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Gazette Notices No. 1343 of 2022 - 1368 of 2022 are published by Order.

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	Construction Professionals Council Act, 2022. (Act 26 of 2022)	152.00

GENERAL NOTICES

No. 1343 of 2022

NOTICE

ACCESS TO INFORMATION ACT, 2018

(Act No. 4 of 2018)

In exercise of the powers conferred by section 7(1) of The Access to Information Act, 2018 (Act 4 of 2018) the head of the **Department of Immigration and Civil Status** hereby designates **Mrs Erica Dufresne** as the Information Officer for **Department of Immigration and Civil Status** replacing **Michel Elisabeth**.

Dated this: 2nd December, 2022.

Alain Volcere
Principal Secretary
Department of Immigration and Civil Status

Contact Details of Information Officer

Telephone: +248 2822351

Email: erica@immigration.gov.sc

No. 1344 of 2022

Curatelle Act**Section 23 (8)(b)****Notice of Appointment of Executor**

Notice is hereby given that on the 24th day of November 2022, the Curator appointed Patrick David Moustache of La Louise, Mahe, Seychelles, NIN: 954-0012-5-1-43 as the executor of the succession of the deceased Marie Louisa Moustache nee Auguste also known as Mrs Louisa Moustache nee Auguste under section 23 of the Curatelle Act.

Dated this 24th day of November, 2022.

Curator

No. 1345 of 2022

Curatelle Act**Section 23 (8)(b)****Notice of Appointment of Executor**

Notice is hereby given that on the 24th day of November 2022, the Curator appointed Ronald Jules Cetoupe of Cascade, Mahe, Seychelles, NIN: 956-0887-1-1-63 as the executor of the succession of the deceased Chaw Yelle Zida Setoupe born Chang Sam (or Chang-Sam) also known as Bernadette Cetoupe, Bernadette Cetoupe born Chang-Sam, Bernadette Chang-Sam and Bernadette Cetoupe born Chang-Sam under section 23 of the Curatelle Act.

Dated this 24th day of November, 2022.

Curator

No. 1346 of 2022

Curatelle Act**Section 23 (8)(b)****Notice of Appointment of Executor**

Notice is hereby given that on the 24th day of November 2022, the Curator appointed Davis Charles Landri of Grand Anse, Mahe, Seychelles, NIN: 975-0134-1-1-63 as the executor of the succession of the deceased Eric Michel Landry also known as Eric Michel Landri under section 23 of the Curatelle Act.

Dated this 24th day of November, 2022.

Curator

No. 1347 of 2022

Curatelle Act**Section 23 (8)(b)****Notice of Appointment of Executor**

Notice is hereby given that on the 24th day of November 2022, the Curator appointed Daniel Jean-Claude Max of Belonie, Mahe, Seychelles, NIN: 959-0589-1-1-26 as the executor of the successions of the deceaseds, Joseph Bal Max also known as Joseph Max, Charles Maxime Max also known as Maxime Max, Germaine Marie-Therese Max, Sepile Antoine Max, Jerry Max under section 23 of the Curatelle Act.

Dated this 24th day of November, 2022.

Curator

No. 1348 of 2022

Corrigendum

The International Business Company LIQUITEK GLOBAL LTD No. 193511 as published in Notice No. 1021 of 2022, in the Official Gazette No. 72 dated 14th November, 2022, is deleted.

No. 1349 of 2022

Corrigendum

In the Notice No. 1287 of 2022 published in the Official Gazette No. 77 dated Monday 28th November, 2022 relating to striking off Exquisite Performance Ltd., No. 216731, for the IBC No. “216731” to read “208859”.

No. 1350 of 2022

Corrigendum

In the Notice No. 1322 of 2022 published in the Official Gazette No. 80 dated 05th December, 2022 relating to striking off OCEAN SELECTED No. 198925, for the IBC Name “OCEAN SELECTED” to read “OCEAN SELECTED LTD”.

No. 1351 of 2022

FOUNDATIONS ACT

Section 95(4)

Notice is hereby given pursuant to Section 95(4) of the Foundations Act, 2009 that **CAPITAL FOUNDATION - No. 000430** have been struck off the register owing to dissolution, with effect from **29th November, 2022**.

Financial Services Authority

No. 1352 of 2022

INTERNATIONAL BUSINESS COMPANIES ACT

(Act 15 of 2016)

Sections 272(1)(b)(ii) and 272(2)(b)

Notice is hereby given in accordance with section 272(2)(b) of the International Business Companies Act, 2016 (the Act), the following companies will be struck off the register at the expiration of 60 days from the date of this publication, pursuant to section 272(1)(b)(ii) of the Act.

<u>Company Name</u>	<u>IBC No.</u>
XINOST CONSULTING LIMITED	206137
CONSOLIDATED ADVISOR LTD.	132754
FARGUS HOLDINGS LTD	133158
FALERO SHIPPING COMPANY LTD	180616
Sliva Ethic FI Limited	147235
Solaire Hydro Energie S.A.	91179
COMPETENT LIMITED	101255
HODGARDEN LTD.	183074
ELEGANT WORLD LTD.	97698
TEAM INTERNATIONAL LTD.	79487
Nu Hospitality Ltd	214855
LATAM TRADE CORP.	149139
A&M Investments Limited	220052

Financial Services Authority

No. 1353 of 2022

INTERNATIONAL BUSINESS COMPANIES ACT*(Act 15 of 2016)***Sections 272(1)(b)(iv) and 272(2)(b)**

Notice is hereby given in accordance with section 272(2)(b) of the International Business Companies Act, 2016 (the Act), the following companies will be struck off the register at the expiration of 60 days from the date of this publication, pursuant to section 272(1)(b)(iv) of the Act.

<u>Company Name</u>	<u>IBC No.</u>
Perfect Heart Co., Ltd.	221010
Haredon Investments	141093

Financial Services Authority

No. 1354 of 2022

INTERNATIONAL BUSINESS COMPANIES ACT*(Act 15 of 2016)***Sections 272(1)(a)(i) and 272(2)(b)**

Notice is hereby given in accordance with section 272(2)(b) of the International Business Companies Act, 2016 (the Act), the following companies will be struck off the register at the expiration of 60 days from the date of this publication, pursuant to section 272(1)(a)(i) of the Act.

<u>Company Name</u>	<u>IBC No.</u>
HCM Group Ltd.	216065
WESTBURY TECHNICAL SERVICES LIMITED	8085
Victory Star Investment Inc.	208559
Imane Corporation Ltd	37355
Reliance Import & Export Ltd.	155912
BING HONEST TRADING CORP.	99000
FULL STAR INVESTMENT CORP.	99001
LAURUS LIMITED	24410
Nivonne Trading Ltd	221553
World Logistics Services Ltd	60040
Brightstreams Limited	134364
Moissanite Holding Limited	225782
Forenex Consulting Ltd	183898
MATA ENGINEERING AND CONSULTING LTD	189774
Magnum Opus LLC	183047
Vantage Global Prime Holding Limited	231554
VIG Holding Limited	231555

Financial Services Authority

No. 1355 of 2022

INTERNATIONAL BUSINESS COMPANIES ACT*(Act 15 of 2016)***Sections 297(3)(a) and 297(5)**

Notice is hereby given pursuant to Section 297(5) of the International Business Companies Act, 2016 (the Act) that the following companies have been struck off the register owing to dissolution, with effect from **28th November, 2022** in accordance with Section 297(3)(a) of the Act.

<u>Company Name</u>	<u>IBC No.</u>
GLORIOUS MAY LIMITED 榮美有限公司	117440
SPRING SUN INTERNATIONAL LIMITED	181080
OVERSEAS BUSINESS CO., LTD	141791
GdWill Trading Co., Ltd.	192147
Kirkdale International Limited	209098
Bright Cut Ltd	142248
Legacy Beauty LTD	208827
Genius Scafform Engineering Co., Ltd.	163796
SAMSON INVESTMENT CORP.	20709

Financial Services Authority

No. 1356 of 2022

INTERNATIONAL BUSINESS COMPANIES ACT

(Act 15 of 2016)

Sections 297(3)(a) and 297(5)

Notice is hereby given pursuant to Section 297(5) of the International Business Companies Act, 2016 (the Act) that the following companies have been struck off the register owing to dissolution, with effect from **29th November, 2022** in accordance with Section 297(3)(a) of the Act.

