectors, especially tourism, fisheries and the offshore industry. The Seychelles has also been improving upon its infrastructure, especially with respect to its trade and communication links and on manpower development. It is hoped that all of these factors will help bring in further FDI into the country.