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MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT, 2022

(Act 7 of 2022)

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MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT, 2022

(Act 7 of 2022)



I assent

A handwritten signature in black ink, appearing to read 'Wavel'.

Wavel Ramkalawan
President

28th April, 2022

AN ACT TO MAKE PROVISION FOR MUTUAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN SEYCHELLES AND OTHER COUNTRIES; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

ENACTED by the President and the National Assembly.

PART I PRELIMINARY

Short title

1. This Act may be cited as the Mutual Assistance in Criminal Matters Act, 2022.

Interpretation

2.(1) In this Act, unless the context otherwise requires —

“ancillary criminal matter” means —

- (a) the restraining of dealing with, or the seizure, forfeiture or confiscation of, property in connection with a serious offence or a foreign serious offence, as the case may be; or
- (b) the seizure, forfeiture or confiscation of property by a court in respect of an offence or other unlawful conduct;
- (c) the obtaining, enforcement or satisfaction of a Seychelles confiscation order or a foreign confiscation order, as the case may be; or
- (d) the imposition or recovery of a pecuniary penalty in respect of an offence or other unlawful conduct;
- (e) the identification or tracing of proceeds of crime and property derived from or used in the commission of a serious offence or a foreign serious offence;

“application” means a notice of motion supported by an accompanying affidavit;

“authorized officer” means —

- (a) any police officer as defined under the Police Force Act, Cap. 172;
- (b) any officer of Customs appointed under the Customs Management Act, 2011;
- (c) any immigration officer as defined under the Immigration Decree Act, Cap. 93;
- (d) any person authorized by the Anti-Corruption Commission as established under the Anti-Corruption Act, 2016; and
- (e) any person authorized by the Attorney General;

“Central Authority” means the Attorney General or any authority designated as a Central Authority for Seychelles in pursuance of section 7;

“communications data” includes —

- (a) traffic data;
- (b) subscriber information;
- (c) any information not falling within paragraph (a) or (b) that is held or obtained by the provider of a postal service or a telecommunications service and which relates to the provision of that service and includes content data;
- (d) *content data*;

“competent authority” means a person or authority whom the Attorney General is satisfied is authorized under the law of that foreign State —

- (a) in the case of a request by that foreign State to Seychelles for assistance in a criminal matter, to make the request;
- (b) in the case of a request by Seychelles to that foreign State for assistance in a criminal matter, to receive the request;

“content data” means the subject or purpose of the communication, or the message or information being conveyed by the communication, whether or not any interpretation, process, mechanism or device needs to be applied or used to make the meaning of the communication intelligible;

“covert electronic surveillance” means covert surveillance carried out by or with an electronic surveillance device which transmits records or otherwise captures audio product or visual images, but does not include either surveillance by a tracking device which only provides the location or position, or the interception of telecommunications;

“covert surveillance” means surveillance carried out in a manner that is calculated to ensure that the persons who are subject to the surveillance are unaware that it is or may be taking place;

“criminal investigation” means an investigation —

- (a) into a serious offence or a foreign serious offence, as the case may be; or
- (b) for the purposes of an ancillary criminal matter;

“criminal matter” means in respect of a serious offence or a foreign serious offence, as the case may be —

- (a) a criminal investigation;
- (b) criminal proceedings;
- (c) an ancillary criminal matter;

“criminal proceedings” means a trial of a person for a serious offence or a foreign serious offence, as the case may be, and includes any proceedings to determine whether a particular person should be tried for the offence;

“dealing” in relation to any property, includes —

- (a) receiving or acquiring the property;
- (b) concealing or disguising the property, whether by concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it or otherwise;
- (c) disposing of or converting the property;
- (d) bringing the property into or removing the property from Seychelles;

- (e) using the property to borrow money, or as security, whether by way of a charge, mortgage or pledge or otherwise; or
- (f) where a debt is owed to the person holding the property, making a payment to any person in reduction of the amount of the debt;

“financial institution” means —

- (a) a financial institution as defined under the Financial Institutions Act, Cap 79;
- (b) a financial institution as defined under the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020;

“foreign confiscation order” means an order made by a court in a foreign State for the recovery, forfeiture or confiscation of —

- (a) payments or other rewards received in connection with an offence against the law of that foreign State that is a foreign serious offence, or the value of such payments or rewards; or
- (b) property derived or realized, directly or indirectly, from payments or other rewards received in connection with such an offence, or the value of such property;

“foreign law immunity certificate” means a certificate given, or a declaration made, by a foreign State or under the law of that foreign State, certifying or declaring that, under the law of that foreign State, persons generally or a specified person could or could not, either generally or in specified proceedings and either generally or in specified circumstances, be required —

- (a) to answer a specified question; or
- (b) to produce a specified thing;

“foreign prisoner” means a person who is being held in custody in a foreign State —

- (a) pending trial or sentence for, or sentence for;
- (b) pursuant to sentence of imprisonment for,
an offence against the law of that foreign State;

“foreign serious offence” means an offence —

- (a) against the law of a foreign State stated in a certificate issued by or on behalf of the foreign State; and
- (b) that consists of or includes any activity which, if the activity had occurred in Seychelles, would have constituted a serious offence;

“foreign State” means any country or territory other than Seychelles and includes any competent authority thereof;

“interception of communications” means disrupting, destroying, opening, interrupting, suppressing, stopping, seizing, recording, copying, listening to and viewing of communications in the course of its transmission so as to make some or all of the contents of the communication available, while being transmitted, to a person other than the sender or intended recipient of the communication;

“items subject to legal privilege” mean —

- (a) communication between an Attorney-at-Law and the Attorney-at-Law's client made in connection with the giving of legal advice to the client;
- (b) communications between an Attorney-at-Law and Attorney-at-Law's client made in connection with, or in contemplation of, judicial proceedings and for the purposes of such proceedings; and

(c) items enclosed with or referred to in such communications and made —

(i) in connection with the giving of legal advice; or

(ii) in connection with or in contemplation of judicial proceedings and for the purposes of such proceedings,

when these items are in the possession of a person who is entitled to possession of them, but excluding, in any case, any communications or thing held with the intention of furthering a criminal purpose;

“material” includes any book, document or other record in any form, and any article or thing relating to it;

“Minister” means the Minister responsible for legal affairs;

“order” includes a direction or judgment of a court;

“postal item” means any letter, parcel, package, or other thing which is being or will be carried by a public postal service;

“postal service” means any service which —

(a) consists in the collection, sorting, conveyance, distribution and delivery of postal items; and

(b) is offered or provided as a service, the main purpose of which, or one of the main purposes of which, is to make available, or to facilitate, a means of transmission from place to place of postal items containing communications;

“premises” include —

(a) a structure (whether or not movable or offshore), building, tent, vehicle, vessel, hovercraft or aircraft;

(b) a place (whether or not enclosed or built upon); or

- (c) part of any premises including premises of a kind referred to in paragraph (a) or (b);

“preservation of communications data” means the protection of communications data which already exists in a stored form from modification or deletion, or from anything that would cause its current quality or condition to change or deteriorate;

Provided that communications data that is stored on a highly transitory basis and already exists in a stored form as an integral function of the technology used in its transmission shall not be communications data for the purposes of this definition;

“process” means any summons, warrant, order or other document in respect of a criminal matter that is issued, as the case may be —

- (a) by any court of Seychelles or by any Judge, Magistrate or officer of such a court;
- (b) by any court of a foreign State or by any Judge, Magistrate or officer of such a court;

“property” means movable or immovable property of every description, whether situated in or outside Seychelles and whether tangible or intangible and includes both virtual assets and an interest in any such movable or immovable property;

“seizure” means freezing coupled with the administration, control, possession, or management of the funds, property or other assets;

“serious offence” means —

- (a) any offence that is punishable with imprisonment for a term of 12 months or more; or
- (b) an inchoate offence including any attempt, abetment, counselling or conspiracy to commit any of the offence referred to in paragraph (a);

“Seychelles confiscation order” means —

- (a) an order or penalty made in Seychelles for the confiscation or forfeiture of property in respect of a serious offence;
- (b) a confiscation order within the meaning of Proceeds of Crime (Civil Confiscation) Act, Cap. 298;

“subscriber information” means any information that is held by a provider of a postal service or telecommunications service relating to subscribers to its services and by which a subscriber's identity, affairs or personal particulars can be established, but does not include traffic data;

“surveillance” includes —

- (a) monitoring, observing or listening to persons, their movements, their conversations or their other activities or communication;
- (b) recording anything monitored, observed or listened to in the course of surveillance; and
- (c) surveillance by or with the assistance of a surveillance device;

“telecommunication” means a communication transmitted or received by means of guided or unguided electromagnetic or other forms of energy or technology;

“telecommunications service” means a service provided to any person for transmitting and receiving telecommunications, being a service, the use of which enables communications to be transmitted or received over a telecommunications system operated by a service provider;

“telecommunications system” means any system, including the apparatus comprised in it, which exists, whether wholly or partly in Seychelles or in the foreign State making a request, for the purpose of transmitting and receiving telecommunications;

“traffic data” means computer data —

- (a) that relates to a communication by means of a computer system;
- (b) is generated by a computer system that is part of the chain of communication; and
- (c) shows the communication's origin, destination, route, time, date, size, duration or the type of underlying services;

“treaty” includes a convention, agreement, protocol, statute or any other instrument of international law in relation to mutual assistance in criminal matters;

“virtual asset” means a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes;

“video link” means a technological arrangement whereby a witness or person, without being physically present in the place where the proceedings are conducted, is able to see and hear and be seen and be heard by the relevant court or relevant authority.

(2) For the purposes of this Act, judicial proceedings that are criminal proceedings are —

- (a) instituted in Seychelles or a foreign State when a person is produced and charged in court with a serious offence or foreign serious offence, as the case maybe;
- (b) concluded on the occurrence of any of the following events;
 - (i) the discontinuance of the proceedings;
 - (ii) the acquittal of the defendant;
 - (iii) the quashing of the defendant's conviction for the offence;

- (iv) the grant of a pardon in respect of the defendant's conviction for the offence;
- (v) the court sentencing or otherwise dealing with the defendant in respect of the person's conviction for the offence without having made a foreign confiscation order;
- (vi) the satisfaction of a foreign confiscation order made in the proceedings, whether by payment of the amount due under the order, by the defendant serving imprisonment in default, by the recovery of all property liable to be recovered or otherwise.

Object of Act

3.(1) The object of this Act is for Seychelles to provide and obtain international assistance in criminal matters, including —

- (a) the location and identification of a person;
- (b) the making of arrangements for persons to give evidence or to assist in criminal investigations;
- (c) the provision and obtaining evidence, documents and things;
- (d) the execution of requests for search and seizure;
- (e) the service of documents;
- (f) the recovery, forfeiture or confiscation of property in respect of a serious offence or a foreign serious offence;
- (g) the restraining of dealings in property, or the freezing of property, that may be recovered in respect of a serious offence or a foreign serious offence;
- (h) the identification or tracing of proceeds of crime and

property derived from or used in the commission of a serious offence or a foreign serious offence;

- (i) the recovery of pecuniary penalties in respect of a serious offence or a foreign serious offence;
- (j) interception of telecommunications and conducting covert surveillance;
- (k) preserving communications data;
- (l) any form of assistance in a criminal matter that is specified in a treaty to which Seychelles is a party; and
- (m) any other form of assistance in a criminal matter that is consistent with the laws of Seychelles.

(2) This Act shall apply to the provision or the obtaining of assistance in relation to a serious offence or a foreign serious offence committed or believed to have been committed before or after the commencement of this Act.

Act does not limit cooperation with international organizations

4.(1) Nothing in this Act derogates from existing forms of cooperation or prevents the development of other forms of cooperation, whether formal or informal, in respect of any criminal matter between Seychelles and any foreign State or authority such as the International Criminal Police Organization (INTERPOL).

(2) This Act does not prevent the provision or obtaining of international assistance in criminal matters under any other written law.

Act not authority for extradition of any person

5. Nothing in this Act authorizes —

- (a) the extradition of any person;
- (b) the arrest or detention with a view to the extradition of any person.

PART 2
REQUEST BY SEYCHELLES
DIVISION 1 - PRELIMINARY PROVISIONS

Application of this Part

6. A request for assistance may be made to a foreign State by Seychelles under this Part.

Requests to be made by the Attorney General

7.(1) A request by Seychelles to a foreign State for assistance in a criminal matter under this Part shall be made by or through the Attorney General or an authority designated as a Central Authority under subsection (3).

(2) A request under subsection (1) shall be made through the diplomatic channel.

(3) For the purposes of this Act, the Central Authority is —

(a) the Attorney General; or

(b) any authority who the President may, by notice published in the Gazette, designate as a Central Authority on such terms and conditions as the President may determine.

(4) An authority designated as a Central Authority under subsection (3) shall have the same powers as the Attorney General and shall provide or obtain international assistance in criminal matters on such terms and conditions as the President may determine.

Direct Requests

8.(1) Notwithstanding section 7, an authority authorized by Seychelles may make a request for assistance in a criminal matter directly to a foreign State —

(a) where and to the extent permitted by any treaty or international arrangement; or

- (b) where and to the extent permitted by any agreement with the Attorney General; or
- (c) in a case of urgency, with the consent of the Attorney General.

(2) Where an authority transmits a request under subsection (1), the authority shall send, without delay, a copy of the request made for assistance in the criminal matter to the Attorney General and Minister responsible for foreign affairs.

DIVISION 2 - LOCATING AND IDENTIFYING PERSONS

Assistance in locating or identifying persons

9. Where the Attorney General is satisfied that there are reasonable grounds for believing that there is, in any foreign State, a person who —

- (a) is or might be concerned in or affected by; or
- (b) could give evidence or assistance relevant to,

any criminal matter in Seychelles, the Attorney General may make a request to that foreign State to assist in locating, or, if the person's identity is unknown, identifying and locating, that person.

DIVISION 3 - SERVICE OF DOCUMENTS

Assistance in serving documents

10.(1) The Attorney General may request a foreign State to assist in effecting service of any process where the Attorney General is satisfied that for the purposes of or in connection with, any criminal matter in Seychelles, it is necessary or desirable to serve that process on a person or an authority in the foreign State.

(2) The service of a process in a foreign State may be proved by an affidavit, a declaration or a statement of the person who served the process.

DIVISION 4 - TAKING OF EVIDENCE IN A FOREIGN STATE**Request for taking of evidence**

11.(1) The Attorney General may request a foreign State to arrange for —

- (a) such evidence to be taken in the foreign State; and
- (b) the evidence to be sent to the Attorney General,

if the Attorney General is satisfied that there are reasonable grounds for believing that such evidence would be relevant to any criminal matter in Seychelles.

(2) The Attorney General may request a foreign State —

- (a) to assist in obtaining, by search and seizure, if necessary, such thing in the foreign State or a photograph or copy of the thing;
- (b) to arrange for the thing or the photograph or copy of the thing to be sent to the Attorney General,

if the Attorney General is satisfied that there are reasonable grounds for believing that such evidence would be relevant to any criminal matter in Seychelles.

(3) Any evidence, thing or photograph or copy of a thing received by the Attorney General pursuant to a request under subsection (1) or (2) may, subject to the provisions of the Criminal Procedure Code, Cap. 54, Evidence Act, Cap. 74, or any other law, be admitted as evidence at any proceedings to which the request relates.

(4) In assessing the weight to be attached to any evidence received by the Attorney General pursuant to a request made under subsection (1) which has been admitted as evidence in any criminal proceedings to which the request relates, the court shall have regard to —

- (a) whether it was possible to challenge the evidence taken; and
- (b) whether the law of the foreign State concerned allowed the parties to the criminal proceedings to be represented by an Attorney-at-Law or an authorized person when the evidence was being taken.

(5) All courts in Seychelles shall take judicial notice of any seal or signature impressed, affixed, appended or subscribed on or to any statement or deposition tendered in evidence under this section.

(6) Evidence or assistance under this section may be given via video link.

DIVISION 5 - ENFORCEMENT OF SEYCHELLES CONFISCATION ORDERS

Request for enforcement of Seychelles confiscation order

12.(1) The Attorney General may request a foreign State to make arrangements —

- (a) for the enforcement and satisfaction of a Seychelles confiscation order; or
- (b) where a Seychelles confiscation order may be made in any proceedings which have been or are to be instituted in Seychelles, to restrain dealing in any property against which the order may be enforced or which may be available to satisfy the order,

if the Attorney General is satisfied that there are reasonable grounds for believing that some or all of the property concerned is located in that foreign State.

(2) Where —

- (a) the Seychelles confiscation order requires the payment of a specified amount; and

- (b) the property is recovered in a foreign country pursuant to a request under subsection (1),

that specified amount shall be reduced from the value of property so recovered.

(3) A certificate purporting to be issued by or on behalf of a foreign State stating —

- (a) that property has been recovered in the foreign State pursuant to a request under subsection (1);
- (b) the value of the property;
- (c) the date on which the property was recovered,

shall, in any judicial proceedings, be admissible as evidence of the matter so stated.

DIVISION 6 - ATTENDANCE OF PERSONS

Request for attendance of persons in Seychelles

13.(1) Where the Attorney General is satisfied that —

- (a) there are reasonable grounds to believe that a person in a foreign State is capable of giving evidence or assistance relevant to a criminal matter involving a serious offence; and
- (b) that person consents to travel to Seychelles for the purpose of giving such evidence or assistance,

the Attorney General may request the foreign State to assist in arranging for the attendance of a person in Seychelles for the purpose of giving such evidence or assistance.

(2) The Attorney General may make arrangements with a foreign State for the purposes of —

- (a) the removal of the person to Seychelles;
- (b) the return of the person to the foreign State;
- (c) in the case of a foreign prisoner, the custody of that person while in Seychelles; and
- (d) any other relevant matter.

Penalty not to be imposed on a person refusing to come to Seychelles

14. Where, pursuant to section 13, the Attorney General requests the assistance of a foreign State in arranging the attendance in Seychelles of any person, that person shall not be subjected to any penalty or liability or otherwise prejudiced in law by reason only of that person's refusal or failure to consent to attend as requested.

Privileges and immunities of person coming to Seychelles

15.(1) A person who is in Seychelles, pursuant to a request made under section 13, shall not —

- (a) be detained, prosecuted or punished in Seychelles for any offence that is alleged to have been committed, or that was committed, before the person's departure from the foreign State concerned pursuant to the request;
- (b) be subjected to any civil proceedings in Seychelles in respect of any act or omission that is alleged to have occurred, or that had occurred, before the person's departure from the foreign State pursuant to the request, being civil proceedings to which the person could not be subjected if the person were not in Seychelles; or
- (c) be required to give evidence or assistance in relation to any criminal matter in Seychelles other than the criminal matter to which the request relates.

(2) Subsection (1) ceases to apply if —

- (a) the person has left Seychelles and then returns otherwise than pursuant to the same or another request; or
- (b) the person has had the opportunity to leave Seychelles and had remained in Seychelles otherwise than for —
 - (i) the purpose to which the request relates; or
 - (ii) the purpose of giving evidence or assistance in a criminal matter in Seychelles certified by the Attorney General in writing to be a criminal matter in which it is desirable that the person gives evidence or assistance.

Arrest of a person who escaped from custody

16.(1) A police officer may, without warrant, arrest a person, if the police officer has reasonable grounds to believe that the person —

- (a) has been brought to Seychelles pursuant to request under section 13(2)(c); and
- (b) has escaped from lawful custody while in Seychelles pursuant to the request.

(2) A person who has been arrested pursuant to subsection (1) shall be returned to lawful custody.

(3) A person who escapes from lawful custody while in Seychelles pursuant to a request under section 13(2)(c) commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or a fine of level 3 on the standard scale, or to both such fine and imprisonment.

DIVISION 7 - REQUESTS PERMITTED UNDER THE LAWS OF A FOREIGN STATE

Other forms of request

17.(1) The Attorney General may make such other requests to a foreign State that are permitted under the laws of the foreign State, including the interception of telecommunications and postal items, surveillance of any kind, and the preservation of communications data.

(2) Any evidence or thing or copy of a thing received by the Attorney General pursuant to a request under subsection (1) may, subject to the provisions of the Criminal Procedure Code, Cap. 54, Evidence Act, Cap. 74, or any other law, be admitted as evidence at any proceedings to which the request relates.

(3) The Minister may make regulations in respect of any form of request made under subsection (1).

PART 3
REQUEST TO SEYCHELLES
DIVISION 1 - PRELIMINARY PROVISIONS

Application of this Part

18. Unless otherwise stated in this Part, assistance by Seychelles may be provided to a prescribed foreign State under this Part.

Prescribed foreign State

19.(1) For the purposes of this Part, a prescribed foreign State is a foreign State that has a treaty in force between Seychelles and that foreign State under which there is an agreement to provide assistance in criminal matters.

(2) Subject to this Act or any other written law, a request made by a foreign State shall be acted upon pursuant to the provisions of the treaty.

(3) As soon as practicable after 1 January in every year, the Minister responsible for foreign affairs shall publish a notice in the Gazette specifying the treaties in force between Seychelles and a foreign State under which there is an obligation to provide assistance in criminal matters.

Ad hoc requests for assistance

20.(1) This section applies where a foreign State requests assistance under this Part and that foreign State —

- (a) is not a prescribed foreign State;
- (b) is a prescribed foreign State but the request is outside the

scope of the treaty between Seychelles and the prescribed foreign State.

(2) If any foreign State makes a request for assistance under subsection (1), the Attorney General, in consultation with the Minister responsible for foreign affairs, may consider the following matters in order to decide whether or not the request shall be dealt with under this Part —

- (a) any assurances given by the foreign State that the foreign State will entertain a similar request by Seychelles for assistance in criminal matters;
- (b) the seriousness of the offence to which the request relates;
- (c) the willingness of the foreign State to enter any sharing arrangements under section 55;
- (d) any other matters that the Attorney General considers relevant.

(3) If, after considering those matters in subsection (2), the Attorney General decides that the request shall be dealt with under this Part, the Attorney General may deal with that request accordingly.

Request to be made to the Attorney General

21.(1) A request by any foreign State to Seychelles for assistance in a criminal matter under this Part shall be made to the Attorney General or an authority designated as a Central Authority under section 7.

(2) A request under subsection (1) shall be made through the diplomatic channel.

Direct requests

22.(1) Notwithstanding section 21, an authority authorized by Seychelles may receive a request for assistance in a criminal matter directly from a prescribed foreign State —

- (a) where and to the extent permitted by any treaty or international arrangement;
- (b) where and to the extent permitted by any agreement with the Attorney General;
- (c) in a case of urgency, with the consent of the Attorney General.

(2) Where an authority authorized by Seychelles receives a request pursuant to subsection (1), the authority shall send, without delay, a copy of the request to the Attorney General and Minister responsible for foreign affairs.

Form of request

23.(1) Every request shall —

- (a) specify the purpose of the request and the nature of the assistance being sought;
- (b) identify the person or authority that initiated the request;
- (c) specify whether the foreign State is requesting assistance either pursuant to section 19 or 20; and
- (d) be accompanied by —
 - (i) a certificate from the foreign State that the request is made in respect of a criminal matter within the meaning of this Act;
 - (ii) a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws;
 - (iii) where the request relates to —
 - (a) the location of a person who is suspected to be

involved in or to have benefited from the commission of a foreign serious offence; or

- (b) the tracing of property that is suspected to be connected with a foreign serious offence, the name, identity, nationality, location or description of that person, or the location and description of the property, if known, and a statement setting forth the basis for suspecting the matter referred to in subparagraph (a) or (b);
- (iv) a description of the offence to which the criminal matter relates, including its maximum penalty;
- (v) details of the procedure which the foreign State wishes Seychelles to follow in giving effect to the request, including details of the manner and form in which any information, document or thing is to be supplied to that foreign State pursuant to the request;
- (vi) where the request is for assistance relating to an ancillary criminal matter and judicial proceedings to obtain a foreign confiscation order have not been instituted in the foreign State, a statement indicating when the judicial proceedings are likely to be instituted;
- (vii) a statement setting out the wishes of the foreign State concerning the confidentiality of the request and the reason for those wishes;
- (viii) details of the period within which the foreign State wishes the request to be met;
- (ix) if the request involves a person travelling from Seychelles to a foreign State, details of the allowances to which the person will be entitled, and of the arrangements for security and accommodation for the person while the person is in the foreign State pursuant to the request;

- (x) any other information required to be included with the request under any treaty between Seychelles and the prescribed foreign State; and
- (xi) any other information that may assist Seychelles in giving effect to the request or which is required under the provisions of this Act or any regulations made under this Act.

(2) Where a foreign State fails to comply with the requirements set out in subsection (1), the Attorney General may request that the foreign State comply with the requirements or submit such other information that the Attorney General deems necessary.

(3) The Attorney General shall execute a request, that is in compliance with this Act, within a reasonable time or within the period specified in subsection (1)(d)(viii), where it is practicable.

Refusal of assistance

24.(1) A request by a foreign State for assistance under this Part shall be refused if, in the opinion of the Attorney General, —

- (a) the request relates to the investigation, prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political nature;
- (b) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Seychelles, would have constituted a military offence under the laws of Seychelles which is not also an offence under the ordinary criminal law of Seychelles;
- (c) there are substantial grounds for believing that the request was made for the purpose of investigating, prosecuting, punishing or otherwise causing prejudice to a person on

account of the person's race, religion, sex, ethnic origin, nationality or political opinions;

- (d) the request relates to the investigation, prosecution or punishment of a person for an offence in a case where the person —
 - (i) has been convicted, acquitted or pardoned by a competent court or other authority in that foreign State or a third State; or
 - (ii) has undergone the punishment provided by the law of that foreign State or a third State, in respect of that offence or of another offence constituted by the same act or omission as the first-mentioned offence;
- (e) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if the act or omission had occurred in Seychelles, would not have constituted an offence against the laws of Seychelles;
- (f) the provision of the assistance would affect the sovereignty, security, public order or other essential public interest of Seychelles;
- (g) the foreign State fails to undertake that the thing requested for will not be used for a matter other than the criminal matter in respect of which the request was made, except with the consent of the Attorney General;
- (h) in the case of a request for assistance under sections 31, 32, 33, 34 and 35 or sections 42, 43, 44 and 45 the foreign State fails to undertake to return to the Attorney General, upon the Attorney General's request, any thing obtained pursuant to the request upon completion of the criminal matter in respect of which the request was made;
- (i) the provision of the assistance could prejudice a criminal matter in Seychelles; or

- (j) the provision of the assistance would require steps to be taken that would be contrary to the Constitution or any other law.

(2) A request by a foreign State for assistance under this Part may be refused by the Attorney General —

- (a) pursuant to the terms of any treaty between Seychelles and that prescribed foreign State;
- (b) if, in the opinion of the Attorney General, the provision of the assistance would, or would be likely to, prejudice the safety of any person, whether that person is within or outside Seychelles;
- (c) if, in the opinion of the Attorney General, the provision of the assistance would impose an excessive burden on the resources of Seychelles and the foreign State is not willing to enter into a sharing arrangement under section 55; or
- (d) if that foreign State is not a prescribed foreign State and the foreign State fails to give an undertaking to the Attorney General that the foreign State will, subject to the laws of that foreign State, comply with a future request by Seychelles to that foreign State for assistance in a criminal matter.

(3) Without prejudice to subsection (2)(c), if there is a request for assistance by a foreign State and the Attorney General is of the opinion that the expenses involved in complying with the request or continuing to effect the assistance requested for is of an extraordinary or substantial nature, the Attorney General shall consult with the foreign State on the conditions under which the request is to be effected or under which the Attorney General is to cease to give effect to it, as the case may be.

Exceptions to political offences

25. For the purposes of section 24(1)(b), the following offences shall not be held to be offences of a political nature —

- (a) an offence against the life or person of a Head of State or a member of the immediate family of a Head of State;
- (b) an offence against the life or person of a Head of Government, or of a Minister of a Government;
- (c) an offence established under any treaty to which Seychelles and the foreign State are parties and which is declared in the treaty concerned not to be regarded as an offence of a political nature for the purposes of mutual assistance in criminal matters;
- (d) any other offence declared by the Minister by Order published in the Gazette; and
- (e) any attempt, abetment or conspiracy to commit any of the offences referred to in paragraphs (a) to (d).

Notification of refusal

26. If a request by a foreign State for assistance under this Part is refused in whole or in part, notice of the refusal shall be given by the Attorney General to the Foreign State with the reasons for the refusal.

DIVISION 2 - LOCATING AND IDENTIFYING PERSONS

Assistance in locating or identifying a person

27.(1) A foreign State may request the Attorney General to assist in locating, or identifying and locating, a person who is believed to be in Seychelles.

(2) Where, on the receipt of a request made under subsection (1) by a foreign State, the Attorney General is satisfied that —

- (a) the request relates to a criminal matter in the foreign State;
- (b) there are reasonable grounds for believing that the person to whom the request relates —

- (i) is or might be concerned in, or could give or provide evidence or assistance relevant to, the criminal matter; and
- (ii) is or might be in Seychelles,

the Attorney-General may authorize assistance in accordance with this section.