<u>Company Name</u>	<u>IBC No.</u>
Palm RF Ltd	136046
APEX DRAGON LIMITED	160197
GOLDEN ASCEND DEVELOPMENT LIMITED 金昇發展有限公司	121663

Financial Services Authority

No. 1357 of 2022

INTERNATIONAL BUSINESS COMPANIES ACT

(Act 15 of 2016)

Sections 297(3)(a) and 297(5)

Notice is hereby given pursuant to Section 297(5) of the International Business Companies Act, 2016 (the Act) that the following companies have been struck off the register owing to dissolution, with effect from **30th November, 2022** in accordance with Section 297(3)(a) of the Act.

<u>Company Name</u>	<u>IBC No.</u>
Dada Legend Inc.	180556
BiBiDai Distributed Network Technology Service Group Ltd	210638
CORREMAX International Co., Ltd.	86796

Financial Services Authority

No. 1358 of 2022

INTERNATIONAL BUSINESS COMPANIES ACT

(Act 15 of 2016)

Sections 297(3)(a) and 297(5)

Notice is hereby given pursuant to Section 297(5) of the International Business Companies Act, 2016 (the Act) that the following companies have been struck off the register owing to

dissolution, with effect from **2nd December, 2022** in accordance with Section 297(3)(a) of the Act.

<u>Company Name</u>	<u>IBC No.</u>
Aliort Management Ltd	220822
Alev Holding Ltd	64933
NINGBO FST FOREIGN TRADE INDUSTRIAL CORPORATION 中晨集团有限公司	26909
VERTEX PROFITS HOLDINGS LIMITED	124910

Financial Services Authority

No. 1359 of 2022

INTERNATIONAL BUSINESS COMPANIES ACT

(Act 15 of 2016)

Sections 297(3)(a) and 297(5)

Notice is hereby given pursuant to Section 297(5) of the International Business Companies Act, 2016 (the Act) that the following companies have been struck off the register owing to dissolution, with effect from **6th December, 2022** in accordance with Section 297(3)(a) of the Act.

<u>Company Name</u>	<u>IBC No.</u>
HILLNOX LIMITED	161032
Equity Wealth Holdings Limited	116615
Wide Horizons Investments Inc	157513
Blendend Ltd	84253

Financial Services Authority

No. 1360 of 2022

IN THE SUPREME COURT OF SEYCHELLES

Julianna Marie		Judgment creditor
	v/s	
Christian Cafrine		Judgment Debtor

On Tuesday the 20th December 2022 at 9 o'clock in the forenoon at the Palais De Justice yard Ile du Port, Mahe, Seychelles the undersigned Process Server will sell by public auction to the highest bidder for cash.

One Hyundai I20 S13931

Viewing will start at 8.30 a.m.

Dated this 09th day of December, 2022.

Tony Alcindor
Chief Process Server
In charge of the sale

No. 1361 of 2022

**NOTICE OF LIQUIDATOR APPOINTMENT AND OF
COMMENCEMENT OF WINDING UP**

Section 286 of the International Business Companies Act 2016 (the "Act")

of

SUNSTONE ENGINEERING CO., LTD.
Company No.: 190999

SUNSTONE ENGINEERING CO., LTD. (the “Company”), incorporated under the Act with IBC Registration No. 190999

I, MR. TSAI, YI-CHEN of 6F.-1, No.187, Sec. 4, Xinyi Rd., Da’ an Dist., Taipei City 106, Taiwan (R.O.C), hereby give notice that I have been appointed to act for as the Liquidator of the Company, hereby give notice in accordance with section 286 of the Act that the voluntary winding up of the Company under Sub-Part II of Part XVII of the Act has been commenced.

Dated this 29th day of November, 2022.

MR. TSAI, YI-CHEN
LIQUIDATOR

No. 1362 of 2022

**NOTICE OF LIQUIDATOR APPOINTMENT AND OF
COMMENCEMENT OF WINDING UP**

Section 286 of the International Business Companies Act 2016 (the “Act”)

of

SPREAD WELL CO., LTD.
Company No.: 072410

SPREAD WELL CO., LTD. (the “Company”), incorporated under the Act with IBC Registration No. 072410

I, Wu, Chu-Yuan a.k.a. Eunice GOH of 12F., No.129, Xingxun St., Neihu Dist., Taipei City 114, Taiwan (R.O.C), hereby give notice that I have been appointed to act for as the Liquidator of the Company, hereby give notice in accordance with section 286 of the Act that the voluntary winding up of the Company under Sub-Part II of Part XVII of the Act has been commenced.

Dated this 06th day of December, 2022.

Wu, Chu-Yuan a.k.a. Eunice GOH
LIQUIDATOR

No. 1363 of 2022

**NOTICE OF LIQUIDATOR APPOINTMENT AND OF
COMMENCEMENT OF WINDING UP**

Section 286 of the International Business Companies Act 2016 (the “Act”)

of

WIDE SPRING ENTERPRISE INC.
Company No.: 190900

WIDE SPRING ENTERPRISE INC. (the “Company”), incorporated under the Act with IBC Registration No. 190900

I, Mr. Fu, Houn-Chi of 26/134 RICHMOND PALACE, SOI 43 SUKHUMVIT ROAD, KLONGTON NUE, WATTANA, BANGKOK, 10110 THAILAND, hereby give notice that I have been appointed to act for as the Liquidator of the Company, hereby give notice in

accordance with section 286 of the Act that the voluntary winding up of the Company under Sub-Part II of Part XVII of the Act has been commenced.

Dated this 06th day of December, 2022.

Mr. Fu, Houng-Chi
LIQUIDATOR

No. 1364 of 2022

CHANGE OF NAME

Notice is hereby given that I have applied to the Chief Officer of the Civil Status to change my name from Josephina Confiance nee Dorothee to Josephina Juliana Confiance nee Dorothee agreeable with sections 94-99 of Cap. 34. Any person interested may oppose such application by filing a protest in writing setting forth his/her grounds of objections.

Mrs Josephina Confiance nee Dorothee
Val Dan Dor
Mahe
Seychelles

No. 1365 of 2022

CHANGE OF NAME

Notice is hereby given that I have applied to the Chief Officer of the Civil Status to change my daughter's name from Heather Chaira Shauna Hoareau to Heather Chaira Shauna Japha agreeable with sections 94-99 of Cap. 34. Any person interested may oppose such application by filing a protest in writing setting forth his/her grounds of objections.

Mr Brian Claude Zapha
C/o Bryan Julie
Barrister and Attorney-at-Law
Suite 206
Premier Building
Victoria
Mahe
Seychelles

No. 1366 of 2022

CHANGE OF NAME

Notice is hereby given that I have applied to the Chief Officer of the Civil Status to change my name from Christie Firuza Anissa Camille to Anissa Christie Firuza Camille agreeable with sections 94-99 of Cap. 34. Any person interested may oppose such application by filing a protest in writing setting forth his/her grounds of objections.

Ms. Anissa Camille
Anse Boileau
Mahe
Seychelles

No. 1367 of 2022

CHANGE OF NAME

Notice is hereby given that I have applied to the Chief Officer of the Civil Status to change my son's name from Lemuel Mario Tyler Aglae to Lemuel Mario Tyler Naiken agreeable with sections 94-99 of Cap. 34. Any person interested may oppose such application by filing a protest in writing setting forth his/her grounds of objections.

Ms. Mary Lisette Katherina Naiken
Mont Buxton
Mahe

No. 1368 of 2022

NOTICE OF INTENTION TO APPLY FOR
CITIZENSHIP OF SEYCHELLES

Notice is hereby given that I, Mr. Ralph Robert Charles Frank Fernandes of 74 Comerford Rd. Brockley SE4 2AX London whose further particulars appear below, being a person eligible to apply for citizenship under *Article 10/12 of the Constitution / Section 5(2)/5A/5B/5C and 6 of the Citizenship Act (Cap 30) have applied for *Registration/Naturalisation as a citizen of Seychelles and any person who knows any lawful reasons why the application should not be granted may forward a written and signed statement of the reasons within 28 days of the last publication of this notice to the Citizenship Officer, Immigration Division, Independence House, Victoria.

