

Seychelles

Maintenance Orders (Reciprocal Enforcement) Act Chapter 119

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Maintenance Orders (Reciprocal Enforcement) Act

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Seychelles

Maintenance Orders (Reciprocal Enforcement) Act

Chapter 119

Commenced on 20 August 2007

[This is the version of this document at 1 December 2014.]

[Act 5 of 2007]

Part I – Preliminary

1. Short title

This Act may be cited as the Maintenance Orders (Reciprocal Enforcement) Act.

2. Interpretation

In this Act #

"certified copy", in relation to an order of a court, means a copy of the order certified by the proper officer of the court to be a true copy;

"Convention" means the Convention on the Recovery Abroad of Maintenance, New York 1956;

"Family Tribunal" means the Family Tribunal established under section 77 of the Children Act;

"transmitting agency";

(a) in relation to a relevant State other than Seychelles, means the judicial or administrative authority designated by such State as its transmitting agency for the purposes of the Convention;

(b) in relation to Seychelles, means the Principal Secretary of the Ministry of Foreign Affairs;

"court" means any court or tribunal having jurisdiction to hear and grant applications for maintenance;

"dependants" means such persons as the person, against whom a maintenance order is made, is liable to maintain according to the law in force in the State of that person, including its private international law;

"Minister" means the Minister responsible for Foreign Affairs;

"maintenance order" means an order for the periodic payment of sums of money towards the maintenance of the spouse or other dependants of the person against whom the order is made;

"prescribed" means prescribed by rules of court or by the Code of Civil Procedure;

"receiving agency"

(a) in relation to a relevant State other than Seychelles, means the public or private body designated by such State as its receiving agency for the purposes of the Convention;

(b) in relation to Seychelles, means the Principal Secretary of the Ministry of Foreign Affairs;

"relevant State" means Seychelles and any other State party to the Convention or a State to which this Act is extended by an Order made under [section 11](#).

Part II – Applications for maintenance

3. Requirements of application

- (1) Where a person claiming maintenance is in the territory of one relevant State and the person from whom maintenance is claimed is subject to the jurisdiction of another relevant State, the first mentioned person may make an application to the transmitting agency in the first mentioned person's State for the recovery of maintenance from the other person.
- (2) An application referred to in subsection (1) shall be accompanied by the following#
 - (a) a power of attorney authorising the receiving agency in the other relevant State to act or to appoint a person to act on behalf of the person claiming maintenance;
 - (b) the full name, address, date of birth, nationality and occupation and a photograph of the person claiming maintenance;
 - (c) full name, address during the pre-ceeding five years, date of birth, nationality and occupation of the person from whom maintenance is claimed;
 - (d) particulars of the grounds upon which the claim is based and of the relief sought and any other relevant information such as the financial and family circumstances of the person claiming maintenance and the person from whom maintenance is claimed.
- (3) The transmitting agency referred in sub-section (1) shall satisfy itself #
 - (a) that the application has been made in good faith; and
 - (b) that the requirements of the law of the relevant State of the person from whom maintenance is claimed are complied with,

and transmit the documents to the receiving agency of that State. The documents may contain a statement of the opinion of the transmitting agency as to the merits of the claim and a recommendation that free legal aid and exemption from costs be given to the person claiming maintenance.

4. Receiving agency authorised to act

Where an application is transmitted to a receiving agency of a relevant State that agency shall take on behalf of the person claiming maintenance all appropriate steps for the recovery of maintenance including settlement of the claim and, where necessary, the institution and prosecution of an action for maintenance and the execution of any order or other judicial act for the payment of maintenance.

Part III – Orders for maintenance

5. Enforcement in Seychelles of maintenance orders made in another relevant State

Where a maintenance order has, whether before or after the commencement of this Act, been made against any person in Seychelles by any court in another relevant State and a certified copy of the order has been transmitted by the transmitting agency of that State to the receiving agency in Seychelles, the latter shall send the certified copy of the order to the Secretary of the Family Tribunal of Seychelles for registration and on receipt thereof the order shall be registered in the prescribed manner and shall from the date of such registration be of the same force and effect, and, subject to the provisions of this Act, all proceedings may be taken on such order as if it had been an order originally obtained in the Family Tribunal and the Family Tribunal shall have power to enforce the order accordingly.