(3) Where, in relation to a request made under subsection (1), the Attorney General authorizes assistance in accordance with this section, the Attorney General shall forward the request to the appropriate authority in Seychelles.

(4) The appropriate authority referred to in subsection (3) shall, to the best of its ability, seek to locate or identify and locate, as the case may be, the person to whom the request relates, and shall inform the Attorney General of the outcome of the actions taken.

(5) On receipt of information under subsection (4), the Attorney General shall inform the foreign State of the result of the inquiries made pursuant to the request.

DIVISION 3 - SERVICE OF PROCESS

Assistance in service of process

28.(1) A foreign State may request the Attorney General to assist in effecting the service of process on a person in Seychelles.

(2) Where, on receipt of a request made under subsection (1), the Attorney General is satisfied that —

- (a) the request relates to a criminal matter in that foreign State;
- (b) there are reasonable grounds for believing that the person to be served is in Seychelles;
- (c) the foreign State has provided sufficient details of the consequences of a failure to comply with such process; and

- (d) where the request relates to the service of a summons to appear as a witness in that foreign State, that foreign State has given an adequate undertaking in respect of the matters specified in section 29,

the Attorney General may authorise assistance in accordance with this section.

(3) Where service is authorized under subsection (2), the Attorney General may, at the request of a foreign State, arrange for the service of process in Seychelles relating to a criminal matter in the foreign State.

(4) Without limiting the manner in which the service of process in a foreign State may be proved in Seychelles, service of such process may be proved by the declaration of the person who served the process.

Undertaking by foreign State

29. Where, pursuant to a request under section 28, a foreign State requests the assistance of the Attorney General in effecting the service on any person of a summons to appear as a witness in that foreign State, the Attorney General shall, before authorizing assistance in accordance with section 28, obtain from the foreign State an undertaking that that person will not be subject to any penalty or liability or otherwise prejudiced in law by reason only of that person's refusal or failure to accept or comply with the summons, notwithstanding any contrary statement in the summons.

Penalty not to be imposed for failure to comply with the summons

30. The person who is to appear as a witness pursuant to section 28 shall not be subjected to any penalty or liability or otherwise prejudiced in law by reason only of that person's refusal or failure to accept, or comply with, the summons, notwithstanding any contrary statement in the summons.

DIVISION 4 - OBTAINING EVIDENCE

Taking of evidence for criminal matters

31.(1) Where a request is made by a foreign State that evidence be taken in Seychelles for the purpose of any criminal matters in that foreign State, the Attorney General may, subject to such conditions as the Attorney General may specify, authorize the taking of such evidence.

(2) If the Attorney General authorizes the taking of the evidence under subsection (1), a Judge or Magistrate may —

- (a) take the evidence on oath of each witness appearing before the Judge or Magistrate to give evidence in relation to the criminal matter as if the witness were giving evidence on a charge against a person for an offence against the laws of Seychelles;
- (b) cause the evidence to be reduced into writing and certify at the end of that writing that the evidence was taken by the said Judge or Magistrate; and
- (c) cause the writing, so certified, to be sent to the Attorney General.

(3) The proceedings may be conducted in the presence or absence of the person to whom the criminal matters in the foreign State relates or in the presence of that person's Attorney-at-Law or representative, if any.

(4) The certificate referred to in subsection (2)(b) shall state whether the person to whom the criminal matters in the foreign State relates or the person's Attorney-at-Law or representative, if any, was present at the proceedings.

(5) The laws of Seychelles with respect to the compelling of persons to attend before the Supreme Court, and to give evidence, answer questions and produce materials or articles shall, in so far as they are applicable, apply for the purposes of this section as if it were a hearing of a charge against a person for an offence against the laws of Seychelles.

(6) Notwithstanding subsection (5), for the purposes of this section, the person to whom the criminal matters in the foreign State relates is competent, but not compellable, to give evidence.

(7) Notwithstanding subsection (5), no person who is required under this section to give evidence for the purposes of any criminal matters in a foreign State shall be required to answer any question that the person could not be compelled to answer in those proceedings in that foreign State.

(8) A duly certified foreign law immunity certificate is admissible in proceedings under this section as prima facie evidence of the matters stated in the certificate.

(9) Evidence taken under this section shall not be admissible in evidence or otherwise used for the purposes of any judicial proceedings, disciplinary proceedings, or other proceedings in Seychelles except in a prosecution of the person who gave that evidence for the offence of perjury or contempt of court in respect of that evidence.

(10) Notwithstanding subsection (9), evidence taken under this section may be used for impeaching the credibility of the person who gave the evidence in any judicial proceedings.

Production order for criminal matters

32.(1) Where a request is made by a foreign State that any particular thing or description of a thing in Seychelles be produced for the purpose of any criminal matter in that foreign State, the Attorney General or an authority authorized by the Attorney General may apply to the court for an order under subsection (3).

(2) An application for an order under subsection (3) in relation to any thing in the possession of a financial institution shall be made to a Judge or a Magistrate.

(3) If, on such an application, the court is satisfied that the conditions referred to in subsection (4) are fulfilled, the court may make an order that the person who appears to the court to be in possession of the thing to which the application relates shall —

- (a) produce the thing to an authorized officer for the said officer to take away; or
- (b) give an authorized officer access to the thing,

within 5 days of the date of the order or such other period as the court considers appropriate.

- (4) The conditions referred to in subsection (3) are —
- (a) that there are reasonable grounds for suspecting that a specified person has committed or benefited from a foreign serious offence;
 - (b) that there are reasonable grounds for believing that the thing to which the application relates —
 - (i) is likely to be of substantial value, whether by itself or together with another thing, to the criminal matter in respect of which the application was made; and
 - (ii) does not consist of or include items subject to legal privilege; and
 - (c) that the court is satisfied that it is not contrary to the public interest or to any law for the thing to be produced or access to it to be given.

(5) The proceedings referred to in subsection (3) may be conducted in the presence or absence of the person to whom the criminal proceedings in the foreign State relates or in the presence of the person's Attorney-at-Law or representative, if any.

(6) No person who is required by an order under this section to produce or make available any thing for the purposes of any criminal proceedings in a foreign State shall be required to produce any thing that the person could not be compelled to produce in the proceedings in that foreign State.

(7) A duly certified foreign law immunity certificate is admissible in proceedings under this section as prima facie evidence of the matters stated in the certificate.

(8) Proceedings under subsection (3) shall be heard in Chambers unless the court directs otherwise.

(9) Where the Attorney General receives a request under subsection (1), the Attorney General may execute the request without an order of the

court where the person in possession or control of the thing has given the thing to the Attorney General to fulfil the request under this section and the person has signed a declaration declaring that the thing was voluntarily given to the Attorney General.

Supplementary provisions regarding production orders

33.(1) Where the Supreme Court orders a person under section 32 to give an authorized officer access to any thing on any premises, the court may, on the same or subsequent application of the Attorney General or an authority authorized by the Attorney General, order any person who appears to the Supreme Court to be entitled to grant entry to the premises to allow an authorized officer to enter the premises to obtain access to the thing.

(2) Where any material to which an order under section 32 relates consists of information contained in or accessible by means of any data equipment —

- (a) an order under section 32(3)(a) shall have effect as an order to produce the material in a form which can be taken away and which is visible and legible; and
- (b) an order under section 32(3)(b) shall have effect as an order to give access to the material in a form which is visible and legible.

(3) A person is not excused from producing or making available any thing by an order under section 32 on the ground that —

- (a) the production or making available of the thing might tend to incriminate the person or make the person liable to a penalty; or
- (b) the production or making available of the thing would be in breach of an obligation, whether imposed by law or otherwise, of the person not to disclose the existence of the contents of the thing.

(4) An order under section 32 —

- (a) shall not confer any right to the production of, or of access to, items subject to legal privilege; and
- (b) shall have effect notwithstanding any obligations as to secrecy or other restrictions upon the disclosure of information imposed by law or otherwise.

(5) An authorized officer may photograph or make copies of any thing produced or to which access is granted pursuant to an order made under section 32.

(6) Where an authorized officer takes possession of any thing under an order made under section 32 or takes any photograph or makes any copy of the thing pursuant to subsection (5), the authorized officer shall inform the Attorney General and shall, unless the Attorney General otherwise directs, immediately send the thing or the photograph or copy of the thing to the relevant foreign State.

(7) In this section, “data equipment” means any equipment which —

- (a) automatically processes information;
- (b) automatically records or stores information;
- (c) can be used to cause information to be automatically recorded, stored or otherwise processed on other equipment, wherever situated;
- (d) can be used to retrieve information whether the information is recorded or stored in the equipment itself or in other equipment, wherever situated; or
- (e) can be used to carry out any combination of the functions specified in paragraphs (a) to (d).

Immunities in compliance of production order

34.(1) No civil or criminal action, other than a criminal action for an offence under section 35, shall lie against any person for —

- (a) producing or giving access to any thing if the person had produced or given access to the thing in good faith in compliance with an order made against him under section 32; or
- (b) doing or omitting to do any act if that person had done or omitted to do the act in good faith and as a result of complying with such an order.

(2) A person who complies with an order made under section 32 shall not be treated as being in breach of any restriction upon the disclosure of information or thing imposed by law, contract or rules of professional conduct.

Failure to comply with production order

35. Any person who —

- (a) without reasonable excuse contravenes or fails to comply with an order under section 32; or
- (b) in purported compliance with such an order, produces or makes available to an authorized officer any material known to the person to be false or misleading in a material particular without —
 - (i) indicating to the authorized officer that the material is false or misleading and the part of the material that is false or misleading; or
 - (ii) providing correct information to the authorized officer if the person is in possession of, or can reasonably acquire, the correct information,

commits an offence and is liable on conviction to a fine of level 3 on the standard scale or to imprisonment for a term not exceeding 2 years or to both such fine and term of imprisonment.

DIVISION 5 - ARRANGING ATTENDANCE OF PERSON IN A FOREIGN STATE**Request for attendance of a person in a foreign State**

36.(1) A foreign State may request the Attorney General to assist in arranging the attendance, in that foreign State, of a person in Seychelles for the purpose of giving evidence or assistance in relation to a criminal matter in that foreign State.

(2) The Attorney General may assist in making arrangements for the travel of the person to the foreign State pursuant to a request referred to in subsection (1) if the Attorney General is satisfied that —

- (a) the request relates to a criminal matter in the foreign State involving a foreign serious offence;
- (b) there are reasonable grounds to believe that the person concerned is capable of giving evidence or assistance relevant to the criminal matter;
- (c) the person concerned has freely consented to attend as requested; and
- (d) the foreign State has given adequate undertakings in respect of the matters referred to in subsection (3).

(3) The matters in relation to which undertakings are to be given by the foreign State are —

- (a) that the person shall not —
 - (i) be detained, prosecuted or punished for any offence against the law of the foreign State that is alleged to have been committed, or that was committed, before the person's departure from Seychelles;
 - (ii) be subjected to any civil suit in the foreign State in respect of any act or omission of the person that is alleged to have occurred, or that had occurred, before the person's departure from Seychelles; or

- (iii) be required to give evidence or assistance in relation to any criminal matter in the foreign State other than the criminal matter to which the request relates, unless the person has left the foreign State or the person has had the opportunity of leaving the foreign State and has remained in the foreign State otherwise than for the purpose of giving evidence or assistance in relation to the criminal matter to which the request relates;
- (b) that any evidence given by the person in the criminal proceedings to which the request relates, if any, will be inadmissible or otherwise disqualified from use in the prosecution of the person for an offence against the law of the foreign State, other than for the offence of perjury or contempt of court in relation to the giving of that evidence;
- (c) that the person will be returned to Seychelles in accordance with arrangements agreed to by the Attorney General; and
- (d) such other matters as the Attorney General thinks appropriate.

(4) Where, pursuant to this section, the foreign State requests the assistance of the Attorney General in arranging the attendance of any person in that foreign State, the person to whom the request relates shall not be subjected to any penalty or liability or otherwise prejudiced in law by reason only of that person's refusal or failure to consent to attend as requested.

Request for attendance of a prisoner or detainee to a foreign State

37.(1) Where a request by the foreign State under section 36 relates to —

- (a) a prisoner within the meaning of section 2 of the Prison Act, Cap. 180; or
- (b) a person under detention in Seychelles,

the Attorney General may assist in arranging the transfer of such person into the custody of an officer of the foreign State for the purpose of transporting

such person from Seychelles to the foreign State and, after that, to be detained in that foreign State under the custody of such authority as may be lawful in that foreign State and produced from time to time under custody before the appropriate authority or court in the foreign State before which the person is required to attend as a witness.

(2) Immediately upon the person's attendance being dispensed with by the appropriate authority or court in the foreign State before which the person's attendance is required, the person shall be transported in the custody of an officer of the foreign State to Seychelles and returned into the custody of a Seychelles officer having lawful authority to take the person into custody and the person shall, after that, continue to undergo the imprisonment or detention which the person was undergoing prior to the transfer of his custody under subsection (1).

(3) Where, pursuant to this section, the foreign State requests the assistance of the Attorney General in arranging the attendance of any person in that foreign State, the person to whom the request relates shall not be subjected to any penalty or liability or otherwise prejudiced in law by reason only of that person's refusal or failure to consent to attend as requested.

(4) No transfer under subsection (1) shall be effected unless the foreign State gives an undertaking —

- (a) to bear, and be responsible for, all the expenses of the transfer of custody;
- (b) to keep the person under lawful custody throughout the transfer of his custody; and
- (c) to return the person into the custody of the authorized officers of Seychelles immediately on the person's attendance before the appropriate authority or court in the foreign State being dispensed with.

DIVISION 6 - ENFORCEMENT OF FOREIGN CONFISCATION ORDER

Request for enforcement of a foreign confiscation order

38.(1) A foreign State may request the Attorney General to assist in —

- (a) the enforcement and satisfaction of a foreign confiscation order made in any judicial proceedings instituted in that foreign State against property that is reasonably believed to be located in Seychelles; or
- (b) where a foreign confiscation order may be made in judicial proceedings which have been or are to be instituted in that foreign State, the restraining of dealing in any property that is reasonably believed to be located in Seychelles and against which the order may be enforced or which may be available to satisfy the order.

(2) On receipt of a request under subsection (1), the Attorney General may —

- (a) in the case of section (1)(a), take action pursuant to section 39 and the regulations made pursuant to section 58 or such practice directions given by the Supreme Court;
- (b) in the case of section (1)(b), take action under the regulations made pursuant to section 58; or
- (c) make an application pursuant to section 153C of the Criminal Procedure Code, Cap. 54, for an order under section 153A or 153B of the Criminal Procedure Code.

Registration of confiscation order

39.(1) The Attorney General or a person authorized by the Attorney General may apply, by way of a notice of motion and an accompanying affidavit, to the Supreme Court for the registration of a foreign confiscation order.

(2) A Judge may, on an application referred to in subsection (1), register the foreign confiscation order if the Judge is satisfied —

- (a) that the order is in force and not subject to further appeal in the foreign State;

- (b) where a person affected by the order did not appear in the proceedings in the foreign State, that the person had received notice of such proceedings in sufficient time to enable the person to challenge those proceedings; and
- (c) that by enforcing the order in Seychelles, such enforcement would not be contrary to the interests of justice.

(3) For the purpose of subsection (2), the Judge shall take into consideration a certificate referred to in section 41, if presented to the Judge at any time during the course of the proceedings.

(4) A Judge may revoke the registration of a foreign confiscation order if it appears to the Judge that —

- (a) the order has been satisfied by payment of the amount due under the order or other means; or
- (b) the person against whom the order was made is serving imprisonment in default of payment.

(5) Where an amount of money payable or remaining to be paid under a foreign confiscation order registered in the Supreme Court under this section is expressed in a currency other than the Seychelles Rupee, the amount shall, for the purpose of any action taken in relation to that order, be converted into Seychelles Rupees using the daily weighted trading exchange rates of the Central Bank of Seychelles on the date of registration of the order.

(6) For the purposes of subsection (5), a notice issued by the Central Bank of Seychelles and stating the daily weighted trading exchange rate prevailing on the specified date shall be admissible in any judicial proceedings as evidence of the facts so stated.

(7) In this section, “appeal” includes —

- (a) any proceedings by way of discharging or setting aside a judgment; and
- (b) an application for a new trial, opposition or a stay of execution.

Proof of orders of foreign State

40.(1) For the purposes of sections 38 and 39 and the regulations made pursuant to section 58 —

- (a) any order made or judgment given by a court of a foreign State purporting to bear the seal of that court and to be signed by any person in the person's capacity as a Judge, Magistrate or officer of the court, shall be deemed without further proof to have been duly sealed or to have been signed by that person, as the case may be; and
- (b) a document, duly authenticated, that purports to be a copy of any order made or judgment given by a court of a foreign State shall be deemed without further proof to be a true copy.

(2) A document is duly authenticated for the purpose of section (1)(b) if it purports to be certified by any person in the person's capacity as a Judge, Magistrate or officer of the court in question or by or on behalf of that foreign State.

Evidence in relation to proceeding and orders in a foreign State

41.(1) For the purposes of sections 38 and 39 and the regulations made pursuant to section 58, a certificate purporting to be issued by or on behalf of a foreign State stating that —

- (a) judicial proceedings have been instituted and have not been concluded, or that judicial proceedings are to be instituted, in that foreign State;
- (b) a foreign confiscation order is in force and is not subject to appeal;
- (c) all or a certain amount of the sum payable under a foreign confiscation order remains unpaid in that foreign State, or that other property recoverable under a foreign confiscation order remains unrecovered in that foreign State;

- (d) a person has been notified of any judicial proceedings in accordance with the law of that foreign State; or
- (e) an order, however described, made by a court of that foreign State has the purpose of —
 - (i) recovering, forfeiting or confiscating —
 - (a) payments or other rewards received in connection with an offence against the law of that foreign State that is a foreign serious offence, or the value of the payments or rewards; or
 - (b) property derived or realized, directly or indirectly, from payments or other rewards received in connection with such an offence or the value of such property; or
 - (ii) forfeiting or destroying, or forfeiting or otherwise disposing of, any drugs or other substance in respect of which an offence against the corresponding drug law of that foreign State has been committed, or which was used in connection with the commission of such an offence,

shall, in any proceedings in a court, be received in evidence without further proof.

(2) In any such proceedings, a statement contained in a duly authenticated document, which purports to have been received in evidence or to be a copy of a document so received, or to set out or summarize evidence given in proceedings in a court in a foreign State, shall be admissible as evidence of any fact stated in the document.

(3) A document is duly authenticated for the purposes of subsection (2) if it purports to be certified by any person in that person's capacity as a Judge, Magistrate or officer of the court in the foreign State, or by or on behalf of that foreign State.

(4) Nothing in this section shall prejudice the admissibility of any evidence, whether contained in any document or otherwise, which is admissible apart from by virtue of this section.

DIVISION 7 - SEARCH AND SEIZURE

Request for search and seizure

42.(1) The Attorney General may, on the request of the foreign State, assist in obtaining any thing by search or seizure.

(2) Where, on receipt of a request referred to in subsection (1), the Attorney General is satisfied that —

- (a) the request relates to a criminal matter in that foreign State in respect of a foreign serious offence; and
- (b) there are reasonable grounds for believing that the thing to which the request relates is relevant to the criminal matter and is located in Seychelles,

the Attorney General may apply to the Magistrate's Court or the Supreme Court for a warrant under section 43 in respect of premises specified by the Attorney General.

(3) An application for a warrant referred to in section 43 in respect of any thing in the possession of a financial institution shall be made to the Supreme Court.

(4) An application for a warrant referred to in section 43 shall specify with sufficient particulars the thing in the possession of a financial institution.

Search warrant

43.(1) On an application referred to in section 42, the court may issue a warrant authorizing an authorized officer to enter and search the premises specified by the Attorney General if the court is satisfied that —

- (a) an order made under section 32 in relation to any thing on the premises has not been complied with; or

(b) the conditions in subsection (2) are fulfilled.

(2) The conditions referred to in paragraph (1)(b) are —

(a) that there are reasonable grounds for suspecting that a person specified in the request has committed or has benefited from a foreign serious offence;

(b) that there are reasonable grounds for believing that the thing to which the application relates —

(i) is likely to be of substantial value, whether by itself or together with another thing, to the criminal matter in respect of which the application is made; and

(ii) does not consist of or include items subject to legal privilege; and

(c) that the court is satisfied that it is not contrary to the public interest for the warrant to be issued.

(3) A warrant issued under this section shall be subject to such conditions as the court may specify in the warrant.

Additional powers of person executing search warrant

44.(1) Where an authorized officer has entered premises in the execution of a warrant issued under section 43, the authorized officer may seize and retain any thing that is specified in the warrant, other than items subject to legal privilege.

(2) An authorized officer may photograph or make a copy of any thing seized under subsection (1).

(3) Where an authorized officer seizes any thing or takes a photograph or makes a copy of any thing under a warrant, the authorized officer shall inform the Attorney General and shall, unless the Attorney General otherwise directs, immediately send the thing or the photograph or copy of the thing to the relevant foreign State.

(4) Any person who hinders or obstructs an authorized officer in the execution of a warrant issued under this section commits an offence and is liable on conviction to a fine of level 2 on the standard scale or to imprisonment for a term not exceeding 2 years or to both such fine and term of imprisonment.

Immunities of officers executing search warrant

45.(1) No civil or criminal action shall lie against any person for —

- (a) producing or giving access to any thing if the person had produced or given access to the thing in good faith in compliance with a warrant issued under section 43; or
- (b) doing or omitting to do any act if the person had done or omitted to do the act in good faith and as a result of complying with such a warrant.

(2) A person who complies with a warrant issued under section 43 shall not be treated as being in breach of any restriction upon the disclosure of any information or thing imposed by law, contract or rules of professional conduct.

DIVISION 8 - INTERCEPTION OF COMMUNICATIONS, PRESERVATION OF COMMUNICATIONS DATA AND SURVEILLANCE

Request for the interception of telecommunications

46.(1) For the purposes of a criminal investigation, the Attorney General may, in accordance with the provisions of this Act and any other written law, execute a request from a foreign State for —

- (a) the interception and immediate transmission of telecommunications; or
- (b) the interception, recording and subsequent transmission of telecommunications.

(2) A request by a foreign State under this section shall include —

- (a) confirmation that a lawful interception order or warrant has been issued in connection with the particular criminal investigation by a court or relevant authority in the foreign State, or such actions are being done in accordance with a written law in the foreign State;
- (b) details of the criminal matter under investigation;
- (c) the desired duration of the interception;
- (d) if possible, the provision of sufficient technical data, including the following information —
 - (i) the name of the authority, telecommunications service provider or person with access to the relevant data;
 - (ii) the location at which the data is held;
 - (iii) details of the data of the relevant interception;
 - (iv) such other information that the Attorney General may require the foreign State to provide.

Order for the interception of telecommunications

47.(1) Where the Attorney General approves a request under section 46, the Attorney General or the Commissioner of Police may make an ex-parte application to the Supreme Court for an order to intercept telecommunications.

(2) Where the Supreme Court grants an application under subsection (1), the Supreme Court may —

- (a) require an authority, a telecommunications service provider or person with access to the data to intercept and retain a specified communication, or communication of a specified description, received or transmitted by that authority, telecommunications service provider or person;

- (b) authorize a police officer or a competent person to intercept or listen to a conversation provided by the authority, telecommunications service provider or person;
- (c) authorize a police officer or a competent person to enter any premises and to install on the premises a device for the interception and retention of specified telecommunications; or
- (d) approve the use of any technology belonging to Seychelles or the foreign State that may facilitate the interception of telecommunications;
- (e) make such other orders that the Supreme Court deems appropriate.

Request for the interception of postal items

48.(1) For the purposes of a criminal investigation, the Attorney General may, in accordance with the provisions of this Act and any other written law, execute a request from a foreign State to assist in the interception of a postal item during the course of its carriage by a postal service.

(2) The Attorney General may grant a request under subsection (1) if the Attorney General is satisfied that —

- (a) the foreign State has jurisdiction over the criminal matter for which the request is sought; and
- (b) there are grounds to suspect that the information obtained pursuant to the interception will be relevant to the commission of a serious foreign offence in the foreign State.

Order for the interception of postal items

49.(1) Where the Attorney General approves a request under section 48, the Attorney General or the Commissioner of Police may make an ex-parte application to the Supreme Court for an order to intercept a postal item.

(2) Where the Supreme Court grants an application under subsection (1), the Supreme Court may direct —

- (a) that the intercepted postal item or a copy thereof is transmitted to or from the foreign State;
- (b) such other orders that the Supreme Court deems appropriate.

Request for the preservation of communication data

50.(1) A foreign State may request the Attorney General to assist in the preservation of communications data.

(2) The Attorney General may assist in the preservation of communications data where there are reasonable grounds to believe that the communications data held in Seychelles will be relevant to a criminal investigation or proceedings in the foreign State.

(3) A request for the preservation of communications data by a foreign State to the Attorney General under this section shall —

- (a) contain a brief description of criminal investigation and the reasons for the necessity of the preservation of the communications data;
- (b) contain a description of the communications data to be preserved and its relationship to the criminal investigation or prosecution, and in particular, identifying whether the communications data to be preserved includes —
 - (i) subscriber information;
 - (ii) traffic data;
 - (iii) any other information falling within the definition of communications data;
- (c) contain information to identify the custodian of the stored

communications data or the location computer system or relevant technology;

- (d) indicate the manner and time within which the foreign State intends to submit a substantive request for assistance for the production of the required communications data.

(4) Where the Attorney General approves a request under this section, the Attorney General or the Commissioner of Police may make an ex-parte application to the Supreme Court for an order to preserved the required communications data.

(5) The preservation of communications data pursuant to a request made under this section shall not exceed a period of 120 days, unless the Supreme Court determines otherwise.

Covert surveillance

51.(1) A request may be made to the Attorney General by a foreign State for the deployment of covert surveillance.

(2) Covert surveillance under this section shall take place in accordance with regulations made under this Act or any other written law.

(3) Regulations under subsection (2) may set out a framework for —

- (a) covert electronic surveillance, including the use of a tracking device;
- (b) the establishment of joint investigation team with the competent authority in Seychelles and the competent authority in the foreign State.

PART 4

MISCELLANEOUS

Register of Requests for Assistance in Criminal Matters

52.(1) The Attorney General shall maintain a case management system with such details and in such form as the Attorney General may determine.

- (2) The case management system shall contain —
 - (a) all requests made or received by the Attorney General under sections 7 and 21;
 - (b) all requests made or received by an authority authorized by Seychelles under sections 8 and 22.

(3) The Minister responsible for foreign affairs or an authorized person may access the case management system to verify or cross-reference any information.

Authentication of documents

53.(1) Subject to sections 12, 40 and 41 and any law relating to the admissibility of evidence, any document that is obtained, provided or produced pursuant to a request made under this Act and that is duly authenticated is admissible in evidence without any further proof in any criminal proceedings.

(2) A document is duly authenticated for the purposes of subsection (1) if —

- (a) it purports to be signed or certified by a Judge, Magistrate, or officer in or of that foreign State; and
- (b) either —
 - (i) it is verified by oath or affirmation of a witness or of an officer of the government of the foreign State; or
 - (ii) it purports to be sealed with an official or public seal of that foreign State or of a Minister, department or officer of the government of that foreign State.

(3) All courts in Seychelles shall take judicial notice of the official or public seal referred to in subsection (2).

(4) Nothing in this section prevents the proof of any matter or admission in evidence of any document in accordance with any other provision of this Act or any other law of Seychelles.

Use of video link in proceedings

54.(1) A court may issue an order that the testimony or statement of a person, the identification of a person or thing or any other form of assistance under this Act be provided by video link.

- (2) An order issued under subsection (1) shall order the person —
- (a) to attend at a time and place fixed by the court to give a statement, testify or otherwise provide assistance by video link and to remain in attendance until excused by the foreign State;
 - (b) to answer any questions raised by the foreign State in accordance with the law that applies to that foreign State; or
 - (c) to produce or show any item, article or document or copy thereof to the foreign State at the time and place fixed by the court and the court may impose any other appropriate conditions;
 - (d) to comply with such other directions that the court deems necessary to facilitate a request for assistance by a foreign State.

(3) The costs of establishing a video link and costs related to the servicing of the video link in Seychelles shall be borne by the foreign State, unless otherwise agreed by the Attorney General and the foreign State.

(4) Section 31(5), (6), (7), (8), (9) and (10) shall apply *mutatis mutandis* to this section.

Sharing Arrangements

55.(1) Subject to subsection (3), the ordinary costs of executing a request by a prescribed foreign State, as defined in section 19, shall be borne by Seychelles unless otherwise specified in the treaty between the prescribed foreign State and Seychelles.

(2) The ordinary costs of executing a request by a foreign State, as defined in section 20, shall be borne by that foreign State, except where —

- (a) the foreign state gives an undertaking to the Attorney General that the foreign State will, subject to the laws of that foreign State, comply with a future request by Seychelles; and
- (b) the Minister responsible for foreign affairs has directed the Attorney General to waive the costs of executing the particular request; or
- (c) the Attorney General is willing to proceed with the request in accordance with subsection (3).

(3) The Attorney General shall invite a foreign State to enter sharing arrangements where the Attorney General takes the view that the request imposes an excessive burden on the resources of Seychelles.