Further particulars:

- a) My present nationality is British citizen.
 - b) The date of my first entry into Seychelles is May 1954.
 - c) The date of my last entry into Seychelles before the present application is 15-09-2022.
 - d) I am a pensioner.
 - e) The special circumstance which qualifies me to make this application is my grand parents.
-

S.I. 128 of 2022

NATIONAL PAYMENT SYSTEM ACT, 2014

(Act 14 of 2014)

National Payment System (Electronic Money) Regulations, 2022

Arrangement of Regulations

Regulations

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S.I. 128 of 2022

NATIONAL PAYMENT SYSTEM ACT, 2014

*(Act 14 of 2014)***National Payment System (Electronic Money) Regulations, 2022**

In exercise of the powers conferred by section 42(1) of the National Payment System Act, 2014 the Central Bank makes the following Regulations —

Citation

1. These Regulations may be cited as the National Payment System (Electronic Money) Regulations, 2022.

Interpretation

2. In these Regulations unless the context otherwise requires —

“abandoned property” means —

- (a) in respect of an electronic money issuer which is a bank, the same meaning as assigned to it in section 59 of the Financial Institutions Act Cap.79;
- (b) in respect of an electronic money issuer which is a credit union, the same meaning as assigned to it in section 37(1) and (2) of the Credit Union Cap. 259;
- (c) in respect of any other electronic money issuer, electronic money held in an electronic money account which has not registered a transaction for a consecutive period of 5 years;

“Act” means the National Payment System Act, 2014;

“agent” shall have the same meaning as assigned to it in section 2 of the Act;

“cash-in” means the process by which a customer exchanges funds for electronic money of equal value credited to the customer's electronic money account ;

“cash-out” means the process by which a customer exchanges electronic money debited from the customer's electronic money account for funds;

“close links” means a person who has close links with an electronic money issuer if that person is —

- (a) a holding company of the electronic money issuer;
- (b) a subsidiary of the electronic money issuer;
- (c) a holding company of a subsidiary of the electronic money issuer; or
- (d) a subsidiary of a holding company of the electronic money issuer;

“custodian account” means an account maintained by an electronic money issuer pursuant to regulation 7(1);

“customer” means a person to whom electronic money has been issued and who uses the electronic money to make payments for goods and services;

“customer funds” means the funds maintained in the custodian account;

“electronic float” means the total outstanding electronic money liabilities of the electronic money issuer to the electronic money holders;

“electronic money” shall have the same meaning as assigned to it in section 2 of the Act;

“electronic money account” means the account held by an electronic money holder with an electronic money issuer for conducting electronic money transactions;

“electronic money holder” means a person who has a claim on an electronic money issuer for electronic money issued by the electronic money issuer;

“electronic money issuer” means a person licensed as a payment service provider or approved by the Central Bank to issue electronic money;

“electronic money platform” means the electronic money operating systems, networks, servers, agreements and technical standards and rules;

“interoperability” means the ability of a system, product or service to work in conjunction with other systems, products or services, without any intervention from the customer;

“merchant” means a person, natural or corporate, that accepts electronic money as payment for goods and services.

Authorised activities

3. An electronic money issuer may engage in the following activities subject to such other applicable requirements as may be required —

- (a) issuance of electronic money;
- (b) distribution of electronic money;
- (c) redemption of electronic money;
- (d) transfer of electronic money;
- (e) distribution of airtime, data and other telecommunication services;

- (f) execution of payment transactions through the use of electronic money;
- (g) other payment services; and
- (h) any other activities or services permitted by the Central Bank.

Prohibitions

4.(1) An electronic money issuer shall not —

- (a) issue electronic money at a discount;
- (b) co-mingle the funds of the customers with any other electronic money issuer, entity or person, including own funds of the electronic money issuer;
- (c) use the electronic money platform to conduct any acts or omissions that constitutes an offence punishable under the laws of Seychelles; or
- (d) allow the use of airtime to make payment transactions.

(2) A merchant or an agent shall not use its merchant or agent electronic money account to make payments for the purchase of goods and services.

(3) For the purpose of these Regulations, electronic money does not include —

- (a) monetary value stored on instruments that can be used to acquire goods or services only —
 - (i) in or on the electronic money issuer's premises including prepaid cards used in specific merchant stores; or

- (ii) under a commercial agreement with the electronic money issuer, either within a limited network of services providers or for a limited range of goods or services;
- (b) monetary value that is issued to make payment transactions executed by means of any telecommunication, digital or Information Technology (IT) devices, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT devices, provided that the telecommunication, digital or IT operator does not act only as the intermediary between the payment service user and the supplier of the goods and services.

(4) The receipt of funds by an electronic money issuer from a customer shall not constitute the taking of a deposit or other repayable funds within the meaning of section 2 of the Financial Institutions Act.

Capital requirements

5.(1) An electronic money issuer shall hold unimpaired initial capital of not less than SCR1,000,000.00.

(2) For the purpose of sub-regulation (1), “initial capital” comprises —

- (a) paid up capital, including share premium accounts but excluding amounts arising in respect of cumulative preference shares;
- (b) reserves other than revaluation reserves; and
- (c) profit or loss brought forward as a result of the application of the final profit or loss.

(3) An electronic money issuer shall hold ongoing capital of not less than —

- (a) the amount of the initial capital specified in sub-regulation (1); or
- (b) 2% per cent of the average outstanding electronic float calculated over the previous 6 months of the financial year whichever is greater.

(4) Notwithstanding sub-regulations (1) and (3), the Central Bank may require an electronic money issuer to maintain a higher capital taking into account the size, nature and risk of the electronic money issuer's operations.

(5) An electronic money issuer in operation at the coming into effect of these Regulations and which does not meet the capital requirements in sub-regulation (3) shall increase its capital to the prescribed level not later than 1 year from the date of coming into force of these Regulations.

(6) An electronic money issuer that fails to maintain the capital requirement under this regulation, shall submit to the Central Bank for approval, a plan on how it intends to restore its capital to the required level.

(7) A deficiency in capital shall be rectified within such period as the Central Bank may specify in granting an approval under sub-regulation (6).

Liquidity requirements

6.(1) An electronic money issuer, other than a bank, shall, at a minimum, maintain liquid assets equal to the value of its electronic float.

(2) The liquid assets required to be maintained under sub-regulation (1) shall remain unencumbered and may take the form of cash or near cash instruments.

(3) For the purpose of sub-regulation (2), “near cash instruments” comprises —

- (a) treasury bills and other securities issued by the Government or Central Bank maturing within 365 days;
- (b) balances with banks or credit unions;
- (c) balances with banks abroad; and
- (d) balances with Central Bank excluding minimum reserve requirements.

(4) An electronic money issuer which is a bank, shall include electronic money balances in the calculation of its statutory reserve requirement and liquidity requirement.

(5) An electronic money issuer shall maintain separate bank or credit union accounts, in respect of funds held for the purpose of sub regulation (1)

(6) An electronic money issuer shall make available for inspection by the Central Bank, at any time, records pertaining to the liquid assets.

(7) An electronic money issuer shall, on the 15th day from the end of every quarter, report to the Central Bank, the liquid assets held by the electronic money issuer as reconciled against the amount of electronic float.

Additional requirements for electronic money

7.(1) An electronic money issuer shall open an account at two or more banks or credit unions for the purpose of safeguarding funds received in exchange for electronic money.

- (2) An electronic money issuer shall ensure that —
 - (a) customer funds are traceable; and
 - (b) there are reconciliation mechanisms in place to guarantee,

on a daily basis, full reconciliation between the customer funds and the electronic float.

(3) The monetary value of customer funds of an electronic money issuer shall be held in pooled accounts.

(4) An electronic money issuer shall not place more than 50% of the total of customer funds in a single bank or credit union.

(5) Customer funds shall —

- (a) not form part of the assets available for distribution by the receiver or liquidator of an electronic money issuer; and
- (b) in an event of a liquidation or receivership of the electronic money issuer, the funds shall be paid in full to the customers.

(6) An electronic money issuer shall submit to the Central Bank, a signed copy of its custodian account agreement.

(7) An electronic money issuer shall, 30 calendar days in advance, give notice to the Central Bank of any changes in the safeguarding arrangements stipulated by these Regulations.

(8) Customer funds shall be available on demand to meet requests from customers for redemption of the monetary value of electronic money.

(9) Customer funds shall only be used to fund electronic money holder and agent transactions, including redemptions or other transactions that result in a net reduction in the value of the electronic float.

(10) An electronic money issuer shall, on a daily basis, reconcile the custodian account balances with the electronic float and shall rectify any deficiencies by end of the next business day.

