

SUPREME COURT OF SEYCHELLES

Reportable

CC 16/2025

In the matter between:

**THE INTERNATIONAL BUSINESS COMPANIES ACT
AND TOMOS LTD**

(rep. by Mr Rajasundaram)

Petitioner

And

FINANCIAL SERVICES AUTHORITY

(rep by Mr Basil Hoareau)

Respondent

Neutral Citation: *Tomos v FSA* (CC16/2025) 10th July 2025

Before: Burian J

Summary: Application to restore name of International Business Company to the Register – International Business Companies Act 2016- objections raised as to improper party to suit- improper party struck off and correct party added.

Heard: 23rd June 2025

Delivered: 10th July 2025

RULING

BURIAN J

Background facts and Introduction:

- [1] The Applicant, Tomos Ltd has petitioned this Court to be reinstated as a Company to the Register of International Business Companies (“the Register”) pursuant to section 277 of the International Business Companies Act 15 of 2016 as amended (“the 2016 Act”). The petition is supported by an affidavit sworn by Roman Miretskiy to which relevant documents are exhibited. The respondent was served with a copy of the petition on the 26th April 2025 and is strenuously objecting to the application raising several points of law which I will consider below.

Points of law raised:

- The application is instituted against the wrong party:

- [2] Mr Hoareau has argued that the application has been brought against the wrong party. He states that the Financial Services Authority is not the 'Registrar' against whom all applications for rescission/restoration of a company should be brought.
- [3] As per the definition in the Act, "Registrar" means the Chief Executive Officer of the Authority appointed under section 9 of the Financial Services Authority Act and as such the application must be initiated against the Registrar of International Business Company's represented by its CEO, Mr Randolph Samson.
- [4] Mr Hoareau has also argued that the company was struck off the register on the 3rd January 2019 for failing to pay its annual fee due on the 8th January 2018 and that as of 2021 the company remained continuously struck off the register for a period of more than one year and it stood dissolved by operation of law with the coming into force of the amendments to the International Business Companies (Amendments) Act 2021. As such the Respondent is moving for the dismissal of the Petition with costs.

Submissions in reply:

- [5] Mr Raja submits that the objections raised by counsel for the Respondent are frivolous. It is further argued that the Registrar as defined under the Act is under the domain of the Financial Services Authority and as such it is argued that it would not be defective if the petition is pursued against the FSA as opposed to the Registrar of Companies.
- [6] Counsel relies on two authorities, namely, *Clarisse v Registrar of International Business Companies*¹ and *Ex-parte Grand Tech Company Limited*² and moves for the reinstatement of the company accordingly.

¹ MC 25/2025

² XP 11/2024

Law and Analysis:

- [7] I am asked to determine whether the application has been wrongly instituted against the Financial Services Authority. The Applicant has chosen to include the Financial Services Authority as a Respondent and whilst I am of the view that there is no legal requirement for there to be Respondent in applications brought pursuant to section 277, I am of the view that there is strict requirement for notice to be served on the Registrar of Companies. The Registrar, though part of the FSA institutionally, is the statutory officer responsible under the Act for striking off and reinstating companies. The law specifically refers to action being done by or addressed to the Registrar, not the FSA as a body.
- [8] In accordance with section 277 (3) of the Act, a notice is required to be served on the Registrar who is entitled to appear and be heard on the hearing of the application. The Registrar is defined as meaning the Chief Executive Officer of the Authority appointed under section 9 of the Financial Services Authority Act. According to the notice on file a copy was served on a Mr Steve Larue, a representative of the Financial Services Authority and not the Registrar. In order to ensure compliance with subsection 3 above, I am of the belief that the case should proceed with the Registrar of International Business Companies as the proper Respondent.
- [9] As this is an issue of misjoinder, I must consider whether this procedural defect can be remedied. Section 112 of the Seychelles Code of Civil Procedure ('the Code') reads as follows:
- "No cause or matter shall be defeated by reason of the misjoinder or non-joinder of parties and the court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.*
- The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the names of any persons improperly joined, whether as plaintiffs or defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the court may be necessary in order to enable the*

court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added.”

- [10] I have the discretion to take a pragmatic approach to this procedural technicality. I am satisfied that this was a bona fide mistake and that there would be no prejudice to the Registrar or the FSA as they are effectively part of the same structure and the correct person has had due notice of the matter before this court.
- [11] Therefore, I believe I may apply section 112 of the Code to strike out the Financial Services Authority and substitute it by adding the Registrar of International Business Companies as the proper Respondent in this case. Counsel for the Petitioner is to file an amended petition after which point I shall issue fresh notice on the Registrar of International Business Companies and proceed to hear the petition on merit.

Signed, dated and delivered at Ile du Port on 10th July 2025



N. Burian

Judge of the Supreme Court