(4) The sharing arrangements may include —

- (a) the costs of a legal consultant appointed by the Attorney General to execute the request or the costs of over time to be paid to a State Counsel;
- (b) the sharing of any monies that resulted from the recovery, forfeiture or confiscation of a foreign serious offence;
- (c) any such other financial arrangements that the Attorney General and foreign State may agree to enter.

(4) The monies received from any sharing arrangements shall be paid into the Consolidated Fund or a fund established under another Act.

Language

56. The documents in support of a request for mutual assistance in criminal matters shall be in English unless stipulated otherwise in any treaty or international arrangement.

Authority to enter into treaty: article 64 of the Constitution

57.(1) The President, or any person authorized by the President, may enter into a treaty, whether bilateral or multilateral, in respect of mutual assistance in criminal matters for the purposes of this Act and such treaty shall be binding on Seychelles pursuant to article 64(5) of the Constitution.

(2) Where a treaty is entered into under subsection (1), the Minister responsible for foreign affairs shall comply with section 19(3).

Regulations

58.(1) The Minister may make such regulations as are necessary or expedient to give full effect to or for carrying out the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made for all or any of the following purposes —

- (a) prescribing the procedure for enforcing foreign confiscation orders;
- (c) covert surveillance;
- (b) prescribing the fees, costs and charges payable under this Act;
- (c) prescribing such forms for the purposes of this Act;
- (d) prescribing for such other matters as are contemplated by or necessary for giving full effect to, the provisions of this Act and for their due administration.

Rules of Court

59. Rules of court, made by the Chief Justice, may provide for the practice and procedure in relation to proceedings under this Act.

Repeal and savings

60.(1) The Mutual Assistance in Criminal Matters Act, Cap. 284, is repealed.

(2) Nothing in this Act affects —

- (a) the validity of any request for mutual assistance in criminal matters made by Seychelles to a foreign State prior to the commencement of this Act;
- (b) the validity of any request for mutual assistance in criminal matters made by a foreign State to Seychelles prior to the commencement of this Act;
- (c) any procedure relating to the provision or obtaining of mutual assistance in criminal matters prior to the commencement of this Act;
- (d) any decision relating to the provision or obtaining of mutual assistance in criminal matters made prior to the commencement of this Act.

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 5th April, 2022.



Mrs. Tania Isaac
Clerk to the National Assembly

ASSOCIATIONS ACT, 2022

(Act 8 of 2022)

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ASSOCIATIONS ACT, 2022

(Act 8 of 2022)



I assent

A handwritten signature in black ink, appearing to read "Wavel".

Wavel Ramkalawan
President

28th April, 2022

AN ACT TO PROVIDE FOR THE REGISTRATION AND REGULATION OF ASSOCIATIONS, TO REPEAL THE REGISTRATION OF ASSOCIATIONS ACT, CAP 201, AND TO PROVIDE FOR OTHER RELATED MATTERS.

ENACTED by the President and the National Assembly.

PART I - PRELIMINARY

Short title

1. This Act may be cited as the Associations Act, 2022 and shall come into operation on such date as the Minister may, by notice published in the Gazette appoint.

Interpretation

2. In this Act, unless the context otherwise requires —

“accounting period” in relation to a registered association means the period specified in its rules, in respect of which a statement of receipts and payments is to be prepared;

“association” means 5 or more persons having agreed to come together under a formal structure for a common purpose other than that of pecuniary gain to its members, but does not include a political party;

“auditor” means a person appointed as such at the annual general meeting of an association;

“charitable organisation” means an organisation with the purpose of benefitting the general public;

“Court” means the Supreme Court;

“executive committee” means the executive committee of an association, appointed under section 25;

“founder” means a person or persons who has or have undertaken some or all of the formational work needed to create an association, and who endows or endow the association with its initial assets;

“foreign association” means an association formed outside Seychelles or in Seychelles, where at least one member is not a citizen of Seychelles ;

“member” means a member of an association;

“Minister” means the Minister responsible for legal affairs;

“office” in relation to an association means the registered office of the association;

“officer” means a person appointed as chairperson, vice-chairperson, treasurer, secretary or any other member of the executive committee or an auditor of an association;

“register” means the register to be kept under section 31;

“registered ” means registered under this Act;

“Registrar” means the Registrar of associations appointed under section 23;

“revenue” means the gross receipts of a registered association;

“secretary” means the secretary of an association residing in Seychelles; and includes —

- (a) a person performing the duties of secretary; and
- (b) in the case of a foreign association, a person appointed specifically to perform duties of secretary;

“umbrella association” means an association formed by two or more associations registered under this Act, for the purpose of providing a common platform to represent them or to facilitate the exchange of information among them or to adopt and enforce standards of conduct among them or for any other lawful purpose; and

“working day” means a day other than a Saturday, Sunday or public holiday.

PART II - REGISTRATION OF ASSOCIATIONS

Application for registration

3.(1) The proposed secretary of an association seeking registration under this Act shall make an application in writing to the Registrar not later than 3 months from the date of the first meeting at which the formation of the association and its rules were approved.

(2) An application made under subsection (1) shall state the name, registered office, place of business and objects of the association, and shall be accompanied by certified copies of the following —

- (a) the names, occupations, registered office, addresses, nationalities and documents of proof of identity of the officers, members and where necessary, of the founder or co-founders, of the association for the time being;
- (b) the resolution of the members of the association appointing the officers;
- (c) a copy of the minutes of proceedings of the meeting at which the rules of the association were approved;
- (d) the rules of the association; and
- (e) such other information in respect of the association as the Registrar may require.

(3) A foreign association seeking registration shall, in addition to the requirements under subsection (2), furnish the Registrar with the following —

- (a) the names and address of the person authorised to represent the foreign association in Seychelles;
- (b) the names and address of the secretary of the association residing in Seychelles;
- (c) the registered office of the association in Seychelles;
- (d) the nature of the activity in which the foreign association intends to engage in Seychelles; and
- (e) such other information or documents relating to paragraphs (a) to (d) in respect of the association as the Registrar may require.

(4) In respect of a foreign association, the Registrar may request information and documents relating to the type and sources of funds of the

association, which shall be kept by the Registrar and shall be accessible only by the relevant authorities or interested parties as may be determined by the Registrar.

(5) The Registrar may, in considering an application under this section, consult any relevant public body or foreign authority.

(6) Upon being satisfied that subsections (1), (2), (3) and (4) have been complied with and that there is no objection under subsection (5), the Registrar may —

- (a) register the association by entering its name in the register and deliver to the applicant a certificate in the form set out in Schedule A;
- (b) request as a condition precedent to registration that the books of the association be kept in English and that any alteration which, in his or her opinion, is necessary be made to the rules of the association; or
- (c) refuse registration.

(7) An association that has been registered remains registered until —

- (a) its registration is cancelled under this Act;
- (b) the association is voluntarily deregistered; or
- (c) the association is wound up or dissolved.

(8) For the purposes of this section and section 16(3), the Registrar shall maintain a register of all associations registered or deemed to be registered under this Act or, immediately upon the coming into force of this Act were in operation under the repealed Act, in such form as the Registrar may determine.

(9) The register may be maintained in an electronic data storage retrieval system or such other form as the Registrar may determine, but shall be capable of producing copies in paper form if required.

(10) The register maintained by the Registrar under subsection (1) shall contain in respect of every association —

- (a) the name and any former name of that association;
- (b) the registration number and date of registration;
- (c) the date of registration;
- (d) the address of the registered office;
- (e) the date on which the name of the association was struck off the register, where applicable;
- (f) the date on which the name of the association was restored to the register, where applicable;
- (g) the name and address of the members of the executive committee and any former members of the executive committee;
- (h) the name and address of the secretary and former secretary; and
- (i) any other information required by the Registrar.

(11) An association kept on the register of associations under subsection (8) shall in each year, pay an annual fee of SCR 200 to the Registrar by the 31st December of each year.

(12) If an association fails to pay the annual fee payable in accordance with subsection (11), the association in default is liable to pay, in addition to the annual fee, an administrative penalty of SCR100 to the Registrar for every month or part of that month that the default continues.

Electronic mode of application for registration

4.(1) An application for the registration of an association may be made by electronic means, by the secretary, through —

- (a) filing of the standard online documents as may be specified by the Registrar through regulations and complying with other requirements of this Act in respect of registration of associations; or
- (b) affixing a digital signature and transmitting, by electronic means, the application for registration to the Registrar and complying with paragraph (a) and the requirements of the Electronic Transactions Act, 2001 with regard to digital signatures.

(2) This section shall, with necessary modifications as may be specified by the Registrar through regulations, apply to an application for registration filed by a foreign association.

Refusal to register

5.(1) The Registrar may refuse to register an association under this Act —

- (a) where the objectives of the association as specified in its constitution are in contravention of the laws of Seychelles or in the opinion of the Registrar the activities and objectives of the association are likely to be contrary to the national interest or a threat to the public interest or public order;
- (b) where the application for registration does not comply with the requirements of this Act; or
- (c) where the applicant has given false or misleading information in any material particular.

(2) Where the Registrar refuses to register an association under subsection (1), the Registrar shall inform the applicant in writing of the reasons for his or her refusal within thirty days from the date of the refusal.

(3) A person or an association aggrieved by the decision of the Registrar under subsection (1) may, within two months of the date of the

Registrar's letter under subsection (2), appeal to the Minister against that decision.

Identical or deceptive similarity of name not allowed

6.(1) No association shall be registered under a name —

- (a) identical with that under which any other existing association is registered or so nearly resembling such name as to be likely, in the opinion of the Registrar, to deceive the public or the members as to its nature or its identity;
- (b) which in the opinion of the Registrar, suggests or is calculated to suggest the patronage of or any connection with Seychelles or the Government of Seychelles or with any other country or the Government of that country unless otherwise approved by the Registrar; and
- (c) which is indecent, offensive or, in the opinion of the Registrar is otherwise objectionable or misleading or is likely to being confused with another association.

(2) No association shall change its name without the prior approval of the Registrar.

(3) A person may apply to the Registrar for the reservation of a name for an association set out in the application as —

- (a) the name of an intended association; or
- (b) the name to which an existing association proposes to change its name.

(4) The Registrar may reserve a name for an association if the Registrar is satisfied as to the *bona fides* of the application and that the proposed name by which the intended association or existing association could be registered is not such as to contravene this Act or any other law.

(5) The Registrar shall, on approving a reservation of a name in accordance with subsection (4), notify the applicant, in writing, and shall

register the name as reserved for a period of 30 days from the date of the notice.

(6) At any time while the name is so reserved in accordance with subsection (4) a person may make an application to the Registrar for an extension of the period, and if the Registrar is satisfied as to the *bona fides* of the application, the Registrar may grant an extension of the reservation of the name for a period not exceeding 5 months from the date of the expiration of the 30 day period under subsection (5).

(7) For the avoidance of doubt, a name for an association shall not be reserved for a period exceeding 6 months.

(8) During the period in which a name is reserved, no association, other than the intended association or an existing association in respect of which the name is reserved may be registered under this Act, whether originally or on change of name, under the reserved name.

(9) An association shall normally contain in its name the word “association”.

(10) The Minister may prescribe fees and forms for the reservation of a name for an association under this section.

Incorporation: Registration essential

7.(1) An association registered under this Act shall be a body corporate having perpetual succession and a common seal, and power in its corporate name to —

- (a) acquire, hold, and dispose of property, movable or immovable;
- (b) sue and be sued in its corporate name; and
- (c) generally to do all such acts and things as bodies corporate may do and perform.

(2) Service of process on the secretary of the association or at the registered office, or principal place of business shall be deemed to be service on the association.

PART III - RULES OF ASSOCIATIONS

Rules

8.(1) The rules of every association seeking registration under this Act shall contain the several matters specified in Schedule B, and shall, on the association being registered, become the rules of the registered association.

(2) An association may amend its rules at a general meeting convened in that behalf, where not less than three-fifths of the total number of members of the association are present in person or by proxy.

(3) Two-thirds of the number of members present in person or by proxy at a meeting held under subsection (2) shall be sufficient to amend the rules of the association.

(4) An amendment of the rules of an association shall have no effect unless it is approved by the Registrar, in the form set out in Schedule C.

(5) An application for the registration of an amendment to the rules of an association shall be signed by the secretary and shall be accompanied by —

- (a) two copies of the proposed amendments to the rules; and
- (b) a certified copy of the minutes of the proceedings of the general meeting at which the special resolution to amend the rules was passed.

(6) A copy of the rules so approved shall be filed with the Registrar.

Membership of minors

9.(1) The rules of a registered association may provide for the admission of a person under eighteen years of age as a member.

(2) Anything to the contrary in any enactment notwithstanding, any such member may, if he or she is over fifteen years of age by himself or herself, and if he or she is under that age by his or her parent or guardian, execute all instruments and give all acquaintances necessary to be executed or given under the rules.

(3) For the avoidance of any doubt, a member below the age of fifteen years shall not be an officer of the association.

Rights of members

10.(1) Every registered association shall, upon request by a member, deliver to the member a copy of the rules of the association in paper or digital form.

(2) Every registered association shall supply gratuitously to every member or person having an interest in its funds, on his or her application, either —

- (a) a copy of the last annual return of the association;
- (b) a copy of a balance sheet or other document duly audited containing the same particulars regarding the receipts and expenditure, funds and effects of the association which are contained in the annual return; or
- (c) a copy of all receipts, expenditure and banking transactions.

Inspection of books

11. A member or person having an interest in the funds of a registered association may inspect the books at all reasonable times at the registered office of the association, except that the person shall not, unless he or she is an officer of the association, or is specially authorized by a resolution of the association to do so, have the right to inspect the loan or debit account of any other member without the written consent of that member.

Power of member to dispose of sums payable at his or her death by nomination

12.(1) A member of a registered association, not being under the age of eighteen years may, by writing under his or her hand delivered at or sent to the registered office of the association, or made in a book kept at that office, nominate a person to whom any sum of money payable by the association upon the death of that member, shall be paid.

(2) A person nominated under subsection (1) shall not be an officer or employee of the association, unless that officer or employee is the spouse, father, mother, child, brother, sister, nephew or niece of the nominator.

(3) A nomination made under subsection (1) may be revoked and varied in writing by a document under the hand of the nominator, delivered, sent, or made under that subsection.

Sureties

13.(1) The rules of an association may require any officer who is appointed to an office involving the receipt or management of monies collected on behalf of the association to become bound with one or more sureties for the just execution of such office, and for rendering a true account according to the rules and regulations of the association, before the officer takes up the duties devolving upon the office.

(2) The bonds taken under subsection (1) shall be filed with the Registrar without payment of a fee or stamp duty, and in case of forfeiture, shall be handed over to the treasurer or other appropriate officer of the association for such suitable legal action as may be deemed advisable.

Rules to be binding

14.(1) The rules of an association shall bind the association and every member or person claiming through such member to the same extent as if such member or person has subscribed his or her name to the rules.

(2) No person shall be liable for debts contracted by an association after he or she has ceased to be a member of the association, unless the debt was contracted during the period when he or she was still a member of the association.

Secretary to make returns

15.(1) The secretary of every registered association shall, before the thirty-first day of July in each year, or when and as often as so requested by the Registrar, furnish to the Registrar a return of the names and addresses of the officers of the association and an audited account of the annual revenue

and expenditure, and of the assets and liabilities, of the association in such form as the Registrar may require:

(2) Any change occurring in the place of office or among the officers of a registered association shall be notified to the Registrar within fourteen days of such change.

(3) A secretary who fails to comply with sub-section (1) or (2) commits an offence and shall, on conviction be liable to a fine not exceeding SCR500 for the first 60 days or part of those days, and SCR 100 for every day for the next 30 succeeding days or part of them, during which the non-compliance continues.

Information to the public

16.(1) Any person shall have a right to inspect the register and obtain a certified copy of any document of a registered association from the Registrar, subject to the payment of such fee as the Minister may prescribe.

(2) The Registrar shall publish in the Gazette or electronically in any form that is accessible to the public, the following documents —

- (a) every newly registered association, within fourteen days of its registration; and
- (b) every association struck off the register, within fourteen days of its striking off.

(3) As soon as practicable after 1 January in every year, the Registrar shall publish in the *Gazette* a list of all associations registered or deemed registered under this Act and maintained on the register in accordance with section 3(8).

(4) The Registrar shall preserve and have custody, in original or other form of all reports and other documents submitted to the Registrar by a registered association under this Act.

(5) The Minister may prescribe other circumstances or manner in which a member of the public may have access to documents preserved under this Act.

PART IV - CANCELLATION, AMALGAMATION AND WINDING UP OF ASSOCIATIONS

Cancellation of registration

17.(1) The Registrar may cancel the registration of a registered association on the grounds that —

- (a) the registration was obtained by fraud or misrepresentation;
- (b) the association has engaged or is about to engage in activities likely to cause a serious threat to public security or public order;
- (c) the association has contravened its rules or this Act, or the Anti-money Laundering and Countering the Financing of Terrorism Act, the Prevention of Terrorism Act or the Beneficial Ownership Act, and has persisted in its default after the Registrar has given it written notice specifying the default and fixing a time which shall not be less than twenty one days for remedying the default, and that time has expired;
- (d) the association has in any way misapplied its funds;
- (e) the Registrar has reasonable cause to believe that the association is not carrying on its functions or is not in operation; or
- (f) the association has ceased to function.

(2) Where the Registrar is satisfied that the registration of an association should be cancelled, the Registrar shall give notice to the secretary, of the Registrar's intention to cancel the registration of the association and of the grounds for his or her decision.

(3) Notwithstanding subsection (2), the Registrar may inquire from relevant authorities to ascertain whether there exists any objection or reasonable ground to prevent the striking off of an association or to suspend the striking off until a later date.

(4) A notice under subsection (2) shall be given —

- (a) by registered post; or
- (b) by service on the secretary or at the registered office of the association or, in the case of a foreign association, at its principal office in Seychelles;
- (c) where the secretary of the association cannot be found or the registered office, or the principal office is not known, by publication of the notice in the *Gazette* or a daily newspaper.

(5) A notice given under subsection (2), shall serve as a notice on the association, its members and officers not to deal with the assets of the association unless otherwise approved or directed by the Registrar.

(6) The Registrar may prescribe the procedures in relation to ascertaining the debts, liabilities and assets of the association, to allow the proper dealing with the assets of the association under subsections (4) and (8)

(7) Any officer who fails to comply with any request for information under any procedures prescribed under this section commits an offence and shall be liable on conviction to a fine of level 2 on the standard scale or to imprisonment not exceeding 3 years or to both.

(8) An association may, not later than twenty-one working days after the date of a notice under subsection (2), appeal to the court against the decision of the Registrar, and, on any such appeal the Judge may make such order as the Judge deems fit.

(9) The registration of an association shall be cancelled and the association shall be struck off the register or wound up by the Registrar and struck off the register in accordance with section 22 —

- (a) where no appeal has been lodged under subsection (7), not later than sixty days after the date of a notice under subsection (2);

- (b) where an appeal has been lodged under subsection (7) and the appeal has been dismissed, not later than 30 days after the date of the dismissal of the appeal.

(10) Upon the striking of an association off the register, all the property of that association shall become vested in the Registrar and an administrator shall be appointed by the Minister for the purpose of advising the Registrar how such property shall be used towards meeting, as far as possible, all the debts and liabilities of the association, and where all the assets are not disposed off, to which association or charity such assets are to be vested.

(11) The Registrar shall subsequent to subsection (9) recommend to the Minister to which association or charity the un disposed assets shall be vested as the Minister may determine.

(12) A person appointed by the Minister under subsection (10) shall submit a report to the Registrar.

(13) Any cost incurred by the Registrar under this section shall be borne by the association and may be paid out from the proceeds of any disposal of the property.

(14) Any person who deals with the property of an association without the approval of the administrator under subsection (9) commits an offence and shall be liable on conviction to a fine of level 2 on the standard scale or to imprisonment not exceeding 3 years or to both.

Voluntary dissolution

18.(1) The Registrar may cancel the registration of an association upon an application made by the association or any officer for voluntary dissolution, on the grounds that the association has ceased to function, subject to the submission of the relevant application, information and documents as the Registrar may determine, provided there is no objection of the striking off from other relevant authorities

- (2) Where the Registrar is satisfied that the registration of an

association should be cancelled, the Registrar shall publish a notice in the *Gazette*, electronically, or in any other form that is accessible to the public.

(3) An officer or any interested person may lodge an opposition with the Registrar against the voluntary dissolution of an association.

(4) An opposition under subsection (3) shall be made in writing and the Registrar may require that it be supported by an affidavit.

(5) An opposition under subsection (3) shall be served on the Registrar within twenty-one days from the date of publication of the notice under subsection (2).

(6) Where —

(a) no person opposes the voluntary dissolution of an association and the Registrar is satisfied that the association be dissolved; or

(b) the Registrar is satisfied that the association be dissolved,

the Registrar shall cancel the registration of the association and shall strike it off the register and publish a notice of the dissolution in the *Gazette*.

(7) The association may, before the period specified in the notice under subsection (2), by special resolution designate to the Registrar, a registered association to which any remaining property of the association after the settling of all its debts and obligations shall be transferred.

Amalgamation

19.(1) Subject to subsections (2) and (4), two or more registered associations may amalgamate to form one association if a special resolution to that effect is approved by every registered association concerned.

(2) Where two or more registered associations have resolved to amalgamate, the secretaries of the associations concerned shall, within thirty days after the last association has done so, jointly —

- (a) give written notice of the amalgamation to the Registrar;
and
- (b) apply under section 3 for the registration of the new association formed after the amalgamation-

(3) Upon receipt of a notice under subsection 2(a), the Registrar may inquire from the relevant authorities to ascertain whether there exist any objection or reasonable ground to prevent the striking off of the association.

(4) Where the Registrar registers an association formed by the amalgamation of two or more registered associations, the Registrar shall cancel the registration and strike those associations off the register and shall issue the new association a certificate in the form set out in Schedule D.

(5) The amalgamation shall take effect from the date of the registration of the new association under subsection (3).

Inquiry into affairs and conduct of association

20.(1) The Registrar may —

- (a) if the Registrar has reasonable grounds to believe that any condition specified under section 17 (1) exists in relation to a registered association; or
- (b) upon the written application of one tenth of the members of an association,

call for all accounts and documents relating to the association, and institute an inquiry into the affairs and conduct of the association.

(2) For the purposes of this section, the Registrar may summon witnesses and examine them on oath.

(3) A person summoned to attend as a witness or to produce any document shall comply with the summons in the same manner as a witness is bound to comply with the summons issued by the court.

(4) Any person who —

- (a) without reasonable excuse, fails to appear before the Registrar when summoned or required by the Registrar;
- (b) without reasonable excuse, fails to produce a document when required to do so by the Registrar;
- (c) gives false evidence before the Registrar,

commits an offence and shall be liable on conviction to a fine of level 2 on the standard scale or to imprisonment not exceeding six months or to both.

(5) Every enactment relating to witnesses and evidence shall, subject to the other provisions of this Act, be applicable to every witness appearing, and to evidence given, before the Registrar.

(6) Where at the conclusion of an inquiry the Registrar is of the opinion that the registration of an association should be cancelled, the Registrar shall proceed and cancel the registration under section 17.

(7) An association aggrieved by the decision of the Registrar under this section may, not later than fourteen working days after the date of the decision under subsection (6), appeal to the court against the decision of the Registrar, and, on any such appeal the Judge may make such order as the Judge deems fit.

(8) The Registrar may, with the approval of the Attorney General, appoint an officer or any other person to conduct an inquiry in any case for the purposes of subsection (1) under such terms and conditions as the Registrar may determine.

(9) The Registrar may determine that the whole or any part of the expenses of or incidental to an inquiry resulting from an application made under subsection 20(1)(b), be paid or refunded by the Association and may direct the expenses be so paid or refunded.

(10) The officer or other person appointed under subsection (8) shall have the same powers as the Registrar under this section for the purposes of the inquiry.

(11) The officer or other person appointed by the Registrar under subsection (8) to conduct an inquiry shall provide a report of that inquiry to the Registrar with his or her conclusions.

(12) The report of the inquiry, if certified or approved by the Registrar, shall be deemed to be the conclusions of the Registrar under this section.

(13) A copy of the report shall, if certified by the Registrar to be a true copy, be admissible as evidence —

- (a) of any fact stated in the report; or
- (b) of the opinion of a person as to any matter referred to in the report,

in any legal proceedings instituted in respect of an association as a result of an inquiry under this section.

Power of Registrar to call for production of books, accounts and other returns

21.(1) The Registrar may, when and as often as the Registrar may deem necessary, call upon the secretary, or treasurer or other member of the executive committee of any association, to produce to him or her or to an auditor or accountant, at such time and place as the Registrar may determine, any book or document in the custody of such secretary, treasurer or other member of the executive committee.

(2) Notwithstanding the provisions of subsection (1), the Registrar shall have power to institute and conduct on-site inspections with or without notice, to enable the Registrar to ensure that a registered association is complying with this Act.

(3) Any secretary, treasurer or other member of the executive committee who fails to comply with the provisions of sub-section (1) commits an offence and shall be liable on conviction, to a fine of level 1 on the standard scale and to imprisonment not exceeding three months or to both.

Winding up of affairs of association

22.(1) The Minister may appoint a liquidator for the purpose of winding up and dissolving a registered association, on such terms and conditions as the Minister may specify in the letter of appointment.

(2) The liquidator shall for the purposes of subsection (1) —

- (a) identify and take possession of all the assets of the association;
- (b) call for claims by such public notice as the liquidator deems appropriate, requiring the claims to be made to him or her within the period of not less than ninety days of the notice;
- (c) apply the assets received —
 - (i) in satisfaction of any dues to the Government;
 - (ii) in payment of the remuneration for the services of the liquidator; and
 - (iii) in satisfaction of all claims admitted by the liquidator.

(3) When the liquidator has complied with the provisions of subsection (2), he or she shall submit a written report of his or her conduct of the liquidation to the Registrar and, upon receipt of the report, the Registrar shall recommend to the Minister that all the assets of the association that are not disposed of shall vest in such association or charitable organisation as the Minister may determine.

(4) Where the name of an association has been struck off the register by the Registrar but the association has not been wound up, any interested party may, before the expiration of 5 years from the date of cancellation, apply to the court by petition supported by an affidavit of facts to restore the association to the register.

(5) Any order of the court for the restoration of the association shall comply with this Act and may be subject to such conditions that the court may find fit to impose.

(6) In any such proceedings, the Registrar shall be made a party to the proceedings.

PART V - ADMINISTRATIVE PROVISIONS

Appointment of Registrar

23.(1) The President may appoint a fit and proper person to be the Registrar of Associations for the purposes of this Act.

(2) The President may appoint a public officer as Deputy Registrar and such other public officers as the President considers necessary, to assist the Registrar in the proper discharge of the functions of the Registrar.

(3) The Registrar may delegate to the Deputy Registrar or such other public officer appointed under subsection (2), any of the functions of the Registrar under this Act.

(4) The assignment or delegation of any function under subsection (4) shall not prevent the exercise of that function by the Registrar.

(5) The Deputy Registrar or other public officer appointed under subsection (2) shall have the powers of the Registrar in respect of the delegation.

Secretary

24.(1) Every registered association shall have a secretary who may be an individual, a company or body corporate, or a firm.

(2) Anything required or authorised to be done by the secretary may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by any officer of the association authorised generally or specially in that behalf by the executive committee, until such time as a secretary is appointed.

Executive committee

25.(1) Every association registered under this Act shall have an executive committee which shall include the members proposed and voted

by the association as chairperson, vice chairperson, treasurer, secretary of the association.

(2) The members of the executive committee may in accordance with the association rules, form sub committees and appoint members amongst themselves to be part of the sub committees.

(3) A member proposed and voted under subsection (1) shall apply to the Registrar for approval before becoming a member of the executive committee of the association.

(4) Before approving an application under subsection (3), the Registrar shall satisfy himself or herself that the proposed member understands the obligations of the respective office, possesses the relevant qualifications and experience as may be specified by the Registrar, and has satisfied all the necessary requirements under this Act.

(5) With regard to the position of secretary, the Registrar shall, in addition to subsection (4), be satisfied that the applicant is a resident of Seychelles, and in the case of a company, firm, or body corporate applying to act as secretary, at least one officer of the company, firm or body corporate shall meet the requirements of subsection (4).

(6) The Registrar shall prescribe the application form for the purposes of this section, which shall contain a declaration to be sworn by each applicant regarding the information and particulars provided in the application.

(7) The application under subsection (6) shall in addition contain a declaration from all the members of the executive committee to the effect that they are aware of their obligations under this Act and other relevant laws.

(8) An application under this section shall be subject to payment of such fee as the Minister may prescribe.

(9) The Registrar may approve or decline an application under this section, or may cancel an application already approved on the grounds that the applicant did not comply with the terms and conditions of the approval

issued by the Registrar, or contravened the provisions of this Act or any other relevant law.

(10) No person shall be appointed as a member of the executive committee, where that person —

- (a) is of unsound mind;
- (b) is an undischarged bankrupt;
- (c) has been removed as an officer for violation of the rules of the association or any other written law; or
- (d) has been convicted of an offence involving corruption, fraud, dishonesty or moral turpitude.