(11) An electronic money issuer shall report to the Central Bank, by

end of the following business day, any deficiencies in the reconciliation undertaken pursuant to sub-regulation (10) and the report shall state —

- (a) the amount of the deficiency;
- (b) how the deficiency arose; and
- (c) how the deficiency has been rectified.

(12) A custodian account shall be audited annually as part of the annual independent audit of an electronic money issuer's accounts.

(13) A bank or credit union at which a custodian account is maintained shall submit to the Central Bank such information relating to the custodian account as the Central Bank may request.

(14) The Central Bank may, with reasons in writing, in the interest of protecting electronic money holders, require an electronic money issuer to close a custodian account.

Issuance of electronic money and redeemability

8.(1) An electronic money issuer shall at the request of a customer, redeem —

- (a) at any time; and
- (b) at par value,

the monetary value of the electronic money held.

(2) Redemption may be subject to a fee or charge only where the fee or charge is stated in the contract between the electronic money issuer and the customer.

(3) The redemption rights of a person other than a customer shall be subject to the contract between that person and the electronic money issuer.

Interest requirements

9.(1) A custodian account shall not bear interest unless otherwise approved by the Central Bank, upon written request of an electronic money issuer and the request shall be accompanied by a detailed description of the mechanisms to be established for the distribution of the interest to customers.

(2) The Central Bank may approve a request under sub-regulation (1), if it is satisfied as to —

- (a) the efficiency and effectiveness of the system and mechanisms to be established for; and
- (b) the equitability and fairness of the distribution of interest being proposed.

(3) Interest earned on a custodian account shall be paid into a separate account, held in the same name as the custodian account.

(4) No funds shall be withdrawn from the interest account except for the purpose of distributing interest.

(5) The interest rate on a custodian account shall be an amount between the floor and ceiling rate of the bank or credit union's savings accounts.

(6) An electronic money issuer shall submit a return on the 15th day of every month to the Central Bank showing in relation to the custodian and interest accounts —

- (a) interest earned;
- (b) reconciliations;
- (c) disbursements; and
- (d) such other information as the Central Bank may determine.

(7) Any person who uses the interest earned on a custodian account for any purpose other than that permitted under this regulation, commits an offence and upon conviction is liable to a fine pursuant to the Act.

Transaction limits

10. An electronic money issuer shall, subject to the approval of the Central Bank, establish limits for each type of financial transaction it will process.

Agents and class of agents

11.(1) An electronic money issuer may appoint agents to provide any or all approved electronic money services on its behalf.

(2) An electronic money issuer shall be responsible for the conduct of its agents, who shall execute any or all of the services under the authority of the electronic money issuer.

(3) An agency agreement between an electronic money issuer and an agent shall —

- (a) provide for non-exclusive use of an agent;
- (b) provide for compliance to anti-money laundering and counter financing of terrorism laws;
- (c) provide for consumer protection mechanisms;
- (d) provide a description of the technology to be used for delivering agency services;
- (e) provide for a risk assessment report of the provision of services including the control measures that will be applied to mitigate the risks; and
- (f) include any other requirements that the Central Bank may determine.

(4) A signed copy of the agency agreement and any subsequent amendment to the agreement shall be submitted to the Central Bank within 15 calendar days of its signature or amendment.

(5) An electronic money issuer shall carry out due diligence and suitability assessments of an agent by obtaining the following documents and information —

- (a) in the case of an individual, copy of identity card or passport;
- (b) in the case of a company —
 - (i) copy of certificate of registration or incorporation;
 - (ii) copy of memorandum and articles of association;
 - (iii) board approval to participate in the electronic money agency agreement; and
 - (iv) the physical address of its head office and a list of its branches, agencies, or kiosks if applicable.

(6) An electronic money issuer shall assign each of its agent with a unique identification number.

(7) An electronic money issuer shall keep and maintain a register of agents and the register shall contain, with respect to each agent —

- (a) in the case of an individual, the individual's full name, address, telephone number, email address and unique identification number;
- (b) in the case of a company, the company's full name, business address, telephone number, email address and unique identification number.

(8) When the appointment of an agent is terminated, an electronic money issuer shall notify the Central Bank of the termination within 15 days of the effective date of the termination.

(9) An electronic money issuer shall submit a copy of its register to the Central Bank within 15 days from the end of every calendar year.

(10) An electronic money issuer shall ensure that its agents —

- (a) when registering new customers, perform the relevant Know Your Customer and Customer Due Diligence requirements;
- (b) display tariffs and charges as provided by the electronic money issuer as well as agent identification number and customer service numbers in a conspicuous place; and
- (c) do not charge any additional fees or charges to customers above those specified by the electronic money issuer.

(11) The Central Bank may remove an agent from its register and request an electronic money issuer to remove an agent from its register, if the Central Bank has —

- (a) received and verified adverse information in relation to the fitness and propriety of an agent;
- (b) reason to believe that the electronic money issuer has not carried out proper due diligence on the agent;
- (c) reasonable grounds to suspect that —
 - (i) the agent, in providing the services on behalf of the electronic money issuer, is involved in money laundering or terrorist financing; or
 - (ii) the risk of such activities in subparagraph (i) taking place would be increased through the continued employment of the agent.

(12) An agent appointed under these Regulations may provide services to multiple electronic money issuers, provided that —

- (a) it has a separate agency agreement with each electronic money issuer; and
- (b) it has the capacity to manage the transactions for the different electronic money issuers.

(13) Where the Central Bank suspends or revokes the payment service provider licence or approval of an electronic money issuer, all its agents shall immediately cease to provide services on behalf of the electronic money issuer.

(14) An electronic money issuer shall maintain systems, policies and procedures, including risk management policies, to exercise effective internal control over the provision of services by agents.

(15) An electronic money issuer shall provide appropriate training to its agents, on —

- (a) the use of the electronic money system for conducting all agent activities or services;
- (b) customer due diligence that adequately covers anti-money laundering and terrorist financing;
- (c) Know Your Customer requirements;
- (d) customer support and education; and
- (e) handling of customer complaints.

(16) The Central Bank may at any time inspect the books and accounts of an agent.

(17) An electronic money issuer may appoint any class of agent as it deems fit subject to meeting the requirements and conditions under these Regulations.

Abandoned property

12.(1) An electronic money issuer shall treat abandoned property as follows —

- (a) in the case of a bank, in accordance with Part VI of the Financial Institutions Act, 2004;
- (b) in the case a credit union, in accordance with section 37 of the Credit Union Act, 2009; and
- (c) in the case of electronic money issuer, in accordance with these Regulations.

(2) An electronic money issuer shall publish in at least one local newspaper, the name of the electronic money holder and particulars of abandoned property and shall dispatch by registered post or through electronic means, a notice, to the electronic money holder, at its last known address containing particulars of the property.

(3) Where abandoned property remains unclaimed after a period of 30 calendar days from the publication date stipulated under sub regulation (2), the electronic money issuer shall, transfer the monetary value of the abandoned property to the Central Bank in a special account established for that purpose, accompanied with a report that contains the amount and nature of the property in such form as the Central Bank may determine.

(4) An electronic money issuer shall retain records of funds transferred to the Central Bank pursuant to sub-regulation (3), for a minimum period of 7 years.

(5) Any person who, to the satisfaction of the Central Bank, furnishes proof of ownership of abandoned property is, subject to any terms, conditions or restrictions imposed in respect of that abandoned property by or under any written law, entitled to the repayment of the funds by the Central Bank.

Technical requirements and data protection and privacy

13.(1) An electronic money issuer shall ensure that agent-based

transactions are settled in real time against a pre-funded account held by the agent.

(2) An electronic money issuer shall ensure that the following minimum systems and controls are in place —

- (a) valid third-party certification from a reputable certification authority or body on compliance status with ISO standards at all times;
- (b) appropriate, robust and tested technology systems;
- (c) appropriate and robust security policies and measures intended to safeguard the integrity, authenticity and confidentiality of data and operating processes;
- (d) an adequate and robust business continuity and disaster recovery plan; and
- (e) an effective audit function to provide periodic review of the security control environment and critical systems.

(3) An electronic money issuer shall ensure that the system referred to under sub-regulation (2) is capable of maintaining a complete audit log of all user activities, to facilitate detection of errors, fraud and tempering incidences.

(4) An electronic money issuer shall deploy and adopt appropriate systems that —

- (a) are proportionate with the nature and complexity of the electronic money issuer's design, architecture and platform; and
- (b) are accompanied by procedural safeguards to detect and protect against fraud and hacking.