6. Power of the court to confirm orders made in another relevant State

- (1) Where a maintenance order has been made by any court in another relevant State and the order is provisional only and has no effect unless and until confirmed by the Family Tribunal in Seychelles, and a certified copy of the order together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed has been transmitted to the receiving agency in Seychelles and it appears to the receiving agency that the person against whom the order was made is resident in Seychelles, the receiving agency shall send the said documents to the Family Tribunal with a requisition that a summons be issued calling upon such person to show cause why that order should not be confirmed, and upon receipt of such documents and requisition the Family Tribunal shall issue such a summons and cause it to be served upon such person.
- (2) At the hearing it shall be open to the person on whom the summons was served to raise any defence which the person might have raised in the original proceedings had the person been a party thereto, but no other defence; and the certificate from the court which made the provisional order stating the grounds on which the making of the order might have been opposed had the person against whom the order was made been a party to the proceedings shall be conclusive evidence that those grounds are the grounds on which objection may be taken.
- (3) If at the hearing the person against whom the summons was issued does not appear or, on appearing, fails to satisfy the Family Tribunal that the order ought not to be confirmed, the Family Tribunal may confirm the order either without modification or with such modification as to the Family Tribunal, after hearing the evidence, may seem just.
- (4) If the person against whom the summons was issued appears at the hearing and satisfies the Family Tribunal that for the purpose of any defence it is necessary to remit the case to the court which made the provisional order for the taking of any further evidence, the Family Tribunal may so remit the case to the transmitting agency for transmission to the original court through the receiving agency in the relevant State and adjourn the proceedings for that purpose.
- (5) Where a provisional order has been confirmed under subsection (3), it may be varied or rescinded in like manner as if it had originally been made in Seychelles, and where on an application for rescission or variation the Family Tribunal is satisfied that it is necessary to remit the case to the court which made the provisional order for the purpose of taking any further evidence, the Family Tribunal may so remit the same and adjourn the proceedings for that purpose.
- (6) If the court of the relevant State which made the provisional order shall, for any reason, vary or rescind an order confirmed under this section, such order varying or rescinding the original order shall not have effect in Seychelles unless and until confirmed in the same manner as the original order.
- (7) Where an order has been so confirmed, the person bound thereby shall have the same right of appeal, if any, as the person would have had against the making of the order had the latter been an order made in Seychelles.

7. Transmission of maintenance orders made in Seychelles

Where the Family Tribunal has, whether before or after the commencement of this Act, made a maintenance order against any person, and it is proved to the Family Tribunal that the person against whom the order was made is resident in another relevant State, the Family Tribunal shall send to the transmitting agency in Seychelles for transmission to the receiving agency of that State a certified copy of the order.

8. Provisional order against a person in a relevant State to be confirmed there

- (1) Where an application is made to the Family Tribunal for a maintenance order against any person, and it is proved that that person is resident in another relevant State, the Family Tribunal may, in the absence of that person, if after hearing the evidence it is satisfied of the justice of the

application, make any such order as it might have made if a summons had been duly served on that person and the person had failed to appear at the hearing, but in that case the order shall be provisional only and shall have no effect unless and until confirmed by a competent court in that State.

- (2) The evidence of any witness who is examined on any such application shall be put into writing and such deposition shall be read over to and signed by the witness.
- (3) Where such a provisional order is made, the Family Tribunal shall send to the transmitting agency in Seychelles for transmission to the receiving agency in the relevant State the deposition so taken and a certified copy of the order, together with a statement of the grounds on which the making of the order might have been opposed if the person against whom the order is made had been duly served with a summons and had appeared if the hearing at the hearing and also such information as the Family Tribunal possesses for facilitating the identification of that person and for ascertaining the person's whereabouts.
- (4) Where such provisional order transmitted to a relevant State shall have been remitted to the Family Tribunal in Seychelles which made the order for the purpose of taking further evidence, the Family Tribunal shall, after giving the prescribed notice, proceed to take the further evidence in the same manner and under similar conditions as in the case of the original evidence.
- (5) If upon the hearing of such further evidence it appears to the Family Tribunal that the order should not have been made, the Family Tribunal may rescind the order, but otherwise the depositions shall be transmitted to the receiving agency in the relevant State as in the case of the original depositions.
- (6) The confirmation of an order made under this section shall not affect the power of the Family Tribunal in Seychelles to vary or rescind the order. A copy of such varying or rescinding order shall be transmitted to the receiving agency of the relevant State, and such order varying the original order shall not have effect until and unless confirmed by the court which confirmed the original order.
- (7) The applicant shall have the same right of appeal, if any, against the refusal to make a provisional order as the applicant would have had if the summons had been served on the person against whom the order is sought.

9. Enforcement of orders registered or confirmed in Seychelles

- (1) An order registered or confirmed in Seychelles may be enforced in the same manner as if it had originally been made in Seychelles.
- (2) The Family Tribunal in Seychelles shall take all steps for enforcing all orders which are registered therein.

10. Documents presumed authentic

- (1) Any document purporting to be signed by a judge or officer of a court in a relevant State shall be deemed to have been so signed, without proof of the signature or judicial or official character of the person appearing to have signed it, and the officer shall be deemed to have been the proper officer to sign the document until the contrary is proved.
- (2) Deposition taken in any court herein-above referred to shall be received as evidence before the Family Tribunal in Seychelles.

11. Extension of Act to other States

Where the Minister is satisfied that reciprocal provisions have been made by the legislature of any foreign State other than a relevant State for the enforcement within such State of maintenance orders made by the Family Tribunal in Seychelles, the Minister may, by Order, extend this Act to that State and this Act shall

thereupon apply in respect of that State as though the references to a relevant State in this Act included references to that State.

12. Minister to make regulations

The Minister may, in consultation with the Chief Justice, make Regulations for carrying into effect the principles and provisions of this Act.

13. Repeal of Cap 119

- (1) The Maintenance Orders (Reciprocal Enforcement) Act, 1922 is repealed.
- (2) Notwithstanding subsection (1), Seychelles (Facilities for Enforcement of Maintenance Orders) Provisional Rules of Court shall continue to have effect until repealed or replaced by Regulations made under this Act.