(11) Where a person is removed from office for a reason provided under subsection (10) or was a member of the executive committee of an association that has been cancelled under this Act, he or she shall be restricted from being appointed on the executive committee of an association for a period of not less than three years.

(12) The chairperson, vice-chairperson, treasurer and secretary shall be appointed for a term of three years and shall be eligible for re-appointment for one more term of three years.

(13) For the avoidance of doubt, the chairperson, vice-chairperson, treasurer and secretary shall not hold office for more than 2 terms or a tenure exceeding 6 years, except where an application is made to the Registrar on exceptional grounds, for extension of the 2 terms for a further term of three years.

(14) An application under subsection (13), shall be made to the Registrar in the prescribed form.

(15) Any person whose application is denied or whose approval is cancelled under subsection (9) may appeal to the court under section 32.

(16) Where a member of the executive committee resigns or is removed from office by the association, the association shall, within 14 days

of the date of notice of resignation or removal, notify the Registrar, and seek the approval of the Registrar for the resignation or removal of the member.

(17) Where the Registrar approves a resignation or removal of a member of the executive committee under subsection (14), the association shall, within 14 days of the date of the approval, seek approval of the Registrar for the appointment of a new member to fill the vacancy on the executive committee.

(18) Any person who provides false information to the Registrar in an application or declaration under subsection (6) commits an offence and shall be liable on conviction to a fine of level 2 on the standard scale or to imprisonment not exceeding 3 years or to both.

(19) Any person who acts as a member of the executive committee of an association without the approval of the Registrar, or who continues to act as a member of the executive committee after cancellation of his or her membership by the Registrar, commits an offence and shall be liable on conviction to a fine of level 2 on the standard scale or to imprisonment not exceeding 3 years or to both.

Contribution

26.(1) To meet the expenses incurred in carrying out the purposes of this Act, every registered association shall pay to the Registrar on or before the fifteenth day of September in every year, such percentage of the profits of the association for the preceding year not exceeding one half per centum as may be prescribed in regulations.

(2) A contribution under subsection (1) shall be payable by an association whose profit for the previous year exceeds SCR50,000.

(3) The Registrar may exempt any association from the payment of such contribution if, in the opinion of the Registrar —

- (a) undue hardship would result from such payment;
- (b) the association is engaged in charitable activities; or
- (c) the association is primarily funded from the Consolidated Fund.

(4) Any contribution due by an association shall be a debt to the Government and may be sued for and recovered by the Registrar or the Attorney General by civil action in any court of competent jurisdiction.

(5) Notwithstanding any written law, any person, authority or public body shall on the written request of the Registrar provide the Registrar with any information necessary for the effective implementation of this section.

Application of funds

27.(1) A registered association shall not apply its funds except for the furtherance of its objects and the payment of emoluments to its employees, allowances or expenses to its officers, and expenses for its administration including the auditing of its accounts.

(2) The executive committee of a registered association shall not incur any expenditure —

- (a) during the period between the accounting date and the next annual general meeting, in excess of one sixth of the expenditure in the preceding accounting period;
- (b) at any other time in excess of SCR1000 under any one item and in excess of SCR4,000 in any year,

unless the expenditure has been previously approved by a general meeting.

(3) A foreign association shall not collect funds or act as an agent in Seychelles on behalf of any person and, except with the approval of the Minister, and in compliance with the Exchange Control Act transfer its property or funds to any country outside Seychelles or make any payment in Seychelles —

- (a) on behalf of a person not resident in Seychelles; or
- (b) in respect of any activity of the association other than its activities in Seychelles.

(4) Where any payment is made in contravention of subsection (3), the Registrar may initiate the relevant legal proceedings and engage the

relevant authorities for the purpose of recovering the amount paid, from the person making the payment or from the person receiving the payment.

(5) Any member of the executive committee who participates in the contravention of subsection (3) commits an offence and shall be liable on conviction to a fine of level 2 on the standard scale or to imprisonment not exceeding six months or to both.

Records and accounts

28.(1) Every registered association shall open and maintain a bank account into which all monies received by the association shall be deposited and transacted.

(2) Every officer who is responsible for keeping any account of a registered association or for the collection, receipt, disbursement, custody or control of the money of the association shall keep a record of all money received and paid by that officer for and on behalf of the association and shall —

- (a) at least once a year on the accounting date;
- (b) on the officer's resignation;
- (c) on vacation of office by the officer; or
- (d) where required to do so by rules of the association or this Act,

render to the association a true account of all monies received and paid by him or her since his or her appointment or since he or she last rendered an account.

(3) The treasurer of every registered association shall, once a year, not later than one month after the accounting date, prepare and submit to the committee, a statement of all receipts and payments of the association in respect of the accounting period and of the assets and liabilities of the association existing on the accounting date.

(4) Every officer shall, if so required, hand over to the association the balance that on any audit appears to be due from him or her, and all bonds, securities and effects, books, papers or other property of the association in his or her possession, under his or her control or entrusted to his or her custody.

(5) Where an officer fails to comply with subsection (4), the committee, any member of the association or the Registrar, acting on behalf of the association, may recover from him or her by judicial process —

- (a) the balance due upon any account last rendered by him or her;
- (b) all other monies received by him or her on account of the association; and
- (c) all bonds, securities and effects, books, papers or other property in his or her possession, under his or her control or entrusted to his or her custody.

Audit

29.(1) The executive committee of every registered association shall —

- (a) cause the statement prepared under section 28 to be audited by an auditor before submitting it to the annual general meeting; and
- (b) once a year not later than two months after the accounting date, and at such other times as may be required by the rules and the Registrar,

cause the accounts of the association to be audited by an auditor.

(2) The executive committee shall, upon written request by the auditor, submit the accounts of the association for audit.

(3) The accounts, whether audited or not, shall be submitted to the Registrar whenever so requested by him. or her.

Annual general meeting

30.(1) Every registered association shall, not later than three months after its accounting date, hold an annual general meeting.

(2) A registered association may provide for —

- (a) its annual general meetings to be conducted entirely by electronic communication; or
- (b) for one or more of its members, or proxies for members, to participate by electronic communication in all or part of its meeting that is being held in person,

in so far as the electronic communication employed ordinarily enables all persons participating in the meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.

(3) Where an association provides for participation in a meeting by electronic communication —

- (a) the notice of such a meeting shall inform members of the availability of the forms for participation, and provide any necessary information to enable members or their proxies to access the available medium or means of electronic communication; and
- (b) access to the medium or means of electronic communication shall be at the expense of the member or proxy, except to the extent that the association determines otherwise.

(4) The executive committee of every registered association shall submit for the approval of its members at the annual general meeting —

- (a) the statement prepared under section 28 (3); and
- (b) an estimate of the expenditure of the association, in the accounting period ending on the next accounting date.

(5) The treasurer of every registered association shall upon application by a member, deliver to the member a copy of the statement of estimates required to be submitted for the approval of the members under subsection (4).

(6) Every association shall, for a period of twelve months beginning not later than 7 days before the annual general meeting, cause a copy of every document required to be submitted to the meeting under subsection (5) to be prominently displayed and made available for inspection by a member at every place of business maintained by the association.

Register of members and records

31.(1) Every registered association shall keep an up to date register of —

- (a) its members; and
- (b) officers of its executive committee.

(2) The register kept under subsection (1) may be in electronic form or any other form and shall contain the following information —

- (a) the name, date of birth and identification number of every member;
- (b) the date of entry as a member and the date of exit;
- (c) any other information as the Registrar may determine; and
- (d) in respect of the executive committee, the designation of the officers and the date of appointment to the office and the date of cessation of office.

(3) Every registered association shall retain —

- (a) for a period of not less than seven years after the last date to which they relate —
 - (i) all books, statements of account and auditors' reports;

- (ii) all registers of members, and all records of money paid by the members to the association;
- (b) for a period of not less than seven years after their date of origin, all minutes of meetings, vouchers, receipts correspondences and all other documents relating to the affairs of the association.

(4) Every registered association shall ensure that all the books and documents of the association and the register of its members are available for inspection by the Registrar or by a member at its office or, in the case of a foreign association, at its principal office in Seychelles.

PART VI - MISCELLANEOUS

Appeals

32.(1) Any person aggrieved by a decision, direction, order or determination of the Registrar under this Act may, within sixty days of the decision, direction, order or determination, give notice in the form prescribed in Schedule F to the Registrar of his or her intention to appeal to the court against the decision, direction, order or determination.

(2) Subject to this Act, any appeal to the court under this Act shall be subject to the same conditions as appeals from a decision of the Magistrates' Court.

(3) Upon receipt of a notice of appeal under subsection (1), the Registrar shall prepare and submit to the court and to the appellant, a brief statement of the question in issue and any document relevant to the appeal and where the appeal is against a decision of the Registrar, a copy of the decision.

(4) At the hearing of the appeal, the appellant, the Registrar and any other person who, in the opinion of the court is likely to be affected by the appeal may, subject to any rules of court, appear and be heard in person or by legal representative

(5) The court may make such order on appeal as the court deems fit in the circumstances and such order shall bind all the parties to the appeal.

(6) No costs shall be awarded against the Registrar in an appeal under this section.

(7) The Chief Justice may make rules regulating the practice and procedure in respect of appeals under this Act.

Obligations of associations financed from Consolidated Fund

33. Every association financed from the Consolidated Fund and whose objective is to implement programmes and projects of a public nature shall, at least once annually through its website or through any other means approved by the Registrar, inform the public of its programmes and projects during the year, putting emphasis on how the funds have or are being spent.

Registrar's certificate to be evidence

34. A certificate under the hand of the Registrar as to the names of the officers of the executive committee and members of the association and as to any other fact required by this Act to be registered shall be sufficient evidence of the facts stated in the certificate, unless the contrary is shown.

Certificate of current standing

35.(1) The Registrar shall, upon request by any person, issue a certificate of current standing of any association registered under this Act in the form determined by the Registrar, if the Registrar is satisfied that —

- (a) the association is on the register;
- (b) the association has paid all fees, annual fees, fines and penalties due and payable under this Act;
- (c) he or she has no filed record of the association being dissolved.

(2) The certificate of current standing under subsection (1) —

- (a) shall contain the following particulars of the association —
 - (i) the name and any former name of the association;

- (ii) the registration number;
 - (iii) the date of its registration under this Act;
 - (iv) the address of its registered office; and
 - (v) that the association is registered in the register under this Act;
- (b) may contain the following particulars of the association —
 - (i) the name and address of the members of its executive committee;
 - (ii) if applicable, whether the association was registered under the repealed Registration of Associations Act;
- (c) shall include a statement as to whether —
 - (i) the association is in the process of amalgamation;
 - (ii) the association is in the process of being wound up, struck off and dissolved;
 - (iii) any proceedings to strike off or remove the association from the register have been instituted; or
 - (iv) the registration of the association is subject to being cancelled.

(3) A certificate of current standing is evidence of the standing of the association on the date that the certificate is issued.

(4) A request for a certificate of current standing under subsection (1) shall be made in writing accompanied by the prescribed fee or proof of payment of the prescribed fee.

Guidelines and practice directions

36. The Registrar may, for the efficient administration of this Act, issue guidelines or administrative or practice directions as the Registrar may deem necessary, including specifying documents required to be submitted under this Act.

Memorandum of understanding or agreement with an authority

37.(1) The Registrar may enter into a written memorandum of understanding or an agreement with any person or authority, including a supervisory and investigative authority for —

- (a) the sharing of information;
- (b) co-operation and mutual assistance in the exercise of respective powers and performance of their respective duties; and
- (c) any other matter the Registrar may deem necessary.

Exemptions

38. Subject to the definition of “association” in section 2, this Act shall not affect the provisions of any enactment relating to —

- (a) companies or partnerships;
- (b) co-operative societies;
- (c) trade unions; or
- (d) any legal persons or corporate body or association established under any other Act.

Offences and penalties

39.(1) An association, officer or other person who fails to comply with this Act or any order made under this Act commits an offence and shall be liable on conviction to a fine of level 2 on the standard scale or to imprisonment for a term not exceeding six months or to both.

(2) Every default under this Act constituting an offence, if continued, shall constitute a new offence in every week during which the default continues.

Administrative sanctions by Registrar

40.(1) Subject to subsection (2), where the Registrar is satisfied that a registered association or an officer of a registered association has

contravened this Act or any regulations made or guidelines issued under this Act or any direction issued under this Act, the Registrar may, in accordance with this Act, take such action as he or she may determine.

(2) The Registrar may, instead of instituting criminal proceedings or compounding of offences for any contravention of this Act, or the contravention of any regulations made or guidelines or direction issued under this Act, impose an administrative sanction under this section.

(3) Where the Registrar intends to impose an administrative sanction against a registered association or an officer of a registered association, he or she shall issue a notice to the association or the officer stating —

- (a) the intention to impose an administrative sanction;
- (b) the reasons for the intention to impose the penalty;
- (c) the type and terms of the administrative sanction;
- (d) where the administrative sanction is an administrative penalty, the amount of the proposed penalty;
- (e) the right of the association or the officer to make written representations to the Registrar in accordance with subsection (5).

(4) The administrative sanctions which the Registrar may impose under subsection (2) may include —

- (a) a private warning;
- (b) an administrative penalty;
- (c) prohibition on a person from being a member of the executive committee of an association for a period exceeding 3 years but not exceeding 5 years; or
- (d) cancel the registration of a registered association as provided under section 17.

(5) Where a registered association or an officer of a registered association receives an administrative sanction notice, that association or officer may, within 21 days from the date of the service of the notice on the association or the officer, make written representations to the Registrar indicating why the association or the officer should not be required to comply with the administrative sanction or in respect of an administrative penalty why the association or the officer should not be required to pay it or why the proposed administrative penalty should be reduced.

(6) Where, after considering the written representations under subsection (5) the Registrar is satisfied that the association or the officer is in contravention of subsection (1), or where no written representations are received, the Registrar shall impose the administrative sanction on the association or the officer.

(7) An administrative penalty under this section shall be a debt due to the Government and may be sued for and recovered by the Registrar or the Attorney General by civil action in any court of competent jurisdiction.

(8) Any administrative penalty paid to the Registrar shall be credited to the Consolidated Fund.

(9) The Registrar may, at any time prior to the issuance of the administrative sanction notice under subsection (1), withdraw the notice and substitute a new notice stating a different administrative sanction.

(10) A person aggrieved by a decision of the Registrar under this section may appeal to the court in accordance with section 32.

(11) An appeal of a decision of the Registrar to impose an administrative sanction does not operate as a stay on the obligation of a registered association or an officer of the association to comply with the administrative sanction, unless the Registrar or the court orders otherwise.

Compounding of offences

41.(1) Where the Registrar is satisfied that an offence under this Act has been committed by any person and the person admits to committing the offence, accepts liability for the commission of the offence and agrees in

writing to the matter being dealt with under this section, the Registrar in consultation with the Attorney General, may compound the offence *in the alternative* of instituting legal proceedings or imposing an administrative penalty by accepting a sum of not more than the maximum fine specified for the offence;

(2) Where a minimum fine is provided, no sum of money less than the minimum shall be accepted.

(3) A sum of money received under this section shall be dealt with as though it were a fine imposed by a court.

(4) The Registrar shall determine the sum of money to be paid by the offender, having due regard to the provisions of this Act, the nature, circumstances, extent and gravity of the offence and any previous conviction or compounding of offences under this Act.

(5) An *ad-hoc* compounding committee may be established to advise the Registrar in the determination of the sum of money to be paid by the offender in accordance with subsection (1).

(6) Upon determination of the sum of money to be paid by the offender under subsection (4), the Registrar shall sign the compounding agreement and serve it on the offender, who shall pay the sum of money within 14 days from the date of service of the compounding agreement.

(7) In the event the offender fails to pay the sum of money within the period set under subsection (6), the compounding agreement shall be void and judicial proceedings shall be instituted or continued.

(8) On payment of the sums provided under this section, the compounding of any offence under subsection (1) shall be filed in court and the proceedings in connection with the commission of the offence which is pending shall be noted as compounded and the offender absolutely discharged.

(9) The compounding of an offence under this section shall be conclusive and final and no court proceedings shall be instituted for that offence.

(10) In any proceedings brought against any person for an offence under this Act, it shall be a defence if the person proves that the offence has been compounded under this section.

(11) Where an association or a person has committed more than one offence under this Act, the Registrar may compound the penalties.

Regulations

42.(1) The Minister may make regulations for carrying the provisions of this Act into effect.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations —

- (a) prescribing the criteria for categorisation of associations registered or deemed registered under this Act;
- (b) for the registration and regulation of umbrella associations;
- (c) for the registration, submission, request and provision of any certificate, record and document to and by the Registrar to be effected by electronic means; and
- (d) prescribing the fees or penalties to be paid under this Act.

Amendment of schedules

43. The Minister may, by statutory instrument, amend the schedules.

Repeal and savings

44.(1) The Registration of Associations Act (Cap 201) is repealed.

(2) Notwithstanding subsection (1), any statutory instrument made under the repealed Act and in force immediately before the commencement of this Act shall remain in force, so far as it is not inconsistent with this Act, until it is repealed or revoked under this Act.

(3) At the coming into operation of this Act, any reference to the repealed Registration of Associations Act (Cap 201) contained in any Act or Statutory Instrument shall, without any modifications, be a reference to this Act.

Transitional provisions

45.(1) An association which, immediately before the date of commencement of this Act, was in operation under the repealed Act may continue to carry out its activities without registration under this Act for a period of six months beginning with the date of commencement of this Act or for such other period as the Registrar may determine, but shall, within that period apply for registration under this Act.

(2) If within the six-month period provided under subsection (1) an application is made for registration, the association may continue to carry out its activities without registration under this Act until that application is finally disposed of or withdrawn, provided that the period does not exceed twelve months.

(3) The Registrar shall, upon registration of an association under subsection (1), issue to the association a certificate of continuation prescribed in Schedule E, and consequently the association shall be deemed to have been registered under this Act and treated as an association registered under this Act.

(4) Notwithstanding subsection (1) an association re-registered under this Act and its officers shall, within a period of twelve months of the issuance of the certificate under subsection (3), comply with the provisions of this Act.

(5) An association which, after the date of commencement of this Act was operating or starts to operate but is not registered under this Act, but which is receiving funding from the public or similar sources by conducting itself in a manner similar to a registered association under this Act, shall apply to be registered under this Act.

(6) An association re-registered and continued under this Act which fails to comply with subsection (4) shall, after the expiry of twelve months

from the date of the issuance of the certificate of continuation under subsection (3), stand cancelled under section 17, unless the Registrar determines otherwise.

(7) Where any association not registered fails to apply for and be registered under this Act and, after the expiry of 6 months after the date of the coming into force of this Act, or 3 months after being notified by the Registrar regarding its status continues with its activities which, in the opinion of the Registrar may cause confusion as to its registrable status, every person associated in that association shall commit an offence and shall be liable on conviction to a fine of level 2 on the standard scale or to imprisonment not exceeding six months or to both.

(8) The re-registration of an association registered under the repealed Act and continuing under this Act shall not affect —

- (a) the continuity of the association as a legal entity; or
- (b) the assets, rights, obligations or liabilities of the association or of its officers.

(9) Every application, matter and proceeding commenced in any court in relation to an association immediately before the date of commencement of this Act shall be continued, completed and enforced as if this Act was not in force.

SCHEDULE A

Associations Act

(Section 3)

Certificate of Registration

THIS IS TO CERTIFY THAT—

[name of the Association]

has this day been registered as an association under the provisions of the Associations Act.

Dated this day of.....20.....

(Registration No.)

.....
Registrar

SCHEDULE B

(Section 8)

Matters to be provided for by the rules of associations registered under the Act, shall include—

1. the corporate name and place of the association;
2. the objects of the association;
3. the admission, rejection, and removal of members;

4. the mode of holding meetings and the right and mode of voting at such meetings;
5. the appointment and removal of members of the executive committee and of auditors;
6. formation of sub committees and appointment of members on the sub committees
7. the investment of the funds, if any, the keeping of accounts and the audit of such accounts at least once a year;
8. the inspection of the books of the association by any person having an interest in the funds of the association;
9. the fines and forfeitures which may be imposed on any members of the association.

SCHEDULE C

(Section 8)

Associations Act

(Section 8)

THIS IS TO CERTIFY THAT these rules amending the rules of the *(insert name of registered association)* were made in compliance with the procedures laid down in the Associations Act, and have been approved by me.

Dated thisday of20.....

.....
Registrar

SCHEDULE D

(Section 19)

Associations Act

Certificate of Amalgamation

(Section 19)

THIS IS TO CERTIFY THAT

(insert name of association) association and the *(insert name of association)* association,

being associations registered under the provisions of the Associations Act, have been amalgamated in accordance with the provisions of section 19 of the Act.

Dated this.....day of20.....

.....

Registrar

SCHEDULE E*[Section 44(3)]***Associations Act***[Section 44(3)]***Certificate of Continuation****THIS IS TO CERTIFY THAT —***(insert name of association)*

that was registered under the repealed Registration of Associations Act (Act 9 of 1959) has as of this day continued as an association under the provisions of the Association Registration and Regulation Act and is deemed registered under this Act.

Dated this day of.....20.....

.....

Registrar

SCHEDULE F

[Section 32(1)]

In the Supreme Court of Seychelles

In the matter between

..... Appellant
and
The Registrar of Associations Respondent
(address)

(insert case no, if any)

NOTICE OF APPEAL

Take Notice that being dissatisfied
with the decision of the Registrar of Associations
..... given on the
..... day of 20..... hereby
appeals to the Supreme Court against the whole of the decision (or against such
part of the decision as the case may be) that (setting
out details) upon the grounds set out in paragraph 2 and will at the hearing of the
appeal seek the relief set out in paragraph 3.

2. Grounds of Appeal

- (a)
- (b)
- (c) etc.

3. Relief sought from the Supreme Court.

- (a)
- (b)
- (c) etc.

Dated atthis day of 20

.....
Appellant/Legal representative of the Appellant
Address

To: The Registrar of Associations
Address
And to: The Registrar
Supreme Court

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 6th April, 2022.

A handwritten signature in dark ink, appearing to read 'T Isaac', written in a cursive style.

Mrs. Tania Isaac
Clerk to the National Assembly

ANTI-CORRUPTION (AMENDMENT) BILL, 2022

(Bill No. 8 of 2022)

**EXPLANATORY STATEMENT OF THE OBJECTS AND REASONS
FOR THE BILL**

The object of this Bill is to clarify the powers of the Anti-Corruption Commission to investigate and prosecute offences of conspiracy and attempt as well as offences of money laundering committed prior to the enactment of the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020 (Act 5 of 2020).

The Bill also proposes to extend to the Commission asset recovery powers following conviction for offences committed prior to the enactment of the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020.

Dated this 05th day of May, 2022.

**FRANK D.R. ALLY
ATTORNEY-GENERAL**

ANTI-CORRUPTION (AMENDMENT) BILL, 2022*(Bill No. 8 of 2022)***ARRANGEMENT OF ARTICLES****ARTICLES**

1. Short title
2. Repeal and replacement of section 40
3. Repeal and replacement of section 51A
4. Repeal and replacement of section 64
5. Consequential amendments

SCHEDULE

ANTI-CORRUPTION (AMENDMENT) BILL, 2022

(Bill No. 8 of 2022)



A BILL

FOR

AN ACT TO ALTER THE ANTI-CORRUPTION ACT (ACT 2 OF 2016).

ENACTED by the President and the National Assembly.

Short title

1. This Act may be cited as the Anti-Corruption (Amendment) Act, 2022, and amends the Anti-Corruption Act, 2016 (Act 2 of 2016), as last amended by Act 58 of 2021, which is hereinafter referred to as the “principal Act”.

Repeal and replacement of section 40

2. The principal Act is amended by repealing section 40 and substituting therefor the following —

Conspiring or Attempting to commit an offence under the Act

“40.(1) A person who conspires with another to commit an offence under Part III of this Act, is guilty of an offence and is liable, on conviction, to the same penalty as would apply on conviction for the Part III Offence.

(2) (a) A person who attempts to commit an offence under Part III of this Act, is guilty of an offence and is liable, on conviction, to the same penalty as would apply on conviction for the Part III Offence.

(b) An attempt to commit an offence under the Act shall have the same meaning as under Chapter XXXIX of the Penal Code.”

Repeal and replacement of section 51A

3. The principal Act is amended by repealing section 51A and substituting therefor the following —

Penal Code Offences

“51A. The Commission may investigate or take over and continue the investigation of offences provided under Chapter V, Chapter X, Chapter XXVI, Chapter XXVII, Chapter XXVIII, Chapter XXX, Chapter XXXII, Chapter XXXV, Chapter XXXVIII, Chapter XXXIX and Chapter XL of the Penal Code (Cap 158).

Repeal and replacement of section 64

4. The principal Act is amended by repealing section 64 and substituting therefor the following —

Prosecution by the Commission

“64.(1) Prosecutions may be instituted by the Commission for the following offences —

- (a) Offences listed under Part III of this Act;
- (b) Offences provided under Chapter V, Chapter X, Chapter XXVI, Chapter XXVII, Chapter XXVIII, Chapter XXX, Chapter XXXII, Chapter XXXV, Chapter XXXVIII, Chapter XXXIX and Chapter XL of the Penal Code (Cap 158);
- (c) Money laundering offences under the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020 (Act 5 of 2020), the Anti-Money Laundering Act 2006 (Act 5 of 2006) and the Anti-Money Laundering Act, 1996 (Act 8 Of 1996).

(2) The Commission may, with the leave of Court, institute prosecutions for such other offences under the Penal Code or any other written law which are founded on the same facts or otherwise closely related to offences being prosecuted under subsection (1).

(3) Where the Commission has instituted an investigation or prosecution for money laundering offences contrary to the Anti-Money Laundering Act 2006 (Act 5 of 2006), then the Commission may exercise the powers of the Attorney General under Part IV and V of that Act and references to the Attorney General therein should be read as including the Commission.

(4) Where the Commission has instituted an investigation or prosecution for money laundering offences contrary to the Anti-Money Laundering Act, 1996 (Act 8 of

1996), then the Commission may exercise the powers of the Attorney General under Section 11 of that Act and references to the Attorney General therein should be read as including the Commission.”

Consequential amendments

5. The Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020, Act 5 of 2020, is amended to the extent specified in the Schedule to this Act.

SCHEDULE

(Section 5)

CONSEQUENTIAL AMENDMENTS

Amendment of section 3 of Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020, Act 5 of 2020

1. Section 3 (8) of the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020, (Act 5 of 2020) is repealed and substituted therefor by the following

“This Act shall apply whether the criminal conduct in question occurred before or after the commencement of this Act and whether it was or is attributable to the person first mentioned in subsection (1) or another person.”

ASSOCIATIONS ACT, 2022

(Act 8 of 2022)

ARRANGEMENT OF SECTIONS

PART I - PRELIMINARY

Sections

1. Short title
2. Interpretation

PART II - REGISTRATION OF ASSOCIATIONS

3. Application for registration
4. Electronic mode of application for registration
5. Refusal to register
6. Identical or deceptive similarity of name not allowed
7. Incorporation: Registration essential

PART III - RULES OF ASSOCIATIONS

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9. Membership of minors
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12. Power of member to dispose of sums payable at his or her death by nomination
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14. Rules to be binding
15. Secretary to make returns
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17. Cancellation of registration
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19. Amalgamation
20. Inquiry into affairs and conduct of association
21. Power of the Registrar to call for production of books, accounts etc
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23. Appointment of Registrar
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25. Executive committee
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31. Register of members and records

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32. Appeals
33. Obligations of associations financed from Consolidated Fund
34. Registrar's certificate to be evidence
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36. Guidelines and practice directions
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38. Exemptions
39. Offences and penalties
40. Administrative sanctions by Registrar
41. Compounding of offences
42. Regulations
43. Amendment of schedules
44. Repeal and savings
45. Transitional provisions



ASSOCIATIONS ACT, 2022

(Act 8 of 2022)



I assent

A handwritten signature in black ink, appearing to read "Wavel".

Wavel Ramkalawan
President

28th April, 2022

AN ACT TO PROVIDE FOR THE REGISTRATION AND REGULATION OF ASSOCIATIONS, TO REPEAL THE REGISTRATION OF ASSOCIATIONS ACT, CAP 201, AND TO PROVIDE FOR OTHER RELATED MATTERS.

ENACTED by the President and the National Assembly.

PART I - PRELIMINARY

Short title

1. This Act may be cited as the Associations Act, 2022 and shall come into operation on such date as the Minister may, by notice published in the Gazette appoint.