Interoperability

14. An electronic money issuer shall ensure that the technology and

systems it uses to effect electronic money transactions are capable of becoming interoperable with other payment systems in Seychelles and internationally.

Consumer protection

15. An electronic money issuer shall comply with the Financial Consumer Protection Act, 2022.

Audit and accounting

16.(1) An electronic money issuer shall adopt International Financial Reporting Standards and International Accounting Standards (IFRS) issued or adopted by the International Accounting Standards Board (IASB) for the purpose of the issuer's external financial reporting.

(2) An electronic money issuer shall, annually, appoint an auditor to audit its accounts and such appointment shall be subject to the approval of the Central Bank.

(3) An auditor shall be independent and have the required experience and capability, as the case may be, to audit —

- (a) banks;
- (b) credit unions; and
- (c) electronic money issuers.

(4) An electronic money issuer shall not appoint the same auditor for a continuous period of more than 5 years without an exemption granted by the Central Bank.

(5) The Central Bank may appoint an auditor, at the expense of the electronic money issuer —

- (a) if an electronic money issuer fails to appoint an auditor satisfactory to the Central Bank; or

- (b) to conduct a special audit relating to the operations of the electronic money issuer, including information technology audits of the electronic money systems.

(6) The duties of an auditor appointed under these Regulations shall include *inter alia* —

- (a) to submit audit information and reports to the electronic money issuer;
- (b) to verify whether fiduciary duties are being administered in accordance with the law.

(7) An auditor shall, in any of the circumstances referred to under sub-regulation (8), communicate to the Central Bank information on, or its opinion on, matters —

- (a) of which it has become aware in its capacity as an auditor of an electronic money issuer or of a person with close links to an electronic money issuer; and
- (b) which relates to services provided by the electronic money issuer.

(8) The circumstances are that —

- (a) the auditor reasonably believes that —
 - (i) there is or has been, or may be or may have been, a contravention of any requirement imposed on the electronic money issuer by these Regulations, the Act and other applicable laws; and
 - (ii) the contravention may be of material significance to the Central Bank in determining whether to exercise, in relation to that electronic money issuer, any functions conferred on the Central Bank by the Act and these Regulations;

- (b) the auditor reasonably believes that the information on, or the auditor's opinion on, those matters may be of material significance to the Central Bank in determining whether the electronic money issuer meets or will continue to meet the conditions set out in the capital requirement to maintain its own funds;
- (c) the auditor reasonably believes that the electronic money issuer is not, may not be or may cease to be, a going concern;
- (d) the auditor is precluded from stating in the auditor's report that the annual accounts have been properly prepared; and
- (e) the auditor is precluded from stating in the auditor's report, where applicable, that the annual accounts give a true and fair view.

(9) An electronic money issuer shall submit to the Central Bank, a copy of its audited report together with a copy of the annual financial statements not later than 30 days after it becomes available, and within 4 months after the end of the financial year.

Reporting

17. An electronic money issuer shall submit, in such form as the Central Bank may, determine —

- (a) monthly statistical report on the operation of its electronic money platform by the 15th day of every month which shall include the information contained in the schedule;
- (b) reports on the cumulative interest amount earned on the bank or credit union account which hold customer funds and its reconciliation;
- (c) daily report on foreign transactions in cash; and

- (d) daily reports on retail exchange rates and foreign exchange balance.

Notification requirements

18.(1) An electronic money issuer shall notify the Central Bank, and give details in writing, of the occurrence of any of the following matters —

- (a) changes in the electronic delivery mechanisms used for electronic money services;
- (b) introduction of new services offered on the system;
- (c) change in ownership of the electronic money issuer involving acquisition or disposing of more than 10% shares in the business;
- (d) merger and acquisition of two or more electronic money issuers;
- (e) notable changes in the size of agent network;
- (f) any loss of confidential data.

(2) The notification under sub-regulation (1) shall be provided at least 30 calendar days before any such occurrences.

(3) The Central Bank shall respond to the notification within 30 calendar days of receipt of the notification.

(4) An electronic money issuer shall notify the Central Bank in writing at least 60 days before ceasing or suspending operations as an electronic money issuer.

Compliance requirements

19.(1) An electronic money issuer shall ensure that all its employees and agents are adequately trained on anti-money laundering and prevention of terrorism requirements.

(2) An electronic money issuer shall, on a regular basis conduct anti-money laundering and counter-financing of terrorism activities risk assessment and submit a report to the Central Bank and the Financial Intelligence Unit.

(3) An electronic money issuer shall ensure that complete end-to-end electronic audit trails are in place that provide a complete and total record of all transactions conducted, including those effected by third party service providers.

(4) An electronic money issuer shall report to the Central Bank any suspected fraud relating to the electronic money service, any security breaches, material service interruption or other significant issues that may affect the safety and efficiency of the electronic money service.

Transitional provision

20. An electronic money issuer in operation before the coming into force of these Regulations shall comply with the provisions of these Regulations within six months from the coming into force of these Regulations.

SCHEDULE

[Regulation 17(a)]

STATISTICAL REPORT INFORMATION

- (i) electronic money balances;
- (ii) total number of registered accounts;
- (iii) total number of active accounts;
- (iv) total number of newly registered accounts;
- (v) total number of inactive and dormant accounts with the associated unclaimed funds;
- (vi) total number of registered agents and their location;
- (vii) total number of active agents and their location;
- (viii) total number of dormant agents and their location;

- (ix) total value and volume of electronic money transactions;
- (x) total number of incidents of fraud, theft and robbery including at the agents, which shall include the source of discovery, nature of incident, reasons, value of maximum exposure and other remarks, if any;
- (xi) total number of service interruptions, system downtime and security breaches, which shall include the source of discovery, nature of incident, reasons, value of maximum exposure and other remarks, if any;
- (xii) total volume and value of person to person payments;
- (xiii) total volume and value of person to business payments;
- (xiv) total volume and value of person to government payments;
- (xv) total volume and value of business or government to person payments;
- (xvi) total trust account balance inquiry;
- (xvii) total volume and value of airtime purchases;
- (xviii) total volume and value of agent cash-in transactions;
- (xix) total volume and value of agent cash-out transitions;
- (xx) total volume and value of cross-border transactions including receiver details;
- (xxi) total volume and value of remittances transactions;
- (xxii) total value and volume of agent cash transactions;
- (xxiii) total value and volume of bulk payment services including details on institution type;
- (xxiv) total value and volume of mobility utility payments including details of bill type;
- (xxv) total value and volume of airtime and data purchases including details on mobile network operator and transaction type;
- (xxvi) interoperability transactions;
- (xxvii) trust account statements;
- (xxviii) trust account and interest balances;
- (xxix) suspicious transaction reports generated;
- (xxx) liquid assets;
- (xxxi) risk-based supervision related returns;
- (xxxii) IFRS or IASB related returns; and
- (xxxiii) any other reports as may be required by the Central Bank.

MADE this 2nd day of December, 2022.

**CAROLINE ABEL
GOVERNOR
CENTRAL BANK OF SEYCHELLES**

REVENUE ADMINISTRATION (AMENDMENT) BILL, 2022

(Bill No.43 of 2022)

OBJECTS AND REASONS

The object of this Bill is to amend the Revenue Administration Act (Cap 308) in order to insert the Accommodation Turnover Tax Act under the Administration of that Act as a consequential amendment upon the proposed enactment of the Accommodation Turnover Tax Act.

In addition, the Bill seeks to empower the Commissioner General to extend the time within which returns may be furnished under a revenue law, whenever the Commissioner General considers it necessary to do so.

The Bill further seeks to empower the Commissioner General to suspend the recovery proceedings for outstanding revenue in cases where a taxpayer is faced with serious hardship, the outstanding revenue of a taxpayer is an uneconomical debt or the outstanding revenue of a taxpayer is an irrecoverable debt.

The Bill will permit the Minister in consultation of the Commissioner General to write off outstanding revenues.

The Bill in addition creates a Medical Board, consisting of three medical practitioners appointed by the Minister to certify that a person has a serious illness that causes a serious hardship.

The Bill also introduces penalties for taxpayers that gain a transfer pricing benefit under section 54 (4) and (7) of the Business Tax Act (Cap 20).