Interpretation

2. In this Act, unless the context otherwise requires —

“accounting period” in relation to a registered association means the period specified in its rules, in respect of which a statement of receipts and payments is to be prepared;

“association” means 5 or more persons having agreed to come together under a formal structure for a common purpose other than that of pecuniary gain to its members, but does not include a political party;

“auditor” means a person appointed as such at the annual general meeting of an association;

“charitable organisation” means an organisation with the purpose of benefitting the general public;

“Court” means the Supreme Court;

“executive committee” means the executive committee of an association, appointed under section 25;

“founder” means a person or persons who has or have undertaken some or all of the formational work needed to create an association, and who endows or endow the association with its initial assets;

“foreign association” means an association formed outside Seychelles or in Seychelles, where at least one member is not a citizen of Seychelles ;

“member” means a member of an association;

“Minister” means the Minister responsible for legal affairs;

“office” in relation to an association means the registered office of the association;

“officer” means a person appointed as chairperson, vice-chairperson, treasurer, secretary or any other member of the executive committee or an auditor of an association;

“register” means the register to be kept under section 31;

“registered ” means registered under this Act;

“Registrar” means the Registrar of associations appointed under section 23;

“revenue” means the gross receipts of a registered association;

“secretary” means the secretary of an association residing in Seychelles; and includes —

- (a) a person performing the duties of secretary; and
- (b) in the case of a foreign association, a person appointed specifically to perform duties of secretary;

“umbrella association” means an association formed by two or more associations registered under this Act, for the purpose of providing a common platform to represent them or to facilitate the exchange of information among them or to adopt and enforce standards of conduct among them or for any other lawful purpose; and

“working day” means a day other than a Saturday, Sunday or public holiday.

PART II - REGISTRATION OF ASSOCIATIONS

Application for registration

3.(1) The proposed secretary of an association seeking registration under this Act shall make an application in writing to the Registrar not later than 3 months from the date of the first meeting at which the formation of the association and its rules were approved.

(2) An application made under subsection (1) shall state the name, registered office, place of business and objects of the association, and shall be accompanied by certified copies of the following —

- (a) the names, occupations, registered office, addresses, nationalities and documents of proof of identity of the officers, members and where necessary, of the founder or co-founders, of the association for the time being;
- (b) the resolution of the members of the association appointing the officers;
- (c) a copy of the minutes of proceedings of the meeting at which the rules of the association were approved;
- (d) the rules of the association; and
- (e) such other information in respect of the association as the Registrar may require.

(3) A foreign association seeking registration shall, in addition to the requirements under subsection (2), furnish the Registrar with the following —

- (a) the names and address of the person authorised to represent the foreign association in Seychelles;
- (b) the names and address of the secretary of the association residing in Seychelles;
- (c) the registered office of the association in Seychelles;
- (d) the nature of the activity in which the foreign association intends to engage in Seychelles; and
- (e) such other information or documents relating to paragraphs (a) to (d) in respect of the association as the Registrar may require.

(4) In respect of a foreign association, the Registrar may request information and documents relating to the type and sources of funds of the

association, which shall be kept by the Registrar and shall be accessible only by the relevant authorities or interested parties as may be determined by the Registrar.

(5) The Registrar may, in considering an application under this section, consult any relevant public body or foreign authority.

(6) Upon being satisfied that subsections (1), (2), (3) and (4) have been complied with and that there is no objection under subsection (5), the Registrar may —

- (a) register the association by entering its name in the register and deliver to the applicant a certificate in the form set out in Schedule A;
- (b) request as a condition precedent to registration that the books of the association be kept in English and that any alteration which, in his or her opinion, is necessary be made to the rules of the association; or
- (c) refuse registration.

(7) An association that has been registered remains registered until —

- (a) its registration is cancelled under this Act;
- (b) the association is voluntarily deregistered; or
- (c) the association is wound up or dissolved.

(8) For the purposes of this section and section 16(3), the Registrar shall maintain a register of all associations registered or deemed to be registered under this Act or, immediately upon the coming into force of this Act were in operation under the repealed Act, in such form as the Registrar may determine.

(9) The register may be maintained in an electronic data storage retrieval system or such other form as the Registrar may determine, but shall be capable of producing copies in paper form if required.

(10) The register maintained by the Registrar under subsection (1) shall contain in respect of every association —

- (a) the name and any former name of that association;
- (b) the registration number and date of registration;
- (c) the date of registration;
- (d) the address of the registered office;
- (e) the date on which the name of the association was struck off the register, where applicable;
- (f) the date on which the name of the association was restored to the register, where applicable;
- (g) the name and address of the members of the executive committee and any former members of the executive committee;
- (h) the name and address of the secretary and former secretary; and
- (i) any other information required by the Registrar.

(11) An association kept on the register of associations under subsection (8) shall in each year, pay an annual fee of SCR 200 to the Registrar by the 31st December of each year.

(12) If an association fails to pay the annual fee payable in accordance with subsection (11), the association in default is liable to pay, in addition to the annual fee, an administrative penalty of SCR100 to the Registrar for every month or part of that month that the default continues.

Electronic mode of application for registration

4.(1) An application for the registration of an association may be made by electronic means, by the secretary, through —

- (a) filing of the standard online documents as may be specified by the Registrar through regulations and complying with other requirements of this Act in respect of registration of associations; or
- (b) affixing a digital signature and transmitting, by electronic means, the application for registration to the Registrar and complying with paragraph (a) and the requirements of the Electronic Transactions Act, 2001 with regard to digital signatures.

(2) This section shall, with necessary modifications as may be specified by the Registrar through regulations, apply to an application for registration filed by a foreign association.

Refusal to register

5.(1) The Registrar may refuse to register an association under this Act —

- (a) where the objectives of the association as specified in its constitution are in contravention of the laws of Seychelles or in the opinion of the Registrar the activities and objectives of the association are likely to be contrary to the national interest or a threat to the public interest or public order;
- (b) where the application for registration does not comply with the requirements of this Act; or
- (c) where the applicant has given false or misleading information in any material particular.

(2) Where the Registrar refuses to register an association under subsection (1), the Registrar shall inform the applicant in writing of the reasons for his or her refusal within thirty days from the date of the refusal.

(3) A person or an association aggrieved by the decision of the Registrar under subsection (1) may, within two months of the date of the

Registrar's letter under subsection (2), appeal to the Minister against that decision.

Identical or deceptive similarity of name not allowed

6.(1) No association shall be registered under a name —

- (a) identical with that under which any other existing association is registered or so nearly resembling such name as to be likely, in the opinion of the Registrar, to deceive the public or the members as to its nature or its identity;
- (b) which in the opinion of the Registrar, suggests or is calculated to suggest the patronage of or any connection with Seychelles or the Government of Seychelles or with any other country or the Government of that country unless otherwise approved by the Registrar; and
- (c) which is indecent, offensive or, in the opinion of the Registrar is otherwise objectionable or misleading or is likely to being confused with another association.

(2) No association shall change its name without the prior approval of the Registrar.

(3) A person may apply to the Registrar for the reservation of a name for an association set out in the application as —

- (a) the name of an intended association; or
- (b) the name to which an existing association proposes to change its name.

(4) The Registrar may reserve a name for an association if the Registrar is satisfied as to the *bona fides* of the application and that the proposed name by which the intended association or existing association could be registered is not such as to contravene this Act or any other law.

(5) The Registrar shall, on approving a reservation of a name in accordance with subsection (4), notify the applicant, in writing, and shall

register the name as reserved for a period of 30 days from the date of the notice.

(6) At any time while the name is so reserved in accordance with subsection (4) a person may make an application to the Registrar for an extension of the period, and if the Registrar is satisfied as to the *bona fides* of the application, the Registrar may grant an extension of the reservation of the name for a period not exceeding 5 months from the date of the expiration of the 30 day period under subsection (5).

(7) For the avoidance of doubt, a name for an association shall not be reserved for a period exceeding 6 months.

(8) During the period in which a name is reserved, no association, other than the intended association or an existing association in respect of which the name is reserved may be registered under this Act, whether originally or on change of name, under the reserved name.

(9) An association shall normally contain in its name the word “association”.

(10) The Minister may prescribe fees and forms for the reservation of a name for an association under this section.

Incorporation: Registration essential

7.(1) An association registered under this Act shall be a body corporate having perpetual succession and a common seal, and power in its corporate name to —

- (a) acquire, hold, and dispose of property, movable or immovable;
- (b) sue and be sued in its corporate name; and
- (c) generally to do all such acts and things as bodies corporate may do and perform.

(2) Service of process on the secretary of the association or at the registered office, or principal place of business shall be deemed to be service on the association.

PART III - RULES OF ASSOCIATIONS

Rules

8.(1) The rules of every association seeking registration under this Act shall contain the several matters specified in Schedule B, and shall, on the association being registered, become the rules of the registered association.

(2) An association may amend its rules at a general meeting convened in that behalf, where not less than three-fifths of the total number of members of the association are present in person or by proxy.

(3) Two-thirds of the number of members present in person or by proxy at a meeting held under subsection (2) shall be sufficient to amend the rules of the association.

(4) An amendment of the rules of an association shall have no effect unless it is approved by the Registrar, in the form set out in Schedule C.

(5) An application for the registration of an amendment to the rules of an association shall be signed by the secretary and shall be accompanied by —

- (a) two copies of the proposed amendments to the rules; and
- (b) a certified copy of the minutes of the proceedings of the general meeting at which the special resolution to amend the rules was passed.

(6) A copy of the rules so approved shall be filed with the Registrar.

Membership of minors

9.(1) The rules of a registered association may provide for the admission of a person under eighteen years of age as a member.

(2) Anything to the contrary in any enactment notwithstanding, any such member may, if he or she is over fifteen years of age by himself or herself, and if he or she is under that age by his or her parent or guardian, execute all instruments and give all acquaintances necessary to be executed or given under the rules.

(3) For the avoidance of any doubt, a member below the age of fifteen years shall not be an officer of the association.

Rights of members

10.(1) Every registered association shall, upon request by a member, deliver to the member a copy of the rules of the association in paper or digital form.

(2) Every registered association shall supply gratuitously to every member or person having an interest in its funds, on his or her application, either —

- (a) a copy of the last annual return of the association;
- (b) a copy of a balance sheet or other document duly audited containing the same particulars regarding the receipts and expenditure, funds and effects of the association which are contained in the annual return; or
- (c) a copy of all receipts, expenditure and banking transactions.

Inspection of books

11. A member or person having an interest in the funds of a registered association may inspect the books at all reasonable times at the registered office of the association, except that the person shall not, unless he or she is an officer of the association, or is specially authorized by a resolution of the association to do so, have the right to inspect the loan or debit account of any other member without the written consent of that member.

Power of member to dispose of sums payable at his or her death by nomination

12.(1) A member of a registered association, not being under the age of eighteen years may, by writing under his or her hand delivered at or sent to the registered office of the association, or made in a book kept at that office, nominate a person to whom any sum of money payable by the association upon the death of that member, shall be paid.

(2) A person nominated under subsection (1) shall not be an officer or employee of the association, unless that officer or employee is the spouse, father, mother, child, brother, sister, nephew or niece of the nominator.

(3) A nomination made under subsection (1) may be revoked and varied in writing by a document under the hand of the nominator, delivered, sent, or made under that subsection.

Sureties

13.(1) The rules of an association may require any officer who is appointed to an office involving the receipt or management of monies collected on behalf of the association to become bound with one or more sureties for the just execution of such office, and for rendering a true account according to the rules and regulations of the association, before the officer takes up the duties devolving upon the office.

(2) The bonds taken under subsection (1) shall be filed with the Registrar without payment of a fee or stamp duty, and in case of forfeiture, shall be handed over to the treasurer or other appropriate officer of the association for such suitable legal action as may be deemed advisable.

Rules to be binding

14.(1) The rules of an association shall bind the association and every member or person claiming through such member to the same extent as if such member or person has subscribed his or her name to the rules.

(2) No person shall be liable for debts contracted by an association after he or she has ceased to be a member of the association, unless the debt was contracted during the period when he or she was still a member of the association.

Secretary to make returns

15.(1) The secretary of every registered association shall, before the thirty-first day of July in each year, or when and as often as so requested by the Registrar, furnish to the Registrar a return of the names and addresses of the officers of the association and an audited account of the annual revenue

and expenditure, and of the assets and liabilities, of the association in such form as the Registrar may require:

(2) Any change occurring in the place of office or among the officers of a registered association shall be notified to the Registrar within fourteen days of such change.

(3) A secretary who fails to comply with sub-section (1) or (2) commits an offence and shall, on conviction be liable to a fine not exceeding SCR500 for the first 60 days or part of those days, and SCR 100 for every day for the next 30 succeeding days or part of them, during which the non-compliance continues.

Information to the public

16.(1) Any person shall have a right to inspect the register and obtain a certified copy of any document of a registered association from the Registrar, subject to the payment of such fee as the Minister may prescribe.

(2) The Registrar shall publish in the Gazette or electronically in any form that is accessible to the public, the following documents —

- (a) every newly registered association, within fourteen days of its registration; and
- (b) every association struck off the register, within fourteen days of its striking off.

(3) As soon as practicable after 1 January in every year, the Registrar shall publish in the *Gazette* a list of all associations registered or deemed registered under this Act and maintained on the register in accordance with section 3(8).

(4) The Registrar shall preserve and have custody, in original or other form of all reports and other documents submitted to the Registrar by a registered association under this Act.

(5) The Minister may prescribe other circumstances or manner in which a member of the public may have access to documents preserved under this Act.

PART IV - CANCELLATION, AMALGAMATION AND WINDING UP OF ASSOCIATIONS

Cancellation of registration

17.(1) The Registrar may cancel the registration of a registered association on the grounds that —

- (a) the registration was obtained by fraud or misrepresentation;
- (b) the association has engaged or is about to engage in activities likely to cause a serious threat to public security or public order;
- (c) the association has contravened its rules or this Act, or the Anti-money Laundering and Countering the Financing of Terrorism Act, the Prevention of Terrorism Act or the Beneficial Ownership Act, and has persisted in its default after the Registrar has given it written notice specifying the default and fixing a time which shall not be less than twenty one days for remedying the default, and that time has expired;
- (d) the association has in any way misapplied its funds;
- (e) the Registrar has reasonable cause to believe that the association is not carrying on its functions or is not in operation; or
- (f) the association has ceased to function.

(2) Where the Registrar is satisfied that the registration of an association should be cancelled, the Registrar shall give notice to the secretary, of the Registrar's intention to cancel the registration of the association and of the grounds for his or her decision.

(3) Notwithstanding subsection (2), the Registrar may inquire from relevant authorities to ascertain whether there exists any objection or reasonable ground to prevent the striking off of an association or to suspend the striking off until a later date.

(4) A notice under subsection (2) shall be given —

- (a) by registered post; or
- (b) by service on the secretary or at the registered office of the association or, in the case of a foreign association, at its principal office in Seychelles;
- (c) where the secretary of the association cannot be found or the registered office, or the principal office is not known, by publication of the notice in the *Gazette* or a daily newspaper.

(5) A notice given under subsection (2), shall serve as a notice on the association, its members and officers not to deal with the assets of the association unless otherwise approved or directed by the Registrar.

(6) The Registrar may prescribe the procedures in relation to ascertaining the debts, liabilities and assets of the association, to allow the proper dealing with the assets of the association under subsections (4) and (8)

(7) Any officer who fails to comply with any request for information under any procedures prescribed under this section commits an offence and shall be liable on conviction to a fine of level 2 on the standard scale or to imprisonment not exceeding 3 years or to both.

(8) An association may, not later than twenty-one working days after the date of a notice under subsection (2), appeal to the court against the decision of the Registrar, and, on any such appeal the Judge may make such order as the Judge deems fit.

(9) The registration of an association shall be cancelled and the association shall be struck off the register or wound up by the Registrar and struck off the register in accordance with section 22 —

- (a) where no appeal has been lodged under subsection (7), not later than sixty days after the date of a notice under subsection (2);

- (b) where an appeal has been lodged under subsection (7) and the appeal has been dismissed, not later than 30 days after the date of the dismissal of the appeal.

(10) Upon the striking of an association off the register, all the property of that association shall become vested in the Registrar and an administrator shall be appointed by the Minister for the purpose of advising the Registrar how such property shall be used towards meeting, as far as possible, all the debts and liabilities of the association, and where all the assets are not disposed off, to which association or charity such assets are to be vested.

(11) The Registrar shall subsequent to subsection (9) recommend to the Minister to which association or charity the un disposed assets shall be vested as the Minister may determine.

(12) A person appointed by the Minister under subsection (10) shall submit a report to the Registrar.

(13) Any cost incurred by the Registrar under this section shall be borne by the association and may be paid out from the proceeds of any disposal of the property.

(14) Any person who deals with the property of an association without the approval of the administrator under subsection (9) commits an offence and shall be liable on conviction to a fine of level 2 on the standard scale or to imprisonment not exceeding 3 years or to both.

Voluntary dissolution

18.(1) The Registrar may cancel the registration of an association upon an application made by the association or any officer for voluntary dissolution, on the grounds that the association has ceased to function, subject to the submission of the relevant application, information and documents as the Registrar may determine, provided there is no objection of the striking off from other relevant authorities

- (2) Where the Registrar is satisfied that the registration of an

association should be cancelled, the Registrar shall publish a notice in the *Gazette*, electronically, or in any other form that is accessible to the public.

(3) An officer or any interested person may lodge an opposition with the Registrar against the voluntary dissolution of an association.

(4) An opposition under subsection (3) shall be made in writing and the Registrar may require that it be supported by an affidavit.

(5) An opposition under subsection (3) shall be served on the Registrar within twenty-one days from the date of publication of the notice under subsection (2).

(6) Where —

(a) no person opposes the voluntary dissolution of an association and the Registrar is satisfied that the association be dissolved; or

(b) the Registrar is satisfied that the association be dissolved,

the Registrar shall cancel the registration of the association and shall strike it off the register and publish a notice of the dissolution in the *Gazette*.

(7) The association may, before the period specified in the notice under subsection (2), by special resolution designate to the Registrar, a registered association to which any remaining property of the association after the settling of all its debts and obligations shall be transferred.

Amalgamation

19.(1) Subject to subsections (2) and (4), two or more registered associations may amalgamate to form one association if a special resolution to that effect is approved by every registered association concerned.

(2) Where two or more registered associations have resolved to amalgamate, the secretaries of the associations concerned shall, within thirty days after the last association has done so, jointly —

- (a) give written notice of the amalgamation to the Registrar;
and
- (b) apply under section 3 for the registration of the new association formed after the amalgamation-

(3) Upon receipt of a notice under subsection 2(a), the Registrar may inquire from the relevant authorities to ascertain whether there exist any objection or reasonable ground to prevent the striking off of the association.

(4) Where the Registrar registers an association formed by the amalgamation of two or more registered associations, the Registrar shall cancel the registration and strike those associations off the register and shall issue the new association a certificate in the form set out in Schedule D.

(5) The amalgamation shall take effect from the date of the registration of the new association under subsection (3).

Inquiry into affairs and conduct of association

20.(1) The Registrar may —

- (a) if the Registrar has reasonable grounds to believe that any condition specified under section 17 (1) exists in relation to a registered association; or
- (b) upon the written application of one tenth of the members of an association,

call for all accounts and documents relating to the association, and institute an inquiry into the affairs and conduct of the association.

(2) For the purposes of this section, the Registrar may summon witnesses and examine them on oath.

(3) A person summoned to attend as a witness or to produce any document shall comply with the summons in the same manner as a witness is bound to comply with the summons issued by the court.

(4) Any person who —

- (a) without reasonable excuse, fails to appear before the Registrar when summoned or required by the Registrar;
- (b) without reasonable excuse, fails to produce a document when required to do so by the Registrar;
- (c) gives false evidence before the Registrar,

commits an offence and shall be liable on conviction to a fine of level 2 on the standard scale or to imprisonment not exceeding six months or to both.

(5) Every enactment relating to witnesses and evidence shall, subject to the other provisions of this Act, be applicable to every witness appearing, and to evidence given, before the Registrar.

(6) Where at the conclusion of an inquiry the Registrar is of the opinion that the registration of an association should be cancelled, the Registrar shall proceed and cancel the registration under section 17.

(7) An association aggrieved by the decision of the Registrar under this section may, not later than fourteen working days after the date of the decision under subsection (6), appeal to the court against the decision of the Registrar, and, on any such appeal the Judge may make such order as the Judge deems fit.

(8) The Registrar may, with the approval of the Attorney General, appoint an officer or any other person to conduct an inquiry in any case for the purposes of subsection (1) under such terms and conditions as the Registrar may determine.

(9) The Registrar may determine that the whole or any part of the expenses of or incidental to an inquiry resulting from an application made under subsection 20(1)(b), be paid or refunded by the Association and may direct the expenses be so paid or refunded.

(10) The officer or other person appointed under subsection (8) shall have the same powers as the Registrar under this section for the purposes of the inquiry.

(11) The officer or other person appointed by the Registrar under subsection (8) to conduct an inquiry shall provide a report of that inquiry to the Registrar with his or her conclusions.

(12) The report of the inquiry, if certified or approved by the Registrar, shall be deemed to be the conclusions of the Registrar under this section.

(13) A copy of the report shall, if certified by the Registrar to be a true copy, be admissible as evidence —

- (a) of any fact stated in the report; or
- (b) of the opinion of a person as to any matter referred to in the report,

in any legal proceedings instituted in respect of an association as a result of an inquiry under this section.

Power of Registrar to call for production of books, accounts and other returns

21.(1) The Registrar may, when and as often as the Registrar may deem necessary, call upon the secretary, or treasurer or other member of the executive committee of any association, to produce to him or her or to an auditor or accountant, at such time and place as the Registrar may determine, any book or document in the custody of such secretary, treasurer or other member of the executive committee.

(2) Notwithstanding the provisions of subsection (1), the Registrar shall have power to institute and conduct on-site inspections with or without notice, to enable the Registrar to ensure that a registered association is complying with this Act.

(3) Any secretary, treasurer or other member of the executive committee who fails to comply with the provisions of sub-section (1) commits an offence and shall be liable on conviction, to a fine of level 1 on the standard scale and to imprisonment not exceeding three months or to both.

Winding up of affairs of association

22.(1) The Minister may appoint a liquidator for the purpose of winding up and dissolving a registered association, on such terms and conditions as the Minister may specify in the letter of appointment.

(2) The liquidator shall for the purposes of subsection (1) —

- (a) identify and take possession of all the assets of the association;
- (b) call for claims by such public notice as the liquidator deems appropriate, requiring the claims to be made to him or her within the period of not less than ninety days of the notice;
- (c) apply the assets received —
 - (i) in satisfaction of any dues to the Government;
 - (ii) in payment of the remuneration for the services of the liquidator; and
 - (iii) in satisfaction of all claims admitted by the liquidator.

(3) When the liquidator has complied with the provisions of subsection (2), he or she shall submit a written report of his or her conduct of the liquidation to the Registrar and, upon receipt of the report, the Registrar shall recommend to the Minister that all the assets of the association that are not disposed of shall vest in such association or charitable organisation as the Minister may determine.

(4) Where the name of an association has been struck off the register by the Registrar but the association has not been wound up, any interested party may, before the expiration of 5 years from the date of cancellation, apply to the court by petition supported by an affidavit of facts to restore the association to the register.

(5) Any order of the court for the restoration of the association shall comply with this Act and may be subject to such conditions that the court may find fit to impose.

(6) In any such proceedings, the Registrar shall be made a party to the proceedings.

PART V - ADMINISTRATIVE PROVISIONS

Appointment of Registrar

23.(1) The President may appoint a fit and proper person to be the Registrar of Associations for the purposes of this Act.

(2) The President may appoint a public officer as Deputy Registrar and such other public officers as the President considers necessary, to assist the Registrar in the proper discharge of the functions of the Registrar.

(3) The Registrar may delegate to the Deputy Registrar or such other public officer appointed under subsection (2), any of the functions of the Registrar under this Act.

(4) The assignment or delegation of any function under subsection (4) shall not prevent the exercise of that function by the Registrar.

(5) The Deputy Registrar or other public officer appointed under subsection (2) shall have the powers of the Registrar in respect of the delegation.

Secretary

24.(1) Every registered association shall have a secretary who may be an individual, a company or body corporate, or a firm.

(2) Anything required or authorised to be done by the secretary may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by any officer of the association authorised generally or specially in that behalf by the executive committee, until such time as a secretary is appointed.

Executive committee

25.(1) Every association registered under this Act shall have an executive committee which shall include the members proposed and voted

by the association as chairperson, vice chairperson, treasurer, secretary of the association.

(2) The members of the executive committee may in accordance with the association rules, form sub committees and appoint members amongst themselves to be part of the sub committees.

(3) A member proposed and voted under subsection (1) shall apply to the Registrar for approval before becoming a member of the executive committee of the association.

(4) Before approving an application under subsection (3), the Registrar shall satisfy himself or herself that the proposed member understands the obligations of the respective office, possesses the relevant qualifications and experience as may be specified by the Registrar, and has satisfied all the necessary requirements under this Act.

(5) With regard to the position of secretary, the Registrar shall, in addition to subsection (4), be satisfied that the applicant is a resident of Seychelles, and in the case of a company, firm, or body corporate applying to act as secretary, at least one officer of the company, firm or body corporate shall meet the requirements of subsection (4).

(6) The Registrar shall prescribe the application form for the purposes of this section, which shall contain a declaration to be sworn by each applicant regarding the information and particulars provided in the application.

(7) The application under subsection (6) shall in addition contain a declaration from all the members of the executive committee to the effect that they are aware of their obligations under this Act and other relevant laws.

(8) An application under this section shall be subject to payment of such fee as the Minister may prescribe.

(9) The Registrar may approve or decline an application under this section, or may cancel an application already approved on the grounds that the applicant did not comply with the terms and conditions of the approval

issued by the Registrar, or contravened the provisions of this Act or any other relevant law.

(10) No person shall be appointed as a member of the executive committee, where that person —

- (a) is of unsound mind;
- (b) is an undischarged bankrupt;
- (c) has been removed as an officer for violation of the rules of the association or any other written law; or
- (d) has been convicted of an offence involving corruption, fraud, dishonesty or moral turpitude.

(11) Where a person is removed from office for a reason provided under subsection (10) or was a member of the executive committee of an association that has been cancelled under this Act, he or she shall be restricted from being appointed on the executive committee of an association for a period of not less than three years.

(12) The chairperson, vice-chairperson, treasurer and secretary shall be appointed for a term of three years and shall be eligible for re-appointment for one more term of three years.

(13) For the avoidance of doubt, the chairperson, vice-chairperson, treasurer and secretary shall not hold office for more than 2 terms or a tenure exceeding 6 years, except where an application is made to the Registrar on exceptional grounds, for extension of the 2 terms for a further term of three years.

(14) An application under subsection (13), shall be made to the Registrar in the prescribed form.

(15) Any person whose application is denied or whose approval is cancelled under subsection (9) may appeal to the court under section 32.

(16) Where a member of the executive committee resigns or is removed from office by the association, the association shall, within 14 days

of the date of notice of resignation or removal, notify the Registrar, and seek the approval of the Registrar for the resignation or removal of the member.

(17) Where the Registrar approves a resignation or removal of a member of the executive committee under subsection (14), the association shall, within 14 days of the date of the approval, seek approval of the Registrar for the appointment of a new member to fill the vacancy on the executive committee.

(18) Any person who provides false information to the Registrar in an application or declaration under subsection (6) commits an offence and shall be liable on conviction to a fine of level 2 on the standard scale or to imprisonment not exceeding 3 years or to both.

(19) Any person who acts as a member of the executive committee of an association without the approval of the Registrar, or who continues to act as a member of the executive committee after cancellation of his or her membership by the Registrar, commits an offence and shall be liable on conviction to a fine of level 2 on the standard scale or to imprisonment not exceeding 3 years or to both.

Contribution

26.(1) To meet the expenses incurred in carrying out the purposes of this Act, every registered association shall pay to the Registrar on or before the fifteenth day of September in every year, such percentage of the profits of the association for the preceding year not exceeding one half per centum as may be prescribed in regulations.

(2) A contribution under subsection (1) shall be payable by an association whose profit for the previous year exceeds SCR50,000.

(3) The Registrar may exempt any association from the payment of such contribution if, in the opinion of the Registrar —

- (a) undue hardship would result from such payment;
- (b) the association is engaged in charitable activities; or
- (c) the association is primarily funded from the Consolidated Fund.

(4) Any contribution due by an association shall be a debt to the Government and may be sued for and recovered by the Registrar or the Attorney General by civil action in any court of competent jurisdiction.

(5) Notwithstanding any written law, any person, authority or public body shall on the written request of the Registrar provide the Registrar with any information necessary for the effective implementation of this section.

Application of funds

27.(1) A registered association shall not apply its funds except for the furtherance of its objects and the payment of emoluments to its employees, allowances or expenses to its officers, and expenses for its administration including the auditing of its accounts.

(2) The executive committee of a registered association shall not incur any expenditure —

- (a) during the period between the accounting date and the next annual general meeting, in excess of one sixth of the expenditure in the preceding accounting period;
- (b) at any other time in excess of SCR1000 under any one item and in excess of SCR4,000 in any year,

unless the expenditure has been previously approved by a general meeting.

(3) A foreign association shall not collect funds or act as an agent in Seychelles on behalf of any person and, except with the approval of the Minister, and in compliance with the Exchange Control Act transfer its property or funds to any country outside Seychelles or make any payment in Seychelles —

- (a) on behalf of a person not resident in Seychelles; or
- (b) in respect of any activity of the association other than its activities in Seychelles.

(4) Where any payment is made in contravention of subsection (3), the Registrar may initiate the relevant legal proceedings and engage the

relevant authorities for the purpose of recovering the amount paid, from the person making the payment or from the person receiving the payment.

(5) Any member of the executive committee who participates in the contravention of subsection (3) commits an offence and shall be liable on conviction to a fine of level 2 on the standard scale or to imprisonment not exceeding six months or to both.

Records and accounts

28.(1) Every registered association shall open and maintain a bank account into which all monies received by the association shall be deposited and transacted.

(2) Every officer who is responsible for keeping any account of a registered association or for the collection, receipt, disbursement, custody or control of the money of the association shall keep a record of all money received and paid by that officer for and on behalf of the association and shall —

- (a) at least once a year on the accounting date;
- (b) on the officer's resignation;
- (c) on vacation of office by the officer; or
- (d) where required to do so by rules of the association or this Act,

render to the association a true account of all monies received and paid by him or her since his or her appointment or since he or she last rendered an account.

(3) The treasurer of every registered association shall, once a year, not later than one month after the accounting date, prepare and submit to the committee, a statement of all receipts and payments of the association in respect of the accounting period and of the assets and liabilities of the association existing on the accounting date.

(4) Every officer shall, if so required, hand over to the association the balance that on any audit appears to be due from him or her, and all bonds, securities and effects, books, papers or other property of the association in his or her possession, under his or her control or entrusted to his or her custody.

(5) Where an officer fails to comply with subsection (4), the committee, any member of the association or the Registrar, acting on behalf of the association, may recover from him or her by judicial process —

- (a) the balance due upon any account last rendered by him or her;
- (b) all other monies received by him or her on account of the association; and
- (c) all bonds, securities and effects, books, papers or other property in his or her possession, under his or her control or entrusted to his or her custody.

Audit

29.(1) The executive committee of every registered association shall —

- (a) cause the statement prepared under section 28 to be audited by an auditor before submitting it to the annual general meeting; and
- (b) once a year not later than two months after the accounting date, and at such other times as may be required by the rules and the Registrar,

cause the accounts of the association to be audited by an auditor.

(2) The executive committee shall, upon written request by the auditor, submit the accounts of the association for audit.

(3) The accounts, whether audited or not, shall be submitted to the Registrar whenever so requested by him. or her.

Annual general meeting

30.(1) Every registered association shall, not later than three months after its accounting date, hold an annual general meeting.

(2) A registered association may provide for —

- (a) its annual general meetings to be conducted entirely by electronic communication; or
- (b) for one or more of its members, or proxies for members, to participate by electronic communication in all or part of its meeting that is being held in person,

in so far as the electronic communication employed ordinarily enables all persons participating in the meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.

(3) Where an association provides for participation in a meeting by electronic communication —

- (a) the notice of such a meeting shall inform members of the availability of the forms for participation, and provide any necessary information to enable members or their proxies to access the available medium or means of electronic communication; and
- (b) access to the medium or means of electronic communication shall be at the expense of the member or proxy, except to the extent that the association determines otherwise.

(4) The executive committee of every registered association shall submit for the approval of its members at the annual general meeting —

- (a) the statement prepared under section 28 (3); and
- (b) an estimate of the expenditure of the association, in the accounting period ending on the next accounting date.

(5) The treasurer of every registered association shall upon application by a member, deliver to the member a copy of the statement of estimates required to be submitted for the approval of the members under subsection (4).

(6) Every association shall, for a period of twelve months beginning not later than 7 days before the annual general meeting, cause a copy of every document required to be submitted to the meeting under subsection (5) to be prominently displayed and made available for inspection by a member at every place of business maintained by the association.

Register of members and records

31.(1) Every registered association shall keep an up to date register of —

- (a) its members; and
- (b) officers of its executive committee.

(2) The register kept under subsection (1) may be in electronic form or any other form and shall contain the following information —

- (a) the name, date of birth and identification number of every member;
- (b) the date of entry as a member and the date of exit;
- (c) any other information as the Registrar may determine; and
- (d) in respect of the executive committee, the designation of the officers and the date of appointment to the office and the date of cessation of office.

(3) Every registered association shall retain —

- (a) for a period of not less than seven years after the last date to which they relate —
 - (i) all books, statements of account and auditors' reports;

- (ii) all registers of members, and all records of money paid by the members to the association;
- (b) for a period of not less than seven years after their date of origin, all minutes of meetings, vouchers, receipts correspondences and all other documents relating to the affairs of the association.

(4) Every registered association shall ensure that all the books and documents of the association and the register of its members are available for inspection by the Registrar or by a member at its office or, in the case of a foreign association, at its principal office in Seychelles.

PART VI - MISCELLANEOUS

Appeals

32.(1) Any person aggrieved by a decision, direction, order or determination of the Registrar under this Act may, within sixty days of the decision, direction, order or determination, give notice in the form prescribed in Schedule F to the Registrar of his or her intention to appeal to the court against the decision, direction, order or determination.

(2) Subject to this Act, any appeal to the court under this Act shall be subject to the same conditions as appeals from a decision of the Magistrates' Court.

(3) Upon receipt of a notice of appeal under subsection (1), the Registrar shall prepare and submit to the court and to the appellant, a brief statement of the question in issue and any document relevant to the appeal and where the appeal is against a decision of the Registrar, a copy of the decision.

(4) At the hearing of the appeal, the appellant, the Registrar and any other person who, in the opinion of the court is likely to be affected by the appeal may, subject to any rules of court, appear and be heard in person or by legal representative

(5) The court may make such order on appeal as the court deems fit in the circumstances and such order shall bind all the parties to the appeal.

(6) No costs shall be awarded against the Registrar in an appeal under this section.

(7) The Chief Justice may make rules regulating the practice and procedure in respect of appeals under this Act.

Obligations of associations financed from Consolidated Fund

33. Every association financed from the Consolidated Fund and whose objective is to implement programmes and projects of a public nature shall, at least once annually through its website or through any other means approved by the Registrar, inform the public of its programmes and projects during the year, putting emphasis on how the funds have or are being spent.

Registrar's certificate to be evidence

34. A certificate under the hand of the Registrar as to the names of the officers of the executive committee and members of the association and as to any other fact required by this Act to be registered shall be sufficient evidence of the facts stated in the certificate, unless the contrary is shown.

Certificate of current standing

35.(1) The Registrar shall, upon request by any person, issue a certificate of current standing of any association registered under this Act in the form determined by the Registrar, if the Registrar is satisfied that —

- (a) the association is on the register;
- (b) the association has paid all fees, annual fees, fines and penalties due and payable under this Act;
- (c) he or she has no filed record of the association being dissolved.

(2) The certificate of current standing under subsection (1) —

- (a) shall contain the following particulars of the association —
 - (i) the name and any former name of the association;

- (ii) the registration number;
 - (iii) the date of its registration under this Act;
 - (iv) the address of its registered office; and
 - (v) that the association is registered in the register under this Act;
- (b) may contain the following particulars of the association —
 - (i) the name and address of the members of its executive committee;
 - (ii) if applicable, whether the association was registered under the repealed Registration of Associations Act;
- (c) shall include a statement as to whether —
 - (i) the association is in the process of amalgamation;
 - (ii) the association is in the process of being wound up, struck off and dissolved;
 - (iii) any proceedings to strike off or remove the association from the register have been instituted; or
 - (iv) the registration of the association is subject to being cancelled.

(3) A certificate of current standing is evidence of the standing of the association on the date that the certificate is issued.

(4) A request for a certificate of current standing under subsection (1) shall be made in writing accompanied by the prescribed fee or proof of payment of the prescribed fee.

Guidelines and practice directions

36. The Registrar may, for the efficient administration of this Act, issue guidelines or administrative or practice directions as the Registrar may deem necessary, including specifying documents required to be submitted under this Act.

Memorandum of understanding or agreement with an authority

37.(1) The Registrar may enter into a written memorandum of understanding or an agreement with any person or authority, including a supervisory and investigative authority for —

- (a) the sharing of information;
- (b) co-operation and mutual assistance in the exercise of respective powers and performance of their respective duties; and
- (c) any other matter the Registrar may deem necessary.

Exemptions

38. Subject to the definition of “association” in section 2, this Act shall not affect the provisions of any enactment relating to —

- (a) companies or partnerships;
- (b) co-operative societies;
- (c) trade unions; or
- (d) any legal persons or corporate body or association established under any other Act.

Offences and penalties

39.(1) An association, officer or other person who fails to comply with this Act or any order made under this Act commits an offence and shall be liable on conviction to a fine of level 2 on the standard scale or to imprisonment for a term not exceeding six months or to both.

(2) Every default under this Act constituting an offence, if continued, shall constitute a new offence in every week during which the default continues.

Administrative sanctions by Registrar

40.(1) Subject to subsection (2), where the Registrar is satisfied that a registered association or an officer of a registered association has

contravened this Act or any regulations made or guidelines issued under this Act or any direction issued under this Act, the Registrar may, in accordance with this Act, take such action as he or she may determine.

(2) The Registrar may, instead of instituting criminal proceedings or compounding of offences for any contravention of this Act, or the contravention of any regulations made or guidelines or direction issued under this Act, impose an administrative sanction under this section.

(3) Where the Registrar intends to impose an administrative sanction against a registered association or an officer of a registered association, he or she shall issue a notice to the association or the officer stating —

- (a) the intention to impose an administrative sanction;
- (b) the reasons for the intention to impose the penalty;
- (c) the type and terms of the administrative sanction;
- (d) where the administrative sanction is an administrative penalty, the amount of the proposed penalty;
- (e) the right of the association or the officer to make written representations to the Registrar in accordance with subsection (5).

(4) The administrative sanctions which the Registrar may impose under subsection (2) may include —

- (a) a private warning;
- (b) an administrative penalty;
- (c) prohibition on a person from being a member of the executive committee of an association for a period exceeding 3 years but not exceeding 5 years; or
- (d) cancel the registration of a registered association as provided under section 17.

(5) Where a registered association or an officer of a registered association receives an administrative sanction notice, that association or officer may, within 21 days from the date of the service of the notice on the association or the officer, make written representations to the Registrar indicating why the association or the officer should not be required to comply with the administrative sanction or in respect of an administrative penalty why the association or the officer should not be required to pay it or why the proposed administrative penalty should be reduced.

(6) Where, after considering the written representations under subsection (5) the Registrar is satisfied that the association or the officer is in contravention of subsection (1), or where no written representations are received, the Registrar shall impose the administrative sanction on the association or the officer.

(7) An administrative penalty under this section shall be a debt due to the Government and may be sued for and recovered by the Registrar or the Attorney General by civil action in any court of competent jurisdiction.

(8) Any administrative penalty paid to the Registrar shall be credited to the Consolidated Fund.

(9) The Registrar may, at any time prior to the issuance of the administrative sanction notice under subsection (1), withdraw the notice and substitute a new notice stating a different administrative sanction.

(10) A person aggrieved by a decision of the Registrar under this section may appeal to the court in accordance with section 32.

(11) An appeal of a decision of the Registrar to impose an administrative sanction does not operate as a stay on the obligation of a registered association or an officer of the association to comply with the administrative sanction, unless the Registrar or the court orders otherwise.

Compounding of offences

41.(1) Where the Registrar is satisfied that an offence under this Act has been committed by any person and the person admits to committing the offence, accepts liability for the commission of the offence and agrees in

writing to the matter being dealt with under this section, the Registrar in consultation with the Attorney General, may compound the offence *in the alternative* of instituting legal proceedings or imposing an administrative penalty by accepting a sum of not more than the maximum fine specified for the offence;

(2) Where a minimum fine is provided, no sum of money less than the minimum shall be accepted.

(3) A sum of money received under this section shall be dealt with as though it were a fine imposed by a court.

(4) The Registrar shall determine the sum of money to be paid by the offender, having due regard to the provisions of this Act, the nature, circumstances, extent and gravity of the offence and any previous conviction or compounding of offences under this Act.

(5) An *ad-hoc* compounding committee may be established to advise the Registrar in the determination of the sum of money to be paid by the offender in accordance with subsection (1).

(6) Upon determination of the sum of money to be paid by the offender under subsection (4), the Registrar shall sign the compounding agreement and serve it on the offender, who shall pay the sum of money within 14 days from the date of service of the compounding agreement.

(7) In the event the offender fails to pay the sum of money within the period set under subsection (6), the compounding agreement shall be void and judicial proceedings shall be instituted or continued.

(8) On payment of the sums provided under this section, the compounding of any offence under subsection (1) shall be filed in court and the proceedings in connection with the commission of the offence which is pending shall be noted as compounded and the offender absolutely discharged.

(9) The compounding of an offence under this section shall be conclusive and final and no court proceedings shall be instituted for that offence.

(10) In any proceedings brought against any person for an offence under this Act, it shall be a defence if the person proves that the offence has been compounded under this section.

(11) Where an association or a person has committed more than one offence under this Act, the Registrar may compound the penalties.

Regulations

42.(1) The Minister may make regulations for carrying the provisions of this Act into effect.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations —

- (a) prescribing the criteria for categorisation of associations registered or deemed registered under this Act;
- (b) for the registration and regulation of umbrella associations;
- (c) for the registration, submission, request and provision of any certificate, record and document to and by the Registrar to be effected by electronic means; and
- (d) prescribing the fees or penalties to be paid under this Act.

Amendment of schedules

43. The Minister may, by statutory instrument, amend the schedules.

Repeal and savings

44.(1) The Registration of Associations Act (Cap 201) is repealed.

(2) Notwithstanding subsection (1), any statutory instrument made under the repealed Act and in force immediately before the commencement of this Act shall remain in force, so far as it is not inconsistent with this Act, until it is repealed or revoked under this Act.

(3) At the coming into operation of this Act, any reference to the repealed Registration of Associations Act (Cap 201) contained in any Act or Statutory Instrument shall, without any modifications, be a reference to this Act.

Transitional provisions

45.(1) An association which, immediately before the date of commencement of this Act, was in operation under the repealed Act may continue to carry out its activities without registration under this Act for a period of six months beginning with the date of commencement of this Act or for such other period as the Registrar may determine, but shall, within that period apply for registration under this Act.

(2) If within the six-month period provided under subsection (1) an application is made for registration, the association may continue to carry out its activities without registration under this Act until that application is finally disposed of or withdrawn, provided that the period does not exceed twelve months.

(3) The Registrar shall, upon registration of an association under subsection (1), issue to the association a certificate of continuation prescribed in Schedule E, and consequently the association shall be deemed to have been registered under this Act and treated as an association registered under this Act.

(4) Notwithstanding subsection (1) an association re-registered under this Act and its officers shall, within a period of twelve months of the issuance of the certificate under subsection (3), comply with the provisions of this Act.

(5) An association which, after the date of commencement of this Act was operating or starts to operate but is not registered under this Act, but which is receiving funding from the public or similar sources by conducting itself in a manner similar to a registered association under this Act, shall apply to be registered under this Act.

(6) An association re-registered and continued under this Act which fails to comply with subsection (4) shall, after the expiry of twelve months

from the date of the issuance of the certificate of continuation under subsection (3), stand cancelled under section 17, unless the Registrar determines otherwise.

(7) Where any association not registered fails to apply for and be registered under this Act and, after the expiry of 6 months after the date of the coming into force of this Act, or 3 months after being notified by the Registrar regarding its status continues with its activities which, in the opinion of the Registrar may cause confusion as to its registrable status, every person associated in that association shall commit an offence and shall be liable on conviction to a fine of level 2 on the standard scale or to imprisonment not exceeding six months or to both.

(8) The re-registration of an association registered under the repealed Act and continuing under this Act shall not affect —

- (a) the continuity of the association as a legal entity; or
- (b) the assets, rights, obligations or liabilities of the association or of its officers.

(9) Every application, matter and proceeding commenced in any court in relation to an association immediately before the date of commencement of this Act shall be continued, completed and enforced as if this Act was not in force.

SCHEDULE A

Associations Act

(Section 3)

Certificate of Registration

THIS IS TO CERTIFY THAT—

[name of the Association]

has this day been registered as an association under the provisions of the Associations Act.

Dated this day of.....20.....

(Registration No.)

.....
Registrar

SCHEDULE B

(Section 8)

Matters to be provided for by the rules of associations registered under the Act, shall include—

1. the corporate name and place of the association;
2. the objects of the association;
3. the admission, rejection, and removal of members;

4. the mode of holding meetings and the right and mode of voting at such meetings;
5. the appointment and removal of members of the executive committee and of auditors;
6. formation of sub committees and appointment of members on the sub committees
7. the investment of the funds, if any, the keeping of accounts and the audit of such accounts at least once a year;
8. the inspection of the books of the association by any person having an interest in the funds of the association;
9. the fines and forfeitures which may be imposed on any members of the association.

SCHEDULE C

(Section 8)

Associations Act

(Section 8)

THIS IS TO CERTIFY THAT these rules amending the rules of the *(insert name of registered association)* were made in compliance with the procedures laid down in the Associations Act, and have been approved by me.

Dated thisday of20.....

.....
Registrar

SCHEDULE D

(Section 19)

Associations Act

Certificate of Amalgamation

(Section 19)

THIS IS TO CERTIFY THAT

(insert name of association) association and the *(insert name of association)* association,

being associations registered under the provisions of the Associations Act, have been amalgamated in accordance with the provisions of section 19 of the Act.

Dated this.....day of20.....

.....
Registrar

SCHEDULE E*[Section 44(3)]***Associations Act***[Section 44(3)]***Certificate of Continuation****THIS IS TO CERTIFY THAT —***(insert name of association)*

that was registered under the repealed Registration of Associations Act (Act 9 of 1959) has as of this day continued as an association under the provisions of the Association Registration and Regulation Act and is deemed registered under this Act.

Dated this day of.....20.....

.....

Registrar

SCHEDULE F

[Section 32(1)]

In the Supreme Court of Seychelles

In the matter between

..... Appellant
and
The Registrar of Associations Respondent
(address)

(insert case no, if any)

NOTICE OF APPEAL

Take Notice that being dissatisfied
with the decision of the Registrar of Associations
..... given on the
..... day of 20..... hereby
appeals to the Supreme Court against the whole of the decision (or against such
part of the decision as the case may be) that (setting
out details) upon the grounds set out in paragraph 2 and will at the hearing of the
appeal seek the relief set out in paragraph 3.

2. Grounds of Appeal

- (a)
- (b)
- (c) etc.

3. Relief sought from the Supreme Court.

- (a)
- (b)
- (c) etc.

Dated atthis day of 20

.....
Appellant/Legal representative of the Appellant
Address

To: The Registrar of Associations
Address
And to: The Registrar
Supreme Court

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 6th April, 2022.

A handwritten signature in dark ink, appearing to read 'T Isaac', written in a cursive style.

Mrs. Tania Isaac
Clerk to the National Assembly

ANTI-CORRUPTION (AMENDMENT) BILL, 2022

(Bill No. 8 of 2022)

**EXPLANATORY STATEMENT OF THE OBJECTS AND REASONS
FOR THE BILL**

The object of this Bill is to clarify the powers of the Anti-Corruption Commission to investigate and prosecute offences of conspiracy and attempt as well as offences of money laundering committed prior to the enactment of the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020 (Act 5 of 2020).

The Bill also proposes to extend to the Commission asset recovery powers following conviction for offences committed prior to the enactment of the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020.

Dated this 05th day of May, 2022.

**FRANK D.R. ALLY
ATTORNEY-GENERAL**

ANTI-CORRUPTION (AMENDMENT) BILL, 2022*(Bill No. 8 of 2022)***ARRANGEMENT OF ARTICLES****ARTICLES**

1. Short title
2. Repeal and replacement of section 40
3. Repeal and replacement of section 51A
4. Repeal and replacement of section 64
5. Consequential amendments

SCHEDULE

ANTI-CORRUPTION (AMENDMENT) BILL, 2022

(Bill No. 8 of 2022)



A BILL

FOR

AN ACT TO ALTER THE ANTI-CORRUPTION ACT (ACT 2 OF 2016).

ENACTED by the President and the National Assembly.

Short title

1. This Act may be cited as the Anti-Corruption (Amendment) Act, 2022, and amends the Anti-Corruption Act, 2016 (Act 2 of 2016), as last amended by Act 58 of 2021, which is hereinafter referred to as the “principal Act”.

Repeal and replacement of section 40

2. The principal Act is amended by repealing section 40 and substituting therefor the following —

Conspiring or Attempting to commit an offence under the Act

“40.(1) A person who conspires with another to commit an offence under Part III of this Act, is guilty of an offence and is liable, on conviction, to the same penalty as would apply on conviction for the Part III Offence.

(2) (a) A person who attempts to commit an offence under Part III of this Act, is guilty of an offence and is liable, on conviction, to the same penalty as would apply on conviction for the Part III Offence.

(b) An attempt to commit an offence under the Act shall have the same meaning as under Chapter XXXIX of the Penal Code.”

Repeal and replacement of section 51A

3. The principal Act is amended by repealing section 51A and substituting therefor the following —

Penal Code Offences

“51A. The Commission may investigate or take over and continue the investigation of offences provided under Chapter V, Chapter X, Chapter XXVI, Chapter XXVII, Chapter XXVIII, Chapter XXX, Chapter XXXII, Chapter XXXV, Chapter XXXVIII, Chapter XXXIX and Chapter XL of the Penal Code (Cap 158).

Repeal and replacement of section 64

4. The principal Act is amended by repealing section 64 and substituting therefor the following —

Prosecution by the Commission

“64.(1) Prosecutions may be instituted by the Commission for the following offences —

- (a) Offences listed under Part III of this Act;
- (b) Offences provided under Chapter V, Chapter X, Chapter XXVI, Chapter XXVII, Chapter XXVIII, Chapter XXX, Chapter XXXII, Chapter XXXV, Chapter XXXVIII, Chapter XXXIX and Chapter XL of the Penal Code (Cap 158);
- (c) Money laundering offences under the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020 (Act 5 of 2020), the Anti-Money Laundering Act 2006 (Act 5 of 2006) and the Anti-Money Laundering Act, 1996 (Act 8 Of 1996).

(2) The Commission may, with the leave of Court, institute prosecutions for such other offences under the Penal Code or any other written law which are founded on the same facts or otherwise closely related to offences being prosecuted under subsection (1).

(3) Where the Commission has instituted an investigation or prosecution for money laundering offences contrary to the Anti-Money Laundering Act 2006 (Act 5 of 2006), then the Commission may exercise the powers of the Attorney General under Part IV and V of that Act and references to the Attorney General therein should be read as including the Commission.

(4) Where the Commission has instituted an investigation or prosecution for money laundering offences contrary to the Anti-Money Laundering Act, 1996 (Act 8 of

1996), then the Commission may exercise the powers of the Attorney General under Section 11 of that Act and references to the Attorney General therein should be read as including the Commission.”

Consequential amendments

5. The Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020, Act 5 of 2020, is amended to the extent specified in the Schedule to this Act.

SCHEDULE

(Section 5)

CONSEQUENTIAL AMENDMENTS

Amendment of section 3 of Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020, Act 5 of 2020

1. Section 3 (8) of the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020, (Act 5 of 2020) is repealed and substituted therefor by the following

“This Act shall apply whether the criminal conduct in question occurred before or after the commencement of this Act and whether it was or is attributable to the person first mentioned in subsection (1) or another person.”

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT, 2022

(Act 7 of 2022)

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY

SECTIONS

1. Short title
2. Interpretation
3. Object of Act
4. Act does not limit cooperation with international organizations
5. Act not authority for extradition of any person

PART 2

REQUEST BY SEYCHELLES

DIVISION 1 - PRELIMINARY PROVISIONS

6. Application of this Part
7. Requests to be made by the Attorney General
8. Direct Requests

DIVISION 2 - LOCATING AND IDENTIFYING PERSONS

9. Assistance in locating or identifying persons

DIVISION 3 - SERVICE OF DOCUMENTS

10. Assistance in serving documents

DIVISION 4 - TAKING OF EVIDENCE IN A FOREIGN STATE

11. Request for taking of evidence

DIVISION 5 - ENFORCEMENT OF SEYCHELLES CONFISCATION ORDERS

12. Request for enforcement of Seychelles confiscation order

DIVISION 6 - ATTENDANCE OF PERSONS

13. Request for attendance of persons in Seychelles
14. Penalty not to be imposed on a person refusing to come to Seychelles

15. Privileges and immunities of person coming to Seychelles
16. Arrest of a person who escaped from custody

DIVISION 7 - REQUESTS PERMITTED UNDER THE LAWS OF A FOREIGN STATE

17. Other forms of request

PART 3 REQUEST TO SEYCHELLES DIVISION 1 - PRELIMINARY PROVISIONS

18. Application of this Part
19. Prescribed foreign State
20. Ad hoc requests for assistance
21. Request to be made to the Attorney General
22. Direct requests
23. Form of request
24. Refusal of assistance
25. Exceptions to political offences
26. Notification of refusal

DIVISION 2 - LOCATING AND IDENTIFYING PERSONS

27. Assistance in locating or identifying a person

DIVISION 3 - SERVICE OF PROCESS

28. Assistance in service of process
29. Undertaking by foreign State
30. Penalty not to be imposed for failure to comply with the summons

DIVISION 4 - OBTAINING EVIDENCE

31. Taking of evidence for criminal matters
32. Production order for criminal matters
33. Supplementary provisions regarding production orders
34. Immunities in compliance of production order
35. Failure to comply with production order

DIVISION 5 - ARRANGING ATTENDANCE OF PERSON IN A FOREIGN STATE

36. Request for attendance of a person in a foreign State
37. Request for attendance of a prisoner or detainee to a foreign State

DIVISION 6 - ENFORCEMENT OF FOREIGN CONFISCATION ORDER

- 38. Request for enforcement of a foreign confiscation order
- 39. Registration of confiscation order
- 40. Proof of orders of foreign State
- 41. Evidence in relation to proceeding and orders in a foreign State

DIVISION 7 - SEARCH AND SEIZURE

- 42. Request for search and seizure
- 43. Search warrant
- 44. Additional powers of person executing search warrant
- 45. Immunities of officers executing search warrant

DIVISION 8 - INTERCEPTION OF COMMUNICATIONS, PRESERVATION OF COMMUNICATIONS DATA AND COVERT SURVEILLANCE

- 46. Request for the interception of telecommunications
- 47. Order for the interception of telecommunications
- 48. Request for the interception of postal items
- 49. Order for the interception of postal items
- 50. Request for the preservation of communication data
- 51. Covert surveillance

PART 4**MISCELLANEOUS**

- 52. Register of Requests for Assistance in Criminal Matters
- 53. Authentication of documents
- 54. Use of video link in proceedings
- 55. Sharing Arrangements
- 56. Language
- 57. Authority to enter into treaty: article 64 of the Constitution
- 58. Regulations
- 59. Rules of Court
- 60. Repeal and savings



MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT, 2022

(Act 7 of 2022)



I assent

A handwritten signature in black ink, appearing to read 'Wavel'.

Wavel Ramkalawan
President

28th April, 2022

AN ACT TO MAKE PROVISION FOR MUTUAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN SEYCHELLES AND OTHER COUNTRIES; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

ENACTED by the President and the National Assembly.