Dated this 12th day of December, 2022

**NAADIR HASSAN
MINISTER OF FINANCE,
NATIONAL PLANNING AND TRADE**

REVENUE ADMINISTRATION (AMENDMENT) BILL, 2022

(Bill No. 43 of 2022)

ARRANGEMENT OF SECTIONS

Sections

1. Short title
2. Amendment of section 2
3. Amendment of section 5
4. Amendment of section 11
5. Insertion of sections 31A, 31B, 31C and 31D
6. Insertion of section 50A

REVENUE ADMINISTRATION (AMENDMENT) BILL, 2022

(Bill No.43 of 2022)



A BILL

FOR

AN ACT TO AMEND THE REVENUE ADMINISTRATION ACT (CAP 308)

ENACTED by the President and the National Assembly.

Short title

1. This Act may be cited as the Revenue Administration (Amendment) Act, 2022.

Amendment of section 2

2. Section 2 of the Revenue Administration Act (Cap 308) in this Act referred to as the “principal Act” is amended —

- (a) by repealing in the definition of “Revenue decision” paragraph (b) and substituting therefor the following paragraph —

“(b) in relation to this Act, the Accommodation Turnover Tax, Business Tax Act, Corporate Social Responsibility Tax Act, Excise Tax Act, Good and Services Tax Act, Income and Non-Monetary Benefits Tax Act, Tourism Marketing Tax Act or the Value Added Tax Act, a decision on any matter left to the discretion, judgement, direction, opinion, approval, consent, satisfaction, or determination of the Commissioner General, other than made in relation to the making of an assessment.”

- (b) by inserting after the definition of “Large business” the following new definition —

““Medical Board” means the Medical Board established under section 31D;”;

Amendment of section 5

3. Section 5 of the principal Act is amended by inserting after subsection (3), the following new subsection —

“(4) Notwithstanding subsection (1), the Commissioner General may when he considers necessary, on his own motion extend the time to furnish a return required to be furnished under a Revenue law.”

Amendment of section 11

4. Section 11 of the principal Act is amended by inserting after paragraph (a) of subsection (3), the following new paragraph —

“(aa) in the case of transfer pricing, within seven years of the date the Commissioner General served or is treated as having served notice of the assessment on the taxpayer; or”.

Insertion of section 31A, 31B, 31C and 31D

5. The following new sections are inserted after section 31 of the principal Act —

“Suspension of recovery proceedings for outstanding revenue

31A.(1) In this section—

(a) “serious hardship” means the inability of a taxpayer to satisfy and pay their outstanding revenue for reasons of —

(i) a taxpayer being declared bankrupt;

(ii) a taxpayer who is an individual or a partner in a partnership—

(A) who has serious illness or his or her dependants has a serious illness and that taxpayer did not hold any money or have ownership over any property, real or personal, from which the outstanding revenue can be satisfied or recovered in whole or in part; or

(B) the death of the taxpayer, where—

(I) the taxpayer did not hold any money or have ownership over any property, real or personal; or

(II) the estate or succession of the deceased taxpayer do not contain any property, from which the outstanding revenue can

be satisfied or recovered
in whole or in part; or

- (C) where an heir, legatee, trustee, fiduciary or executor of a deceased taxpayer or the estate or succession of a deceased taxpayer, as the case may be, is under legal obligation to satisfy the debt of a deceased person, the heir, legatee, trustee, fiduciary or executor, as the case may be, do not have adequate means to satisfy the outstanding revenue of the deceased taxpayer or the estate or succession do not contain property from which the outstanding revenue can be satisfied or recovered in whole or in part;
- (b) “ownership” includes beneficial or derivative interest of monies or property or any right of pre-emption to any money or property or right to any undistributed estate or succession;
- (c) “serious illness” means an illness, injury, impairment, disability physical or mental certified by a Medical Board;
- (d) “taxpayer” means—
- (i) a person liable for revenue under a revenue law;
 - (ii) an heir accepting the succession simply or under benefit of inventory;
 - (iii) the universal legatee;

- (iv) the surviving spouse where he or she does not fall under paragraph (ii) or (iii) and who is entitled to personal chattels;
 - (v) legatees or donees of any money or property by gift *inter vivos* or Will; and
 - (vi) Curator of Vacant Estates in charge of a vacant succession, but shall not include a person liable to deduct or withhold tax or withholding tax under any revenue law.
- (e) “outstanding revenue” means an amount of unsatisfied revenue of a taxpayer;
- (f) “uneconomical debt” means an outstanding revenue that the cost for its recovery would substantially exceed the outstanding revenue and the Commissioner General considers that it would be uneconomical to recover it;
- (g) “irrecoverable debt” means an outstanding revenue which has exceeded the prescription period under Article 2271 of the Civil Code of Seychelles Act, 2020.

(2) Subject to subsection (6), where the Commissioner General considers that —

- (a) a taxpayer has suffered or is in serious hardship;
- (b) the outstanding revenue of a taxpayer is an uneconomical debt; or
- (c) the outstanding revenue of a taxpayer is an irrecoverable debt,

the Commissioner General may direct that recovery of the outstanding revenue shall be suspended.

(3) Notwithstanding subsection (2), where the cause of the serious hardship is bankruptcy, serious illness or death, the Commissioner General may —

- (a) take steps preparatory to, or necessary, to initiate bankruptcy or winding up proceedings against the taxpayer;
- (b) exercise any action under section 24 or all the rights and actions of the taxpayer or the executor or the heir or legatee of the taxpayer to recover any outstanding revenue; or
- (c) take up proceedings to any transactions concluded by the taxpayer or the heir, legatee or executor, as the case may be, which constitute a fraud on the rights of the Commissioner General or to evade satisfaction of the outstanding revenue or to circumvent such satisfaction.

(4) A direction made under subsection (2) may be made by the Commissioner General on his own motion or on the request of a taxpayer.

(5) The suspension period of the recovery of the outstanding revenue shall constitute an interruption to prescription period or time limitation period within which legal proceedings may be initiated or commenced against the taxpayer for the satisfaction or recovery of the outstanding revenue and such period shall be excluded in calculating the prescription period or time limitation period, as the case may be.

(6) The Commissioner General shall, before issuing a direction under subsection (2), carry out an assessment and prepare a report in terms of the provisions of subsection (7).

- (7) The report under subsection (6) shall include—
- (a) documentation of the history of the outstanding revenue;
 - (b) a breakdown of the outstanding revenue including penalties and interest and the period for which the outstanding revenue was unpaid;
 - (c) if the taxpayer is willing or has the capacity and means to pay the outstanding debt in installment or to secure the satisfaction thereof;
 - (d) the steps taken to recover the outstanding revenue;
 - (e) in respect of serious hardship of the taxpayer—
 - (i) the details of the evidence of bankruptcy, serious illness, death or any other relevant matters in relation thereto or connected therewith;
 - (ii) any creditor of the taxpayer;
 - (iii) any property over which the taxpayer has ownership and any transaction or dealing that has taken place and the nature and manner of such transaction and dealing;
 - (f) in respect of a deceased taxpayer—
 - (i) the content and value or an estimate of the value of the estate or succession of the taxpayer;
 - (ii) the capacity or means of the heir, legatee or donee to pay the outstanding revenue in full or in

instalment or to secure the satisfaction thereof;

(iii) if the estate or succession of the deceased taxpayer has been distributed or not;

(g) in respect of uneconomical debt, an assessment of the cost of recovery of the uneconomical debt;

(h) other factors that the Commissioner General reasonably believes would likely arise.

(8) The Commissioner General shall inform the taxpayer in writing of the direction made under subsection (2) and that the direction is subject to the provisions of subsections (5) and section 31C (1).

(9) The Commissioner General shall maintain records of all the outstanding revenue that recovery has been suspended under this section, which shall contain—

(a) the relevant details of the taxpayer such as name, address and tax identification number;

(b) the amount of outstanding revenue; and

(c) the reasons for the suspension of recovery.

(10) The Commissioner General shall include the details of the suspension of recovery of the outstanding revenue during a financial year in the annual report to be submitted under section 21 of the Seychelles Revenue Commission Act (Cap.322).

(11) The Commissioner General shall, within 3 months before the end of each financial year, submit a detailed report to the Minister in respect of any outstanding revenue for which recovery has been suspended under this section during each financial year and make recommendations for the writing off of the outstanding revenue.

(12) Notwithstanding subsection (11) the Minister may at any time direct the Commissioner General to furnish him with a report in respect of outstanding revenue that their recovery has been suspended under this section.