PART I PRELIMINARY

Short title

1. This Act may be cited as the Mutual Assistance in Criminal Matters Act, 2022.

Interpretation

2.(1) In this Act, unless the context otherwise requires —

“ancillary criminal matter” means —

- (a) the restraining of dealing with, or the seizure, forfeiture or confiscation of, property in connection with a serious offence or a foreign serious offence, as the case may be; or
- (b) the seizure, forfeiture or confiscation of property by a court in respect of an offence or other unlawful conduct;
- (c) the obtaining, enforcement or satisfaction of a Seychelles confiscation order or a foreign confiscation order, as the case may be; or
- (d) the imposition or recovery of a pecuniary penalty in respect of an offence or other unlawful conduct;
- (e) the identification or tracing of proceeds of crime and property derived from or used in the commission of a serious offence or a foreign serious offence;

“application” means a notice of motion supported by an accompanying affidavit;

“authorized officer” means —

- (a) any police officer as defined under the Police Force Act, Cap. 172;
- (b) any officer of Customs appointed under the Customs Management Act, 2011;
- (c) any immigration officer as defined under the Immigration Decree Act, Cap. 93;
- (d) any person authorized by the Anti-Corruption Commission as established under the Anti-Corruption Act, 2016; and
- (e) any person authorized by the Attorney General;

“Central Authority” means the Attorney General or any authority designated as a Central Authority for Seychelles in pursuance of section 7;

“communications data” includes —

- (a) traffic data;
- (b) subscriber information;
- (c) any information not falling within paragraph (a) or (b) that is held or obtained by the provider of a postal service or a telecommunications service and which relates to the provision of that service and includes content data;
- (d) *content data*;

“competent authority” means a person or authority whom the Attorney General is satisfied is authorized under the law of that foreign State —

- (a) in the case of a request by that foreign State to Seychelles for assistance in a criminal matter, to make the request;
- (b) in the case of a request by Seychelles to that foreign State for assistance in a criminal matter, to receive the request;

“content data” means the subject or purpose of the communication, or the message or information being conveyed by the communication, whether or not any interpretation, process, mechanism or device needs to be applied or used to make the meaning of the communication intelligible;

“covert electronic surveillance” means covert surveillance carried out by or with an electronic surveillance device which transmits records or otherwise captures audio product or visual images, but does not include either surveillance by a tracking device which only provides the location or position, or the interception of telecommunications;

“covert surveillance” means surveillance carried out in a manner that is calculated to ensure that the persons who are subject to the surveillance are unaware that it is or may be taking place;

“criminal investigation” means an investigation —

- (a) into a serious offence or a foreign serious offence, as the case may be; or
- (b) for the purposes of an ancillary criminal matter;

“criminal matter” means in respect of a serious offence or a foreign serious offence, as the case may be —

- (a) a criminal investigation;
- (b) criminal proceedings;
- (c) an ancillary criminal matter;

“criminal proceedings” means a trial of a person for a serious offence or a foreign serious offence, as the case may be, and includes any proceedings to determine whether a particular person should be tried for the offence;

“dealing” in relation to any property, includes —

- (a) receiving or acquiring the property;
- (b) concealing or disguising the property, whether by concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it or otherwise;
- (c) disposing of or converting the property;
- (d) bringing the property into or removing the property from Seychelles;

- (e) using the property to borrow money, or as security, whether by way of a charge, mortgage or pledge or otherwise; or
- (f) where a debt is owed to the person holding the property, making a payment to any person in reduction of the amount of the debt;

“financial institution” means —

- (a) a financial institution as defined under the Financial Institutions Act, Cap 79;
- (b) a financial institution as defined under the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020;

“foreign confiscation order” means an order made by a court in a foreign State for the recovery, forfeiture or confiscation of —

- (a) payments or other rewards received in connection with an offence against the law of that foreign State that is a foreign serious offence, or the value of such payments or rewards; or
- (b) property derived or realized, directly or indirectly, from payments or other rewards received in connection with such an offence, or the value of such property;

“foreign law immunity certificate” means a certificate given, or a declaration made, by a foreign State or under the law of that foreign State, certifying or declaring that, under the law of that foreign State, persons generally or a specified person could or could not, either generally or in specified proceedings and either generally or in specified circumstances, be required —

- (a) to answer a specified question; or
- (b) to produce a specified thing;

“foreign prisoner” means a person who is being held in custody in a foreign State —

- (a) pending trial or sentence for, or sentence for;
 - (b) pursuant to sentence of imprisonment for,
- an offence against the law of that foreign State;

“foreign serious offence” means an offence —

- (a) against the law of a foreign State stated in a certificate issued by or on behalf of the foreign State; and
- (b) that consists of or includes any activity which, if the activity had occurred in Seychelles, would have constituted a serious offence;

“foreign State” means any country or territory other than Seychelles and includes any competent authority thereof;

“interception of communications” means disrupting, destroying, opening, interrupting, suppressing, stopping, seizing, recording, copying, listening to and viewing of communications in the course of its transmission so as to make some or all of the contents of the communication available, while being transmitted, to a person other than the sender or intended recipient of the communication;

“items subject to legal privilege” mean —

- (a) communication between an Attorney-at-Law and the Attorney-at-Law's client made in connection with the giving of legal advice to the client;
- (b) communications between an Attorney-at-Law and Attorney-at-Law's client made in connection with, or in contemplation of, judicial proceedings and for the purposes of such proceedings; and

(c) items enclosed with or referred to in such communications and made —

(i) in connection with the giving of legal advice; or

(ii) in connection with or in contemplation of judicial proceedings and for the purposes of such proceedings,

when these items are in the possession of a person who is entitled to possession of them, but excluding, in any case, any communications or thing held with the intention of furthering a criminal purpose;

“material” includes any book, document or other record in any form, and any article or thing relating to it;

“Minister” means the Minister responsible for legal affairs;

“order” includes a direction or judgment of a court;

“postal item” means any letter, parcel, package, or other thing which is being or will be carried by a public postal service;

“postal service” means any service which —

(a) consists in the collection, sorting, conveyance, distribution and delivery of postal items; and

(b) is offered or provided as a service, the main purpose of which, or one of the main purposes of which, is to make available, or to facilitate, a means of transmission from place to place of postal items containing communications;

“premises” include —

(a) a structure (whether or not movable or offshore), building, tent, vehicle, vessel, hovercraft or aircraft;

(b) a place (whether or not enclosed or built upon); or

- (c) part of any premises including premises of a kind referred to in paragraph (a) or (b);

“preservation of communications data” means the protection of communications data which already exists in a stored form from modification or deletion, or from anything that would cause its current quality or condition to change or deteriorate;

Provided that communications data that is stored on a highly transitory basis and already exists in a stored form as an integral function of the technology used in its transmission shall not be communications data for the purposes of this definition;

“process” means any summons, warrant, order or other document in respect of a criminal matter that is issued, as the case may be —

- (a) by any court of Seychelles or by any Judge, Magistrate or officer of such a court;
- (b) by any court of a foreign State or by any Judge, Magistrate or officer of such a court;

“property” means movable or immovable property of every description, whether situated in or outside Seychelles and whether tangible or intangible and includes both virtual assets and an interest in any such movable or immovable property;

“seizure” means freezing coupled with the administration, control, possession, or management of the funds, property or other assets;

“serious offence” means —

- (a) any offence that is punishable with imprisonment for a term of 12 months or more; or
- (b) an inchoate offence including any attempt, abetment, counselling or conspiracy to commit any of the offence referred to in paragraph (a);

“Seychelles confiscation order” means —

- (a) an order or penalty made in Seychelles for the confiscation or forfeiture of property in respect of a serious offence;
- (b) a confiscation order within the meaning of Proceeds of Crime (Civil Confiscation) Act, Cap. 298;

“subscriber information” means any information that is held by a provider of a postal service or telecommunications service relating to subscribers to its services and by which a subscriber's identity, affairs or personal particulars can be established, but does not include traffic data;

“surveillance” includes —

- (a) monitoring, observing or listening to persons, their movements, their conversations or their other activities or communication;
- (b) recording anything monitored, observed or listened to in the course of surveillance; and
- (c) surveillance by or with the assistance of a surveillance device;

“telecommunication” means a communication transmitted or received by means of guided or unguided electromagnetic or other forms of energy or technology;

“telecommunications service” means a service provided to any person for transmitting and receiving telecommunications, being a service, the use of which enables communications to be transmitted or received over a telecommunications system operated by a service provider;

“telecommunications system” means any system, including the apparatus comprised in it, which exists, whether wholly or partly in Seychelles or in the foreign State making a request, for the purpose of transmitting and receiving telecommunications;

“traffic data” means computer data —

- (a) that relates to a communication by means of a computer system;
- (b) is generated by a computer system that is part of the chain of communication; and
- (c) shows the communication's origin, destination, route, time, date, size, duration or the type of underlying services;

“treaty” includes a convention, agreement, protocol, statute or any other instrument of international law in relation to mutual assistance in criminal matters;

“virtual asset” means a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes;

“video link” means a technological arrangement whereby a witness or person, without being physically present in the place where the proceedings are conducted, is able to see and hear and be seen and be heard by the relevant court or relevant authority.

(2) For the purposes of this Act, judicial proceedings that are criminal proceedings are —

- (a) instituted in Seychelles or a foreign State when a person is produced and charged in court with a serious offence or foreign serious offence, as the case maybe;
- (b) concluded on the occurrence of any of the following events;
 - (i) the discontinuance of the proceedings;
 - (ii) the acquittal of the defendant;
 - (iii) the quashing of the defendant's conviction for the offence;

- (iv) the grant of a pardon in respect of the defendant's conviction for the offence;
- (v) the court sentencing or otherwise dealing with the defendant in respect of the person's conviction for the offence without having made a foreign confiscation order;
- (vi) the satisfaction of a foreign confiscation order made in the proceedings, whether by payment of the amount due under the order, by the defendant serving imprisonment in default, by the recovery of all property liable to be recovered or otherwise.

Object of Act

3.(1) The object of this Act is for Seychelles to provide and obtain international assistance in criminal matters, including —

- (a) the location and identification of a person;
- (b) the making of arrangements for persons to give evidence or to assist in criminal investigations;
- (c) the provision and obtaining evidence, documents and things;
- (d) the execution of requests for search and seizure;
- (e) the service of documents;
- (f) the recovery, forfeiture or confiscation of property in respect of a serious offence or a foreign serious offence;
- (g) the restraining of dealings in property, or the freezing of property, that may be recovered in respect of a serious offence or a foreign serious offence;
- (h) the identification or tracing of proceeds of crime and

property derived from or used in the commission of a serious offence or a foreign serious offence;

- (i) the recovery of pecuniary penalties in respect of a serious offence or a foreign serious offence;
- (j) interception of telecommunications and conducting covert surveillance;
- (k) preserving communications data;
- (l) any form of assistance in a criminal matter that is specified in a treaty to which Seychelles is a party; and
- (m) any other form of assistance in a criminal matter that is consistent with the laws of Seychelles.

(2) This Act shall apply to the provision or the obtaining of assistance in relation to a serious offence or a foreign serious offence committed or believed to have been committed before or after the commencement of this Act.

Act does not limit cooperation with international organizations

4.(1) Nothing in this Act derogates from existing forms of cooperation or prevents the development of other forms of cooperation, whether formal or informal, in respect of any criminal matter between Seychelles and any foreign State or authority such as the International Criminal Police Organization (INTERPOL).

(2) This Act does not prevent the provision or obtaining of international assistance in criminal matters under any other written law.

Act not authority for extradition of any person

5. Nothing in this Act authorizes —

- (a) the extradition of any person;
- (b) the arrest or detention with a view to the extradition of any person.

PART 2
REQUEST BY SEYCHELLES
DIVISION 1 - PRELIMINARY PROVISIONS

Application of this Part

6. A request for assistance may be made to a foreign State by Seychelles under this Part.

Requests to be made by the Attorney General

7.(1) A request by Seychelles to a foreign State for assistance in a criminal matter under this Part shall be made by or through the Attorney General or an authority designated as a Central Authority under subsection (3).

(2) A request under subsection (1) shall be made through the diplomatic channel.

(3) For the purposes of this Act, the Central Authority is —

(a) the Attorney General; or

(b) any authority who the President may, by notice published in the Gazette, designate as a Central Authority on such terms and conditions as the President may determine.

(4) An authority designated as a Central Authority under subsection (3) shall have the same powers as the Attorney General and shall provide or obtain international assistance in criminal matters on such terms and conditions as the President may determine.

Direct Requests

8.(1) Notwithstanding section 7, an authority authorized by Seychelles may make a request for assistance in a criminal matter directly to a foreign State —

(a) where and to the extent permitted by any treaty or international arrangement; or

- (b) where and to the extent permitted by any agreement with the Attorney General; or
- (c) in a case of urgency, with the consent of the Attorney General.

(2) Where an authority transmits a request under subsection (1), the authority shall send, without delay, a copy of the request made for assistance in the criminal matter to the Attorney General and Minister responsible for foreign affairs.

DIVISION 2 - LOCATING AND IDENTIFYING PERSONS

Assistance in locating or identifying persons

9. Where the Attorney General is satisfied that there are reasonable grounds for believing that there is, in any foreign State, a person who —

- (a) is or might be concerned in or affected by; or
- (b) could give evidence or assistance relevant to,

any criminal matter in Seychelles, the Attorney General may make a request to that foreign State to assist in locating, or, if the person's identity is unknown, identifying and locating, that person.

DIVISION 3 - SERVICE OF DOCUMENTS

Assistance in serving documents

10.(1) The Attorney General may request a foreign State to assist in effecting service of any process where the Attorney General is satisfied that for the purposes of or in connection with, any criminal matter in Seychelles, it is necessary or desirable to serve that process on a person or an authority in the foreign State.

(2) The service of a process in a foreign State may be proved by an affidavit, a declaration or a statement of the person who served the process.

DIVISION 4 - TAKING OF EVIDENCE IN A FOREIGN STATE**Request for taking of evidence**

11.(1) The Attorney General may request a foreign State to arrange for —

- (a) such evidence to be taken in the foreign State; and
- (b) the evidence to be sent to the Attorney General,

if the Attorney General is satisfied that there are reasonable grounds for believing that such evidence would be relevant to any criminal matter in Seychelles.

(2) The Attorney General may request a foreign State —

- (a) to assist in obtaining, by search and seizure, if necessary, such thing in the foreign State or a photograph or copy of the thing;
- (b) to arrange for the thing or the photograph or copy of the thing to be sent to the Attorney General,

if the Attorney General is satisfied that there are reasonable grounds for believing that such evidence would be relevant to any criminal matter in Seychelles.

(3) Any evidence, thing or photograph or copy of a thing received by the Attorney General pursuant to a request under subsection (1) or (2) may, subject to the provisions of the Criminal Procedure Code, Cap. 54, Evidence Act, Cap. 74, or any other law, be admitted as evidence at any proceedings to which the request relates.

(4) In assessing the weight to be attached to any evidence received by the Attorney General pursuant to a request made under subsection (1) which has been admitted as evidence in any criminal proceedings to which the request relates, the court shall have regard to —

- (a) whether it was possible to challenge the evidence taken; and
- (b) whether the law of the foreign State concerned allowed the parties to the criminal proceedings to be represented by an Attorney-at-Law or an authorized person when the evidence was being taken.

(5) All courts in Seychelles shall take judicial notice of any seal or signature impressed, affixed, appended or subscribed on or to any statement or deposition tendered in evidence under this section.

(6) Evidence or assistance under this section may be given via video link.

DIVISION 5 - ENFORCEMENT OF SEYCHELLES CONFISCATION ORDERS

Request for enforcement of Seychelles confiscation order

12.(1) The Attorney General may request a foreign State to make arrangements —

- (a) for the enforcement and satisfaction of a Seychelles confiscation order; or
- (b) where a Seychelles confiscation order may be made in any proceedings which have been or are to be instituted in Seychelles, to restrain dealing in any property against which the order may be enforced or which may be available to satisfy the order,

if the Attorney General is satisfied that there are reasonable grounds for believing that some or all of the property concerned is located in that foreign State.

(2) Where —

- (a) the Seychelles confiscation order requires the payment of a specified amount; and

- (b) the property is recovered in a foreign country pursuant to a request under subsection (1),

that specified amount shall be reduced from the value of property so recovered.

(3) A certificate purporting to be issued by or on behalf of a foreign State stating —

- (a) that property has been recovered in the foreign State pursuant to a request under subsection (1);
- (b) the value of the property;
- (c) the date on which the property was recovered,

shall, in any judicial proceedings, be admissible as evidence of the matter so stated.

DIVISION 6 - ATTENDANCE OF PERSONS

Request for attendance of persons in Seychelles

13.(1) Where the Attorney General is satisfied that —

- (a) there are reasonable grounds to believe that a person in a foreign State is capable of giving evidence or assistance relevant to a criminal matter involving a serious offence; and
- (b) that person consents to travel to Seychelles for the purpose of giving such evidence or assistance,

the Attorney General may request the foreign State to assist in arranging for the attendance of a person in Seychelles for the purpose of giving such evidence or assistance.

(2) The Attorney General may make arrangements with a foreign State for the purposes of —

- (a) the removal of the person to Seychelles;
- (b) the return of the person to the foreign State;
- (c) in the case of a foreign prisoner, the custody of that person while in Seychelles; and
- (d) any other relevant matter.

Penalty not to be imposed on a person refusing to come to Seychelles

14. Where, pursuant to section 13, the Attorney General requests the assistance of a foreign State in arranging the attendance in Seychelles of any person, that person shall not be subjected to any penalty or liability or otherwise prejudiced in law by reason only of that person's refusal or failure to consent to attend as requested.

Privileges and immunities of person coming to Seychelles

15.(1) A person who is in Seychelles, pursuant to a request made under section 13, shall not —

- (a) be detained, prosecuted or punished in Seychelles for any offence that is alleged to have been committed, or that was committed, before the person's departure from the foreign State concerned pursuant to the request;
- (b) be subjected to any civil proceedings in Seychelles in respect of any act or omission that is alleged to have occurred, or that had occurred, before the person's departure from the foreign State pursuant to the request, being civil proceedings to which the person could not be subjected if the person were not in Seychelles; or
- (c) be required to give evidence or assistance in relation to any criminal matter in Seychelles other than the criminal matter to which the request relates.

(2) Subsection (1) ceases to apply if —

- (a) the person has left Seychelles and then returns otherwise than pursuant to the same or another request; or
- (b) the person has had the opportunity to leave Seychelles and had remained in Seychelles otherwise than for —
 - (i) the purpose to which the request relates; or
 - (ii) the purpose of giving evidence or assistance in a criminal matter in Seychelles certified by the Attorney General in writing to be a criminal matter in which it is desirable that the person gives evidence or assistance.

Arrest of a person who escaped from custody

16.(1) A police officer may, without warrant, arrest a person, if the police officer has reasonable grounds to believe that the person —

- (a) has been brought to Seychelles pursuant to request under section 13(2)(c); and
- (b) has escaped from lawful custody while in Seychelles pursuant to the request.

(2) A person who has been arrested pursuant to subsection (1) shall be returned to lawful custody.

(3) A person who escapes from lawful custody while in Seychelles pursuant to a request under section 13(2)(c) commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or a fine of level 3 on the standard scale, or to both such fine and imprisonment.

DIVISION 7 - REQUESTS PERMITTED UNDER THE LAWS OF A FOREIGN STATE

Other forms of request

17.(1) The Attorney General may make such other requests to a foreign State that are permitted under the laws of the foreign State, including the interception of telecommunications and postal items, surveillance of any kind, and the preservation of communications data.

(2) Any evidence or thing or copy of a thing received by the Attorney General pursuant to a request under subsection (1) may, subject to the provisions of the Criminal Procedure Code, Cap. 54, Evidence Act, Cap. 74, or any other law, be admitted as evidence at any proceedings to which the request relates.

(3) The Minister may make regulations in respect of any form of request made under subsection (1).

PART 3
REQUEST TO SEYCHELLES
DIVISION 1 - PRELIMINARY PROVISIONS

Application of this Part

18. Unless otherwise stated in this Part, assistance by Seychelles may be provided to a prescribed foreign State under this Part.

Prescribed foreign State

19.(1) For the purposes of this Part, a prescribed foreign State is a foreign State that has a treaty in force between Seychelles and that foreign State under which there is an agreement to provide assistance in criminal matters.

(2) Subject to this Act or any other written law, a request made by a foreign State shall be acted upon pursuant to the provisions of the treaty.

(3) As soon as practicable after 1 January in every year, the Minister responsible for foreign affairs shall publish a notice in the Gazette specifying the treaties in force between Seychelles and a foreign State under which there is an obligation to provide assistance in criminal matters.

Ad hoc requests for assistance

20.(1) This section applies where a foreign State requests assistance under this Part and that foreign State —

- (a) is not a prescribed foreign State;
- (b) is a prescribed foreign State but the request is outside the

scope of the treaty between Seychelles and the prescribed foreign State.

(2) If any foreign State makes a request for assistance under subsection (1), the Attorney General, in consultation with the Minister responsible for foreign affairs, may consider the following matters in order to decide whether or not the request shall be dealt with under this Part —

- (a) any assurances given by the foreign State that the foreign State will entertain a similar request by Seychelles for assistance in criminal matters;
- (b) the seriousness of the offence to which the request relates;
- (c) the willingness of the foreign State to enter any sharing arrangements under section 55;
- (d) any other matters that the Attorney General considers relevant.

(3) If, after considering those matters in subsection (2), the Attorney General decides that the request shall be dealt with under this Part, the Attorney General may deal with that request accordingly.

Request to be made to the Attorney General

21.(1) A request by any foreign State to Seychelles for assistance in a criminal matter under this Part shall be made to the Attorney General or an authority designated as a Central Authority under section 7.

(2) A request under subsection (1) shall be made through the diplomatic channel.

Direct requests

22.(1) Notwithstanding section 21, an authority authorized by Seychelles may receive a request for assistance in a criminal matter directly from a prescribed foreign State —

- (a) where and to the extent permitted by any treaty or international arrangement;
- (b) where and to the extent permitted by any agreement with the Attorney General;
- (c) in a case of urgency, with the consent of the Attorney General.

(2) Where an authority authorized by Seychelles receives a request pursuant to subsection (1), the authority shall send, without delay, a copy of the request to the Attorney General and Minister responsible for foreign affairs.

Form of request

23.(1) Every request shall —

- (a) specify the purpose of the request and the nature of the assistance being sought;
- (b) identify the person or authority that initiated the request;
- (c) specify whether the foreign State is requesting assistance either pursuant to section 19 or 20; and
- (d) be accompanied by —
 - (i) a certificate from the foreign State that the request is made in respect of a criminal matter within the meaning of this Act;
 - (ii) a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws;
 - (iii) where the request relates to —
 - (a) the location of a person who is suspected to be

involved in or to have benefited from the commission of a foreign serious offence; or

- (b) the tracing of property that is suspected to be connected with a foreign serious offence, the name, identity, nationality, location or description of that person, or the location and description of the property, if known, and a statement setting forth the basis for suspecting the matter referred to in subparagraph (a) or (b);
- (iv) a description of the offence to which the criminal matter relates, including its maximum penalty;
- (v) details of the procedure which the foreign State wishes Seychelles to follow in giving effect to the request, including details of the manner and form in which any information, document or thing is to be supplied to that foreign State pursuant to the request;
- (vi) where the request is for assistance relating to an ancillary criminal matter and judicial proceedings to obtain a foreign confiscation order have not been instituted in the foreign State, a statement indicating when the judicial proceedings are likely to be instituted;
- (vii) a statement setting out the wishes of the foreign State concerning the confidentiality of the request and the reason for those wishes;
- (viii) details of the period within which the foreign State wishes the request to be met;
- (ix) if the request involves a person travelling from Seychelles to a foreign State, details of the allowances to which the person will be entitled, and of the arrangements for security and accommodation for the person while the person is in the foreign State pursuant to the request;

- (x) any other information required to be included with the request under any treaty between Seychelles and the prescribed foreign State; and
- (xi) any other information that may assist Seychelles in giving effect to the request or which is required under the provisions of this Act or any regulations made under this Act.

(2) Where a foreign State fails to comply with the requirements set out in subsection (1), the Attorney General may request that the foreign State comply with the requirements or submit such other information that the Attorney General deems necessary.

(3) The Attorney General shall execute a request, that is in compliance with this Act, within a reasonable time or within the period specified in subsection (1)(d)(viii), where it is practicable.

Refusal of assistance

24.(1) A request by a foreign State for assistance under this Part shall be refused if, in the opinion of the Attorney General, —

- (a) the request relates to the investigation, prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political nature;
- (b) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Seychelles, would have constituted a military offence under the laws of Seychelles which is not also an offence under the ordinary criminal law of Seychelles;
- (c) there are substantial grounds for believing that the request was made for the purpose of investigating, prosecuting, punishing or otherwise causing prejudice to a person on

account of the person's race, religion, sex, ethnic origin, nationality or political opinions;

- (d) the request relates to the investigation, prosecution or punishment of a person for an offence in a case where the person —
 - (i) has been convicted, acquitted or pardoned by a competent court or other authority in that foreign State or a third State; or
 - (ii) has undergone the punishment provided by the law of that foreign State or a third State, in respect of that offence or of another offence constituted by the same act or omission as the first-mentioned offence;
- (e) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if the act or omission had occurred in Seychelles, would not have constituted an offence against the laws of Seychelles;
- (f) the provision of the assistance would affect the sovereignty, security, public order or other essential public interest of Seychelles;
- (g) the foreign State fails to undertake that the thing requested for will not be used for a matter other than the criminal matter in respect of which the request was made, except with the consent of the Attorney General;
- (h) in the case of a request for assistance under sections 31, 32, 33, 34 and 35 or sections 42, 43, 44 and 45 the foreign State fails to undertake to return to the Attorney General, upon the Attorney General's request, any thing obtained pursuant to the request upon completion of the criminal matter in respect of which the request was made;
- (i) the provision of the assistance could prejudice a criminal matter in Seychelles; or

- (j) the provision of the assistance would require steps to be taken that would be contrary to the Constitution or any other law.

(2) A request by a foreign State for assistance under this Part may be refused by the Attorney General —

- (a) pursuant to the terms of any treaty between Seychelles and that prescribed foreign State;
- (b) if, in the opinion of the Attorney General, the provision of the assistance would, or would be likely to, prejudice the safety of any person, whether that person is within or outside Seychelles;
- (c) if, in the opinion of the Attorney General, the provision of the assistance would impose an excessive burden on the resources of Seychelles and the foreign State is not willing to enter into a sharing arrangement under section 55; or
- (d) if that foreign State is not a prescribed foreign State and the foreign State fails to give an undertaking to the Attorney General that the foreign State will, subject to the laws of that foreign State, comply with a future request by Seychelles to that foreign State for assistance in a criminal matter.

(3) Without prejudice to subsection (2)(c), if there is a request for assistance by a foreign State and the Attorney General is of the opinion that the expenses involved in complying with the request or continuing to effect the assistance requested for is of an extraordinary or substantial nature, the Attorney General shall consult with the foreign State on the conditions under which the request is to be effected or under which the Attorney General is to cease to give effect to it, as the case may be.

Exceptions to political offences

25. For the purposes of section 24(1)(b), the following offences shall not be held to be offences of a political nature —

- (a) an offence against the life or person of a Head of State or a member of the immediate family of a Head of State;
- (b) an offence against the life or person of a Head of Government, or of a Minister of a Government;
- (c) an offence established under any treaty to which Seychelles and the foreign State are parties and which is declared in the treaty concerned not to be regarded as an offence of a political nature for the purposes of mutual assistance in criminal matters;
- (d) any other offence declared by the Minister by Order published in the Gazette; and
- (e) any attempt, abetment or conspiracy to commit any of the offences referred to in paragraphs (a) to (d).

Notification of refusal

26. If a request by a foreign State for assistance under this Part is refused in whole or in part, notice of the refusal shall be given by the Attorney General to the Foreign State with the reasons for the refusal.

DIVISION 2 - LOCATING AND IDENTIFYING PERSONS

Assistance in locating or identifying a person

27.(1) A foreign State may request the Attorney General to assist in locating, or identifying and locating, a person who is believed to be in Seychelles.

(2) Where, on the receipt of a request made under subsection (1) by a foreign State, the Attorney General is satisfied that —

- (a) the request relates to a criminal matter in the foreign State;
- (b) there are reasonable grounds for believing that the person to whom the request relates —

- (i) is or might be concerned in, or could give or provide evidence or assistance relevant to, the criminal matter; and
- (ii) is or might be in Seychelles,

the Attorney-General may authorize assistance in accordance with this section.

(3) Where, in relation to a request made under subsection (1), the Attorney General authorizes assistance in accordance with this section, the Attorney General shall forward the request to the appropriate authority in Seychelles.

(4) The appropriate authority referred to in subsection (3) shall, to the best of its ability, seek to locate or identify and locate, as the case may be, the person to whom the request relates, and shall inform the Attorney General of the outcome of the actions taken.

(5) On receipt of information under subsection (4), the Attorney General shall inform the foreign State of the result of the inquiries made pursuant to the request.

DIVISION 3 - SERVICE OF PROCESS

Assistance in service of process

28.(1) A foreign State may request the Attorney General to assist in effecting the service of process on a person in Seychelles.

(2) Where, on receipt of a request made under subsection (1), the Attorney General is satisfied that —

- (a) the request relates to a criminal matter in that foreign State;
- (b) there are reasonable grounds for believing that the person to be served is in Seychelles;
- (c) the foreign State has provided sufficient details of the consequences of a failure to comply with such process; and

- (d) where the request relates to the service of a summons to appear as a witness in that foreign State, that foreign State has given an adequate undertaking in respect of the matters specified in section 29,

the Attorney General may authorise assistance in accordance with this section.

(3) Where service is authorized under subsection (2), the Attorney General may, at the request of a foreign State, arrange for the service of process in Seychelles relating to a criminal matter in the foreign State.

(4) Without limiting the manner in which the service of process in a foreign State may be proved in Seychelles, service of such process may be proved by the declaration of the person who served the process.

Undertaking by foreign State

29. Where, pursuant to a request under section 28, a foreign State requests the assistance of the Attorney General in effecting the service on any person of a summons to appear as a witness in that foreign State, the Attorney General shall, before authorizing assistance in accordance with section 28, obtain from the foreign State an undertaking that that person will not be subject to any penalty or liability or otherwise prejudiced in law by reason only of that person's refusal or failure to accept or comply with the summons, notwithstanding any contrary statement in the summons.

Penalty not to be imposed for failure to comply with the summons

30. The person who is to appear as a witness pursuant to section 28 shall not be subjected to any penalty or liability or otherwise prejudiced in law by reason only of that person's refusal or failure to accept, or comply with, the summons, notwithstanding any contrary statement in the summons.

DIVISION 4 - OBTAINING EVIDENCE

Taking of evidence for criminal matters

31.(1) Where a request is made by a foreign State that evidence be taken in Seychelles for the purpose of any criminal matters in that foreign State, the Attorney General may, subject to such conditions as the Attorney General may specify, authorize the taking of such evidence.