Permission to write-off outstanding revenue

31B.(1) The Minister may, after considering the report made by the Commissioner General under section 31A(11) or (12) grant or refuse permission to write off any outstanding revenue specified in the report.

(2) Notwithstanding any other written law, where the Minister grants permission under subsection (1), to write-off an outstanding revenue, the Commissioner General shall make a write-off order specifying —

- (a) the names of all taxpayers in respect of whom permission has been granted; and
- (b) the amount of outstanding revenue written-off.

(3) The Commissioner General shall publish the write-off order under subsection (2) in the Gazette within 3 months after the end of each financial year.

(4) The Commissioner General shall include the write-off order under subsection (2) in the annual report submitted under section 21 of the Seychelles Revenue Commission Act (Cap. 322).

(5) Where the Minister refuse to grant permission to write-off outstanding revenue, the Minister shall in writing inform the Commissioner General the reason for the refusal.

Reversion, cancellation or annulment of direction or write-off order

31C.(1) Notwithstanding a direction of the Commissioner General made under section 31A(2) or a write-off order made under section 31B(1), the Commissioner General may cancel, annul or reverse the direction or order and direct that the recovery of the

outstanding revenue shall be reinstated or pursued in relation to all or part of the outstanding revenue, where—

- (a) in respect of serious hardship—
 - (i) the circumstances of the taxpayer changes and the serious hardship ceases to exist;
 - (ii) the Commissioner General receives, by operation of law, additional funds in respect of a taxpayer after the taxpayer becomes bankrupt, or if additional funds due to the taxpayer's estate or succession are discovered after the direction;
- (b) in respect of an uneconomical debt that is outstanding revenue, the outstanding revenue is deemed not an uneconomical;
- (c) the direction or write-off order was made due to false or misleading information provided by the taxpayer or any person and notwithstanding anything in any written law the outstanding revenue shall become due and payable.

Establishment of Medical Board

31D.(1) There is established a Medical Board for the purpose of certifying serious illnesses under section 31A.

(2) The Medical Board shall consist of at least three medical practitioners who shall be appointed by the Minister.

(3) The Minister may co-opt such medical practitioners with specialised experience to assist the Medical Board.

(4) The Medical Board shall upon the request of the Commissioner General under section 31A(4) examine and assess the merit of a request.

(5) Where the Medical Board finds that a person has a serious illness that impairs his ability to satisfy his outstanding revenue, the Medical Board shall issue the taxpayer with a certificate, certifying the serious illness of the taxpayer or his or her dependent.

(6) The Minister shall appoint a member of the Medical Board to be the Chairperson.

(7) The quorum of the Medical Board shall be determined by the Minister.

(8) The members of the Medical Board shall hold office on such terms and conditions as the Minister may determine.

Insertion of section 50A

6. The following new sections are inserted after section 50 of the principal Act —

“Imposition of Additional Tax

50A.(1) Where the Commissioner General, in relation to the year of assessment 2023 or any subsequent year of assessment and pursuant to a Transfer Pricing audit —

- (a) increases the amount of the income of a taxpayer;
- (b) reduces the amount of any loss of a taxpayer;
- (c) reduces the amount of any tax concession allowed to a taxpayer; or
- (d) increases the amount of withholding tax payable of a taxpayer,

the Commissioner General may make a determination and depending on the amount of the increase or reduction, impose an additional tax on that taxpayer equal to 10 per cent or 25 per cent of the amount of the increase or reduction.

(2) Where a taxpayer is liable to an additional tax of 25 per cent, the taxpayer may gain a possible downward remission of not less than 10 percent, where the conditions set out in subsection (6) exist.

(3) The Commissioner General, shall serve a taxpayer with written notice of the additional tax to be paid when the amount of income or withholding tax is increased or the amount of loss or tax concession is reduced as a result of the taxpayer obtaining a transfer pricing benefit under section 54(4) and (7) of the Business Tax Act (Cap 20).

(4) Notwithstanding, any objection to or an appeal lodged, under sections 15, 16, 17 and 18, against an assessment made resulting in an adjustment under section 54 of the Business Tax Act, the additional tax imposed under subsection (1), shall be paid —

- (a) within 21 days of receipt of the written notice served on the taxpayer under subsection (3); and
- (b) in the manner specified in the written notice.

(5) Where the condition set out under subsection (6) exist, the Commissioner General may remit wholly or in part any additional tax payable under that subsection.

(6) The conditions for remitting additional tax wholly or in part, are as follows —

- (a) the taxpayer has been cooperative and provided complete responses within the timeline set by the Commissioner General;
- (b) the taxpayer has prepared and furnished complete Transfer Pricing Documentation in accordance with the Transfer Pricing Documentation Regulations;

- (c) the taxpayer has completed the Related Party Dealings Schedule in the business tax return for a tax year;
 - (d) the taxpayer has a good compliance record of timely submission of returns and payment of tax, by the due date for the current tax year and immediate two preceding tax years; and
 - (e) the increase to income or withholding tax, or reduction of loss or tax concessions made by the Commissioner General following a Transfer Pricing audit, is less than SR150,000 or 5% of business tax payable, whichever is greater.”
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CONSTRUCTION PROFESSIONALS COUNCIL ACT, 2022

(Act 26 of 2022)

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CONSTRUCTION PROFESSIONALS COUNCIL ACT, 2022

(Act 26 of 2022)

I assent



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

Wavel Ramkalawan
President

6th December, 2022

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF THE SEYCHELLES COUNCIL OF REGISTERED PROFESSIONALS IN CONSTRUCTION; TO PROVIDE FOR THE REGISTRATION OF CONSTRUCTION PROFESSIONALS; TO REGULATE THE QUALIFICATION AND CONDUCT OF PERSONS WHO CARRY OUT CONSTRUCTION RELATED SERVICES; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

ENACTED by the President and the National Assembly.

PART 1 PRELIMINARY

Short title and commencement

1.(1) This Act may be cited as the Construction Professionals Council Act, 2022.

(2) This Act comes into operation on such date as the Minister may, by notice published in the Gazette, appoint.

Interpretation

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

“Appeals Board” means the Appeals Board established under section 42;

“architect” means a person who sells or supplies for gain or reward any architectural plan, drawing, tracing or any similar item for use in the construction, enlargement or alteration of any building or part thereof, but does not include an architectural draughtsperson or technician and such other persons that the Minister may specify by notice published in the Gazette;

“building maintenance” means work undertaken to provide a report, an opinion or an assessment of work needed in order to keep, restore or improve a facility or a part of a building, its service and surroundings to an acceptable standard and to sustain the utility and value of the facility and includes inspection, testing, servicing, classification to serviceability, repair, refurbishment, rebuilding, rehabilitation, reclamation, preparation of maintenance schedules, planning, budgeting and management of maintenance works;

“building surveying services” means the range of services in the construction industry which comprises, amongst other things, providing reports, opinions or assessments about a design, building work, building maintenance or a building through investigation, consultation and evaluation;

“certificate of registration” means a valid certificate of registration issued under section 25 to a registered construction professional;

“construction professional” means a person or a firm of construction professionals who or which is registered or is eligible to be registered in the register under this Act;

“construction service” means the giving of an undertaking, with or without consideration, to engage in or perform a professional

service or work of an architect, an engineer, a surveyor or any other profession regulated under this Act;

“corporate member” means a firm of construction professionals registered as a construction professional under section 18;

“Council” means the Seychelles Council of Registered Professionals in Construction established under section 4 and includes any committee established by the Council;

“Disciplinary Committee” means the committee established under section 35;

“engineer” means a person providing any professional service, consultation, investigation, evaluation, planning, design in connection with any public or privately owned utilities, buildings, machines, equipment, processes, works or projects wherein public interest and welfare, or the safeguarding of life, public health or property is concerned or involved, and that requires the application of engineering principles and data in any of the following branches of engineering —

- (a) civil engineering;
- (b) mechanical engineering;
- (c) structural engineering;
- (d) electrical engineering;
- (e) such other branches of engineering as may be prescribed by the Minister;

“Fair Trading Commission” means the Fair Trading Commission established under the Fair Trading Act, 2022;

“firm of construction professionals” means any company, commercial partnership or other juridical person that provides construction services;

“graduate member” means a person registered as a graduate member under section 17;

“insurance” or “professional indemnity insurance” means the insurance that is required under section 32;

“Interim Council” means the Interim Council established under section 10;

“licence” means a valid licence issued to a construction professional in accordance with the Licences Act, Cap. 113, or any other written law;

“Licensing Authority” means the Authority established under the Licences Act;

“Minister” means the Minister responsible for infrastructure development;

“Planning Authority” means the Planning Authority established under the Physical Planning Act, 2021;

“professional member” means a person registered as a professional member under section 16;

“professional misconduct” has the same definition assigned to it under section 31;

“quantity surveying services” means the range of services in the construction industry consisting of, amongst other things, financial viability analyses, estimates of construction costs, cost planning, cost control, cost management, value management, advice on procurement methods, preparation of bidding documents, bid evaluations, interim valuations, final account settlements, claims formulation and assessment, contractual advice, replacement cost for the purposes of insurance, mediation, arbitration or adjudication;

“Registrar” means the Registrar of the Seychelles Council of Registered Professionals in Construction appointed under section 8;

“register” means the Construction Professionals Register established under section 12;

“Seychelles Qualification Authority” means the Authority established under the Seychelles Qualifications Authority Act, 2021;

“surveyor” means a person who offers either —

- (a) quantity surveying services; or
- (b) building surveying services.