(2) If the Attorney General authorizes the taking of the evidence under subsection (1), a Judge or Magistrate may —

- (a) take the evidence on oath of each witness appearing before the Judge or Magistrate to give evidence in relation to the criminal matter as if the witness were giving evidence on a charge against a person for an offence against the laws of Seychelles;
- (b) cause the evidence to be reduced into writing and certify at the end of that writing that the evidence was taken by the said Judge or Magistrate; and
- (c) cause the writing, so certified, to be sent to the Attorney General.

(3) The proceedings may be conducted in the presence or absence of the person to whom the criminal matters in the foreign State relates or in the presence of that person's Attorney-at-Law or representative, if any.

(4) The certificate referred to in subsection (2)(b) shall state whether the person to whom the criminal matters in the foreign State relates or the person's Attorney-at-Law or representative, if any, was present at the proceedings.

(5) The laws of Seychelles with respect to the compelling of persons to attend before the Supreme Court, and to give evidence, answer questions and produce materials or articles shall, in so far as they are applicable, apply for the purposes of this section as if it were a hearing of a charge against a person for an offence against the laws of Seychelles.

(6) Notwithstanding subsection (5), for the purposes of this section, the person to whom the criminal matters in the foreign State relates is competent, but not compellable, to give evidence.

(7) Notwithstanding subsection (5), no person who is required under this section to give evidence for the purposes of any criminal matters in a foreign State shall be required to answer any question that the person could not be compelled to answer in those proceedings in that foreign State.

(8) A duly certified foreign law immunity certificate is admissible in proceedings under this section as prima facie evidence of the matters stated in the certificate.

(9) Evidence taken under this section shall not be admissible in evidence or otherwise used for the purposes of any judicial proceedings, disciplinary proceedings, or other proceedings in Seychelles except in a prosecution of the person who gave that evidence for the offence of perjury or contempt of court in respect of that evidence.

(10) Notwithstanding subsection (9), evidence taken under this section may be used for impeaching the credibility of the person who gave the evidence in any judicial proceedings.

Production order for criminal matters

32.(1) Where a request is made by a foreign State that any particular thing or description of a thing in Seychelles be produced for the purpose of any criminal matter in that foreign State, the Attorney General or an authority authorized by the Attorney General may apply to the court for an order under subsection (3).

(2) An application for an order under subsection (3) in relation to any thing in the possession of a financial institution shall be made to a Judge or a Magistrate.

(3) If, on such an application, the court is satisfied that the conditions referred to in subsection (4) are fulfilled, the court may make an order that the person who appears to the court to be in possession of the thing to which the application relates shall —

- (a) produce the thing to an authorized officer for the said officer to take away; or
- (b) give an authorized officer access to the thing,

within 5 days of the date of the order or such other period as the court considers appropriate.

- (4) The conditions referred to in subsection (3) are —
- (a) that there are reasonable grounds for suspecting that a specified person has committed or benefited from a foreign serious offence;
 - (b) that there are reasonable grounds for believing that the thing to which the application relates —
 - (i) is likely to be of substantial value, whether by itself or together with another thing, to the criminal matter in respect of which the application was made; and
 - (ii) does not consist of or include items subject to legal privilege; and
 - (c) that the court is satisfied that it is not contrary to the public interest or to any law for the thing to be produced or access to it to be given.

(5) The proceedings referred to in subsection (3) may be conducted in the presence or absence of the person to whom the criminal proceedings in the foreign State relates or in the presence of the person's Attorney-at-Law or representative, if any.

(6) No person who is required by an order under this section to produce or make available any thing for the purposes of any criminal proceedings in a foreign State shall be required to produce any thing that the person could not be compelled to produce in the proceedings in that foreign State.

(7) A duly certified foreign law immunity certificate is admissible in proceedings under this section as prima facie evidence of the matters stated in the certificate.

(8) Proceedings under subsection (3) shall be heard in Chambers unless the court directs otherwise.

(9) Where the Attorney General receives a request under subsection (1), the Attorney General may execute the request without an order of the

court where the person in possession or control of the thing has given the thing to the Attorney General to fulfil the request under this section and the person has signed a declaration declaring that the thing was voluntarily given to the Attorney General.

Supplementary provisions regarding production orders

33.(1) Where the Supreme Court orders a person under section 32 to give an authorized officer access to any thing on any premises, the court may, on the same or subsequent application of the Attorney General or an authority authorized by the Attorney General, order any person who appears to the Supreme Court to be entitled to grant entry to the premises to allow an authorized officer to enter the premises to obtain access to the thing.

(2) Where any material to which an order under section 32 relates consists of information contained in or accessible by means of any data equipment —

- (a) an order under section 32(3)(a) shall have effect as an order to produce the material in a form which can be taken away and which is visible and legible; and
- (b) an order under section 32(3)(b) shall have effect as an order to give access to the material in a form which is visible and legible.

(3) A person is not excused from producing or making available any thing by an order under section 32 on the ground that —

- (a) the production or making available of the thing might tend to incriminate the person or make the person liable to a penalty; or
- (b) the production or making available of the thing would be in breach of an obligation, whether imposed by law or otherwise, of the person not to disclose the existence of the contents of the thing.

(4) An order under section 32 —

- (a) shall not confer any right to the production of, or of access to, items subject to legal privilege; and
- (b) shall have effect notwithstanding any obligations as to secrecy or other restrictions upon the disclosure of information imposed by law or otherwise.

(5) An authorized officer may photograph or make copies of any thing produced or to which access is granted pursuant to an order made under section 32.

(6) Where an authorized officer takes possession of any thing under an order made under section 32 or takes any photograph or makes any copy of the thing pursuant to subsection (5), the authorized officer shall inform the Attorney General and shall, unless the Attorney General otherwise directs, immediately send the thing or the photograph or copy of the thing to the relevant foreign State.

(7) In this section, “data equipment” means any equipment which —

- (a) automatically processes information;
- (b) automatically records or stores information;
- (c) can be used to cause information to be automatically recorded, stored or otherwise processed on other equipment, wherever situated;
- (d) can be used to retrieve information whether the information is recorded or stored in the equipment itself or in other equipment, wherever situated; or
- (e) can be used to carry out any combination of the functions specified in paragraphs (a) to (d).

Immunities in compliance of production order

34.(1) No civil or criminal action, other than a criminal action for an offence under section 35, shall lie against any person for —

- (a) producing or giving access to any thing if the person had produced or given access to the thing in good faith in compliance with an order made against him under section 32; or
- (b) doing or omitting to do any act if that person had done or omitted to do the act in good faith and as a result of complying with such an order.

(2) A person who complies with an order made under section 32 shall not be treated as being in breach of any restriction upon the disclosure of information or thing imposed by law, contract or rules of professional conduct.

Failure to comply with production order

35. Any person who —

- (a) without reasonable excuse contravenes or fails to comply with an order under section 32; or
- (b) in purported compliance with such an order, produces or makes available to an authorized officer any material known to the person to be false or misleading in a material particular without —
 - (i) indicating to the authorized officer that the material is false or misleading and the part of the material that is false or misleading; or
 - (ii) providing correct information to the authorized officer if the person is in possession of, or can reasonably acquire, the correct information,

commits an offence and is liable on conviction to a fine of level 3 on the standard scale or to imprisonment for a term not exceeding 2 years or to both such fine and term of imprisonment.

DIVISION 5 - ARRANGING ATTENDANCE OF PERSON IN A FOREIGN STATE**Request for attendance of a person in a foreign State**

36.(1) A foreign State may request the Attorney General to assist in arranging the attendance, in that foreign State, of a person in Seychelles for the purpose of giving evidence or assistance in relation to a criminal matter in that foreign State.

(2) The Attorney General may assist in making arrangements for the travel of the person to the foreign State pursuant to a request referred to in subsection (1) if the Attorney General is satisfied that —

- (a) the request relates to a criminal matter in the foreign State involving a foreign serious offence;
- (b) there are reasonable grounds to believe that the person concerned is capable of giving evidence or assistance relevant to the criminal matter;
- (c) the person concerned has freely consented to attend as requested; and
- (d) the foreign State has given adequate undertakings in respect of the matters referred to in subsection (3).

(3) The matters in relation to which undertakings are to be given by the foreign State are —

- (a) that the person shall not —
 - (i) be detained, prosecuted or punished for any offence against the law of the foreign State that is alleged to have been committed, or that was committed, before the person's departure from Seychelles;
 - (ii) be subjected to any civil suit in the foreign State in respect of any act or omission of the person that is alleged to have occurred, or that had occurred, before the person's departure from Seychelles; or

- (iii) be required to give evidence or assistance in relation to any criminal matter in the foreign State other than the criminal matter to which the request relates, unless the person has left the foreign State or the person has had the opportunity of leaving the foreign State and has remained in the foreign State otherwise than for the purpose of giving evidence or assistance in relation to the criminal matter to which the request relates;
- (b) that any evidence given by the person in the criminal proceedings to which the request relates, if any, will be inadmissible or otherwise disqualified from use in the prosecution of the person for an offence against the law of the foreign State, other than for the offence of perjury or contempt of court in relation to the giving of that evidence;
- (c) that the person will be returned to Seychelles in accordance with arrangements agreed to by the Attorney General; and
- (d) such other matters as the Attorney General thinks appropriate.

(4) Where, pursuant to this section, the foreign State requests the assistance of the Attorney General in arranging the attendance of any person in that foreign State, the person to whom the request relates shall not be subjected to any penalty or liability or otherwise prejudiced in law by reason only of that person's refusal or failure to consent to attend as requested.

Request for attendance of a prisoner or detainee to a foreign State

37.(1) Where a request by the foreign State under section 36 relates to —

- (a) a prisoner within the meaning of section 2 of the Prison Act, Cap. 180; or
- (b) a person under detention in Seychelles,

the Attorney General may assist in arranging the transfer of such person into the custody of an officer of the foreign State for the purpose of transporting

such person from Seychelles to the foreign State and, after that, to be detained in that foreign State under the custody of such authority as may be lawful in that foreign State and produced from time to time under custody before the appropriate authority or court in the foreign State before which the person is required to attend as a witness.

(2) Immediately upon the person's attendance being dispensed with by the appropriate authority or court in the foreign State before which the person's attendance is required, the person shall be transported in the custody of an officer of the foreign State to Seychelles and returned into the custody of a Seychelles officer having lawful authority to take the person into custody and the person shall, after that, continue to undergo the imprisonment or detention which the person was undergoing prior to the transfer of his custody under subsection (1).

(3) Where, pursuant to this section, the foreign State requests the assistance of the Attorney General in arranging the attendance of any person in that foreign State, the person to whom the request relates shall not be subjected to any penalty or liability or otherwise prejudiced in law by reason only of that person's refusal or failure to consent to attend as requested.

(4) No transfer under subsection (1) shall be effected unless the foreign State gives an undertaking —

- (a) to bear, and be responsible for, all the expenses of the transfer of custody;
- (b) to keep the person under lawful custody throughout the transfer of his custody; and
- (c) to return the person into the custody of the authorized officers of Seychelles immediately on the person's attendance before the appropriate authority or court in the foreign State being dispensed with.

DIVISION 6 - ENFORCEMENT OF FOREIGN CONFISCATION ORDER

Request for enforcement of a foreign confiscation order

38.(1) A foreign State may request the Attorney General to assist in —

- (a) the enforcement and satisfaction of a foreign confiscation order made in any judicial proceedings instituted in that foreign State against property that is reasonably believed to be located in Seychelles; or
- (b) where a foreign confiscation order may be made in judicial proceedings which have been or are to be instituted in that foreign State, the restraining of dealing in any property that is reasonably believed to be located in Seychelles and against which the order may be enforced or which may be available to satisfy the order.

(2) On receipt of a request under subsection (1), the Attorney General may —

- (a) in the case of section (1)(a), take action pursuant to section 39 and the regulations made pursuant to section 58 or such practice directions given by the Supreme Court;
- (b) in the case of section (1)(b), take action under the regulations made pursuant to section 58; or
- (c) make an application pursuant to section 153C of the Criminal Procedure Code, Cap. 54, for an order under section 153A or 153B of the Criminal Procedure Code.

Registration of confiscation order

39.(1) The Attorney General or a person authorized by the Attorney General may apply, by way of a notice of motion and an accompanying affidavit, to the Supreme Court for the registration of a foreign confiscation order.

(2) A Judge may, on an application referred to in subsection (1), register the foreign confiscation order if the Judge is satisfied —

- (a) that the order is in force and not subject to further appeal in the foreign State;

- (b) where a person affected by the order did not appear in the proceedings in the foreign State, that the person had received notice of such proceedings in sufficient time to enable the person to challenge those proceedings; and
- (c) that by enforcing the order in Seychelles, such enforcement would not be contrary to the interests of justice.

(3) For the purpose of subsection (2), the Judge shall take into consideration a certificate referred to in section 41, if presented to the Judge at any time during the course of the proceedings.

(4) A Judge may revoke the registration of a foreign confiscation order if it appears to the Judge that —

- (a) the order has been satisfied by payment of the amount due under the order or other means; or
- (b) the person against whom the order was made is serving imprisonment in default of payment.

(5) Where an amount of money payable or remaining to be paid under a foreign confiscation order registered in the Supreme Court under this section is expressed in a currency other than the Seychelles Rupee, the amount shall, for the purpose of any action taken in relation to that order, be converted into Seychelles Rupees using the daily weighted trading exchange rates of the Central Bank of Seychelles on the date of registration of the order.

(6) For the purposes of subsection (5), a notice issued by the Central Bank of Seychelles and stating the daily weighted trading exchange rate prevailing on the specified date shall be admissible in any judicial proceedings as evidence of the facts so stated.

(7) In this section, “appeal” includes —

- (a) any proceedings by way of discharging or setting aside a judgment; and
- (b) an application for a new trial, opposition or a stay of execution.

Proof of orders of foreign State

40.(1) For the purposes of sections 38 and 39 and the regulations made pursuant to section 58 —

- (a) any order made or judgment given by a court of a foreign State purporting to bear the seal of that court and to be signed by any person in the person's capacity as a Judge, Magistrate or officer of the court, shall be deemed without further proof to have been duly sealed or to have been signed by that person, as the case may be; and
- (b) a document, duly authenticated, that purports to be a copy of any order made or judgment given by a court of a foreign State shall be deemed without further proof to be a true copy.

(2) A document is duly authenticated for the purpose of section (1)(b) if it purports to be certified by any person in the person's capacity as a Judge, Magistrate or officer of the court in question or by or on behalf of that foreign State.

Evidence in relation to proceeding and orders in a foreign State

41.(1) For the purposes of sections 38 and 39 and the regulations made pursuant to section 58, a certificate purporting to be issued by or on behalf of a foreign State stating that —

- (a) judicial proceedings have been instituted and have not been concluded, or that judicial proceedings are to be instituted, in that foreign State;
- (b) a foreign confiscation order is in force and is not subject to appeal;
- (c) all or a certain amount of the sum payable under a foreign confiscation order remains unpaid in that foreign State, or that other property recoverable under a foreign confiscation order remains unrecovered in that foreign State;

- (d) a person has been notified of any judicial proceedings in accordance with the law of that foreign State; or
- (e) an order, however described, made by a court of that foreign State has the purpose of —
 - (i) recovering, forfeiting or confiscating —
 - (a) payments or other rewards received in connection with an offence against the law of that foreign State that is a foreign serious offence, or the value of the payments or rewards; or
 - (b) property derived or realized, directly or indirectly, from payments or other rewards received in connection with such an offence or the value of such property; or
 - (ii) forfeiting or destroying, or forfeiting or otherwise disposing of, any drugs or other substance in respect of which an offence against the corresponding drug law of that foreign State has been committed, or which was used in connection with the commission of such an offence,

shall, in any proceedings in a court, be received in evidence without further proof.

(2) In any such proceedings, a statement contained in a duly authenticated document, which purports to have been received in evidence or to be a copy of a document so received, or to set out or summarize evidence given in proceedings in a court in a foreign State, shall be admissible as evidence of any fact stated in the document.

(3) A document is duly authenticated for the purposes of subsection (2) if it purports to be certified by any person in that person's capacity as a Judge, Magistrate or officer of the court in the foreign State, or by or on behalf of that foreign State.

(4) Nothing in this section shall prejudice the admissibility of any evidence, whether contained in any document or otherwise, which is admissible apart from by virtue of this section.

DIVISION 7 - SEARCH AND SEIZURE

Request for search and seizure

42.(1) The Attorney General may, on the request of the foreign State, assist in obtaining any thing by search or seizure.

(2) Where, on receipt of a request referred to in subsection (1), the Attorney General is satisfied that —

- (a) the request relates to a criminal matter in that foreign State in respect of a foreign serious offence; and
- (b) there are reasonable grounds for believing that the thing to which the request relates is relevant to the criminal matter and is located in Seychelles,

the Attorney General may apply to the Magistrate's Court or the Supreme Court for a warrant under section 43 in respect of premises specified by the Attorney General.

(3) An application for a warrant referred to in section 43 in respect of any thing in the possession of a financial institution shall be made to the Supreme Court.

(4) An application for a warrant referred to in section 43 shall specify with sufficient particulars the thing in the possession of a financial institution.

Search warrant

43.(1) On an application referred to in section 42, the court may issue a warrant authorizing an authorized officer to enter and search the premises specified by the Attorney General if the court is satisfied that —

- (a) an order made under section 32 in relation to any thing on the premises has not been complied with; or

(b) the conditions in subsection (2) are fulfilled.

(2) The conditions referred to in paragraph (1)(b) are —

(a) that there are reasonable grounds for suspecting that a person specified in the request has committed or has benefited from a foreign serious offence;

(b) that there are reasonable grounds for believing that the thing to which the application relates —

(i) is likely to be of substantial value, whether by itself or together with another thing, to the criminal matter in respect of which the application is made; and

(ii) does not consist of or include items subject to legal privilege; and

(c) that the court is satisfied that it is not contrary to the public interest for the warrant to be issued.

(3) A warrant issued under this section shall be subject to such conditions as the court may specify in the warrant.

Additional powers of person executing search warrant

44.(1) Where an authorized officer has entered premises in the execution of a warrant issued under section 43, the authorized officer may seize and retain any thing that is specified in the warrant, other than items subject to legal privilege.

(2) An authorized officer may photograph or make a copy of any thing seized under subsection (1).

(3) Where an authorized officer seizes any thing or takes a photograph or makes a copy of any thing under a warrant, the authorized officer shall inform the Attorney General and shall, unless the Attorney General otherwise directs, immediately send the thing or the photograph or copy of the thing to the relevant foreign State.

(4) Any person who hinders or obstructs an authorized officer in the execution of a warrant issued under this section commits an offence and is liable on conviction to a fine of level 2 on the standard scale or to imprisonment for a term not exceeding 2 years or to both such fine and term of imprisonment.

Immunities of officers executing search warrant

45.(1) No civil or criminal action shall lie against any person for —

- (a) producing or giving access to any thing if the person had produced or given access to the thing in good faith in compliance with a warrant issued under section 43; or
- (b) doing or omitting to do any act if the person had done or omitted to do the act in good faith and as a result of complying with such a warrant.

(2) A person who complies with a warrant issued under section 43 shall not be treated as being in breach of any restriction upon the disclosure of any information or thing imposed by law, contract or rules of professional conduct.

DIVISION 8 - INTERCEPTION OF COMMUNICATIONS, PRESERVATION OF COMMUNICATIONS DATA AND SURVEILLANCE

Request for the interception of telecommunications

46.(1) For the purposes of a criminal investigation, the Attorney General may, in accordance with the provisions of this Act and any other written law, execute a request from a foreign State for —

- (a) the interception and immediate transmission of telecommunications; or
- (b) the interception, recording and subsequent transmission of telecommunications.

(2) A request by a foreign State under this section shall include —

- (a) confirmation that a lawful interception order or warrant has been issued in connection with the particular criminal investigation by a court or relevant authority in the foreign State, or such actions are being done in accordance with a written law in the foreign State;
- (b) details of the criminal matter under investigation;
- (c) the desired duration of the interception;
- (d) if possible, the provision of sufficient technical data, including the following information —
 - (i) the name of the authority, telecommunications service provider or person with access to the relevant data;
 - (ii) the location at which the data is held;
 - (iii) details of the data of the relevant interception;
 - (iv) such other information that the Attorney General may require the foreign State to provide.

Order for the interception of telecommunications

47.(1) Where the Attorney General approves a request under section 46, the Attorney General or the Commissioner of Police may make an ex-parte application to the Supreme Court for an order to intercept telecommunications.

(2) Where the Supreme Court grants an application under subsection (1), the Supreme Court may —

- (a) require an authority, a telecommunications service provider or person with access to the data to intercept and retain a specified communication, or communication of a specified description, received or transmitted by that authority, telecommunications service provider or person;

- (b) authorize a police officer or a competent person to intercept or listen to a conversation provided by the authority, telecommunications service provider or person;
- (c) authorize a police officer or a competent person to enter any premises and to install on the premises a device for the interception and retention of specified telecommunications; or
- (d) approve the use of any technology belonging to Seychelles or the foreign State that may facilitate the interception of telecommunications;
- (e) make such other orders that the Supreme Court deems appropriate.

Request for the interception of postal items

48.(1) For the purposes of a criminal investigation, the Attorney General may, in accordance with the provisions of this Act and any other written law, execute a request from a foreign State to assist in the interception of a postal item during the course of its carriage by a postal service.

(2) The Attorney General may grant a request under subsection (1) if the Attorney General is satisfied that —

- (a) the foreign State has jurisdiction over the criminal matter for which the request is sought; and
- (b) there are grounds to suspect that the information obtained pursuant to the interception will be relevant to the commission of a serious foreign offence in the foreign State.

Order for the interception of postal items

49.(1) Where the Attorney General approves a request under section 48, the Attorney General or the Commissioner of Police may make an ex-parte application to the Supreme Court for an order to intercept a postal item.

(2) Where the Supreme Court grants an application under subsection (1), the Supreme Court may direct —

- (a) that the intercepted postal item or a copy thereof is transmitted to or from the foreign State;
- (b) such other orders that the Supreme Court deems appropriate.

Request for the preservation of communication data

50.(1) A foreign State may request the Attorney General to assist in the preservation of communications data.

(2) The Attorney General may assist in the preservation of communications data where there are reasonable grounds to believe that the communications data held in Seychelles will be relevant to a criminal investigation or proceedings in the foreign State.

(3) A request for the preservation of communications data by a foreign State to the Attorney General under this section shall —

- (a) contain a brief description of criminal investigation and the reasons for the necessity of the preservation of the communications data;
- (b) contain a description of the communications data to be preserved and its relationship to the criminal investigation or prosecution, and in particular, identifying whether the communications data to be preserved includes —
 - (i) subscriber information;
 - (ii) traffic data;
 - (iii) any other information falling within the definition of communications data;
- (c) contain information to identify the custodian of the stored

communications data or the location computer system or relevant technology;

- (d) indicate the manner and time within which the foreign State intends to submit a substantive request for assistance for the production of the required communications data.

(4) Where the Attorney General approves a request under this section, the Attorney General or the Commissioner of Police may make an ex-parte application to the Supreme Court for an order to preserved the required communications data.

(5) The preservation of communications data pursuant to a request made under this section shall not exceed a period of 120 days, unless the Supreme Court determines otherwise.

Covert surveillance

51.(1) A request may be made to the Attorney General by a foreign State for the deployment of covert surveillance.

(2) Covert surveillance under this section shall take place in accordance with regulations made under this Act or any other written law.

(3) Regulations under subsection (2) may set out a framework for —

- (a) covert electronic surveillance, including the use of a tracking device;
- (b) the establishment of joint investigation team with the competent authority in Seychelles and the competent authority in the foreign State.

PART 4

MISCELLANEOUS

Register of Requests for Assistance in Criminal Matters

52.(1) The Attorney General shall maintain a case management system with such details and in such form as the Attorney General may determine.

(2) The case management system shall contain —

- (a) all requests made or received by the Attorney General under sections 7 and 21;
- (b) all requests made or received by an authority authorized by Seychelles under sections 8 and 22.

(3) The Minister responsible for foreign affairs or an authorized person may access the case management system to verify or cross-reference any information.

Authentication of documents

53.(1) Subject to sections 12, 40 and 41 and any law relating to the admissibility of evidence, any document that is obtained, provided or produced pursuant to a request made under this Act and that is duly authenticated is admissible in evidence without any further proof in any criminal proceedings.

(2) A document is duly authenticated for the purposes of subsection (1) if —

- (a) it purports to be signed or certified by a Judge, Magistrate, or officer in or of that foreign State; and
- (b) either —
 - (i) it is verified by oath or affirmation of a witness or of an officer of the government of the foreign State; or
 - (ii) it purports to be sealed with an official or public seal of that foreign State or of a Minister, department or officer of the government of that foreign State.

(3) All courts in Seychelles shall take judicial notice of the official or public seal referred to in subsection (2).

(4) Nothing in this section prevents the proof of any matter or admission in evidence of any document in accordance with any other provision of this Act or any other law of Seychelles.

Use of video link in proceedings

54.(1) A court may issue an order that the testimony or statement of a person, the identification of a person or thing or any other form of assistance under this Act be provided by video link.

- (2) An order issued under subsection (1) shall order the person —
- (a) to attend at a time and place fixed by the court to give a statement, testify or otherwise provide assistance by video link and to remain in attendance until excused by the foreign State;
 - (b) to answer any questions raised by the foreign State in accordance with the law that applies to that foreign State; or
 - (c) to produce or show any item, article or document or copy thereof to the foreign State at the time and place fixed by the court and the court may impose any other appropriate conditions;
 - (d) to comply with such other directions that the court deems necessary to facilitate a request for assistance by a foreign State.

(3) The costs of establishing a video link and costs related to the servicing of the video link in Seychelles shall be borne by the foreign State, unless otherwise agreed by the Attorney General and the foreign State.

(4) Section 31(5), (6), (7), (8), (9) and (10) shall apply *mutatis mutandis* to this section.

Sharing Arrangements

55.(1) Subject to subsection (3), the ordinary costs of executing a request by a prescribed foreign State, as defined in section 19, shall be borne by Seychelles unless otherwise specified in the treaty between the prescribed foreign State and Seychelles.

(2) The ordinary costs of executing a request by a foreign State, as defined in section 20, shall be borne by that foreign State, except where —

- (a) the foreign state gives an undertaking to the Attorney General that the foreign State will, subject to the laws of that foreign State, comply with a future request by Seychelles; and
- (b) the Minister responsible for foreign affairs has directed the Attorney General to waive the costs of executing the particular request; or
- (c) the Attorney General is willing to proceed with the request in accordance with subsection (3).

(3) The Attorney General shall invite a foreign State to enter sharing arrangements where the Attorney General takes the view that the request imposes an excessive burden on the resources of Seychelles.

(4) The sharing arrangements may include —

- (a) the costs of a legal consultant appointed by the Attorney General to execute the request or the costs of over time to be paid to a State Counsel;
- (b) the sharing of any monies that resulted from the recovery, forfeiture or confiscation of a foreign serious offence;
- (c) any such other financial arrangements that the Attorney General and foreign State may agree to enter.

(4) The monies received from any sharing arrangements shall be paid into the Consolidated Fund or a fund established under another Act.

Language

56. The documents in support of a request for mutual assistance in criminal matters shall be in English unless stipulated otherwise in any treaty or international arrangement.

Authority to enter into treaty: article 64 of the Constitution

57.(1) The President, or any person authorized by the President, may enter into a treaty, whether bilateral or multilateral, in respect of mutual assistance in criminal matters for the purposes of this Act and such treaty shall be binding on Seychelles pursuant to article 64(5) of the Constitution.

(2) Where a treaty is entered into under subsection (1), the Minister responsible for foreign affairs shall comply with section 19(3).

Regulations

58.(1) The Minister may make such regulations as are necessary or expedient to give full effect to or for carrying out the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made for all or any of the following purposes —

- (a) prescribing the procedure for enforcing foreign confiscation orders;
- (c) covert surveillance;
- (b) prescribing the fees, costs and charges payable under this Act;
- (c) prescribing such forms for the purposes of this Act;
- (d) prescribing for such other matters as are contemplated by or necessary for giving full effect to, the provisions of this Act and for their due administration.

Rules of Court

59. Rules of court, made by the Chief Justice, may provide for the practice and procedure in relation to proceedings under this Act.

Repeal and savings

60.(1) The Mutual Assistance in Criminal Matters Act, Cap. 284, is repealed.

(2) Nothing in this Act affects —

- (a) the validity of any request for mutual assistance in criminal matters made by Seychelles to a foreign State prior to the commencement of this Act;
- (b) the validity of any request for mutual assistance in criminal matters made by a foreign State to Seychelles prior to the commencement of this Act;
- (c) any procedure relating to the provision or obtaining of mutual assistance in criminal matters prior to the commencement of this Act;
- (d) any decision relating to the provision or obtaining of mutual assistance in criminal matters made prior to the commencement of this Act.

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 5th April, 2022.



Mrs. Tania Isaac
Clerk to the National Assembly