Application of this Act

3. This Act shall apply to all construction professionals in Seychelles.

PART 2

SEYCHELLES COUNCIL OF REGISTERED PROFESSIONALS IN CONSTRUCTION

Establishment of Council

4.(1) There is established a Council, to be known as the “Seychelles Council of Registered Professionals in Construction”, which shall be a body corporate and discharge the responsibilities assigned to it under this Act.

- (2) The members of the Council shall be elected by the Minister.
- (3) The Council shall comprise of seven members as follows —
 - (a) one representative of the Planning Authority on recommendation of the board of the Planning Authority; and
 - (b) six registered professional members —
 - (i) elected by registered construction professionals; or
 - (ii) failing such election of any or all of the members

within 30 days, appointed by the Minister under subsection (6).

(4) The Council shall not comprise more than 2 professional members from the same construction-related discipline to be members of the Council at the same time.

(5) The Chairperson of the Council shall be elected by its members.

(6) If elections held for the purposes of subsection 3(b)(i) result in less than 6 professional members being elected as members of the Council thereunder, the Minister may appoint such number, as the Minister thinks fit, of professional members, except that the number of professional members so appointed and the number of members elected under subsection 3(b)(i) shall not exceed 6 in the aggregate.

Tenure of members of the Council

5.(1) A member of the Council shall hold office for 4 years and shall be eligible for reappointment.

(2) A member, other than the Chairperson, may at any time resign from office by notice addressed to the Minister and transmitted through the Chairperson.

(3) The Chairperson may at any time resign his or her office by notice addressed to the Minister.

(4) The Council may remove from office any member of the Council who fails, without valid and justifiable reasons, to attend 3 consecutive meetings of the Council of which the member had prior notice or where a member becomes in any manner disqualified for office within the meaning of section 6.

(5) Any vacancy that arises in the membership of the Council shall be filled by a member who shall be elected or appointed in accordance with section 4(3)(b), and that member shall hold the office for the remainder of the tenure of the member whose post has become vacant by virtue of subsections (2) (3) and (4).

Disqualifications from membership of the Council

6. A person shall not be qualified to be a member of the Council if that person is —

- (a) not a citizen of Seychelles
- (b) not a permanent resident of Seychelles;
- (c) not registered as a construction professional;
- (d) declared bankrupt by a court;
- (e) convicted of any offence involving fraud, dishonesty or of any other similar offence which makes the person unfit to be a member of the Council;
- (f) interdicted in accordance with the Civil Code of Seychelles Act, 2020, or declared by a court to be physically or mentally incapacitated by reason of unsoundness of mind; or
- (g) found by the Disciplinary Committee to have committed professional misconduct.

Meetings of the Council

7.(1) The Council shall meet at such places and times as the Chairperson may determine.

(2) The Council shall meet not less than 4 times in each calendar year.

(3) A quorum of any meeting of the Council shall be 5 members.

(4) A decision of the Council shall be made by the majority of the members present and voting at the meeting and, in the event of an equality of votes, the Chairperson or any member presiding at the meeting shall have a casting vote, in addition to a deliberative vote.

(5) Subject to this Act, the Council may regulate its own proceedings.

Registrar and other staff

8.(1) The Council shall appoint a Registrar who shall hold office for a period of 4 years and shall perform the functions assigned to the Registrar under this Act.

(2) The Council may employ such other staff and ensure the provision of services and other facilities as are necessary or expedient for the performance of the functions of the Council.

Functions of the Council

9.(1) In addition to any other functions conferred on the Council under this Act or any other written law, the functions of the Council shall be to —

- (a) keep and maintain every register established under section 12;
- (b) assess the qualifications and experience of an applicant for registration as a construction professional;
- (c) assess and place applicants in categories or classes based on their qualifications and experience;
- (d) conduct or arrange for the conduct of an examination or interview, where appropriate, for the purpose of assessing the professional ability of any person applying for registration as a construction professional;
- (e) register construction professionals and to issue certificates of registration;
- (f) regulate the activities of construction professionals and set class or grade limits of projects to be undertaken by construction professionals;
- (g) safeguard against illegal, improper or unethical construction-related practices, and to develop a Code of Conduct for construction professionals;
- (h) exercise disciplinary control over construction professionals by the appointment of a disciplinary committee;

- (i) facilitate the mutual recognition of the qualifications and standards regarding the practice of construction-related services with other countries;
 - (j) advise the Minister on proposed amendments to this Act and carry out such other functions as the Minister may direct; and
 - (k) generally undertake all acts, matters and things that are necessary to be carried out under this Act and ensure the efficiency of the Council.
- (2) The Seychelles Qualification Authority may —
- (a) advise the Council regarding qualifications of an applicant;
 - (b) assist the Council with establishing standards for the different applicants; and
 - (c) assist the Council in devising examinations for registration and continuing education programmes for applicants.

Interim Council

10.(1) Pending the election of the first Council under this Act, the duties and functions of the Council shall be carried out by an Interim Council appointed by the Minister in accordance with the Act.

- (2) The Interim Council shall comprise —
- (a) one representative of the Planning Authority;
 - (b) six persons who are eligible to be registered as professional members.

(3) The tenure of the members of the Interim Council shall end within 18 months from the date of appointment.

(4) The members of the Interim Council constituted under this section shall vacate office in favour of the Council elected or appointed

under section 4 on the last day of the month in which the election of the members of the Council is held.

(5) Nothing in this section prevents a member of the Interim Council from being elected or appointed under section 4.

Committees of the Council

11. The Council may —

- (a) appoint committees comprising members of the Council and construction professionals for the purpose of carrying out the functions of the Council;
- (b) delegate to the committees any functions as it considers necessary.

PART 3

REGISTRATION AND CLASSIFICATION OF CONSTRUCTION PROFESSIONALS

Register of Construction Professionals

12.(1) The Registrar shall establish and keep a register, to be known as the “Construction Professionals Register”, which shall contain the following particulars of each person registered under this Act —

- (a) the name of the person;
- (b) address and contact information of the person;
- (c) the date of registration in the register;
- (d) duration of registration;
- (e) the registration number;
- (f) the construction service that the person can provide;
- (g) the class, category or grade of the person in the construction service;
- (h) the qualifications of the person;

- (i) in the case of a corporate member —
 - (i) the name of the director, manager or partners of the corporate member; and
 - (ii) the name of the professional member employed by the corporate member;
- (j) such other particulars as the Council may consider necessary.

(2) The register shall be in the custody and under the control of the Registrar and shall be kept in any form at the office of the Council or any other place that the Council may direct.

(3) The Registrar shall keep a separate register of professional members who are deemed by the Council to be a specialist in any particular construction-related discipline and the details of the specialty shall be recorded in the register.

(4) The registers shall be open to inspection by any member of the public at the office of the Registrar during working hours.

Application for registration

13.(1) A person wishing to be registered in the register shall make an application for registration to the Council in such manner or form as may be prescribed.

(2) An application under subsection (1) shall be accompanied by the prescribed fee.

- (3) A person making an application under subsection (1) shall —
 - (a) agree to have the Council conduct a background check on the person's qualifications and professional experience;
 - (b) agree to attend an interview with the Council to determine the competence of the person, if necessary;

- (c) comply with the requirements under the immigration laws if the person is not a citizen of Seychelles; and
- (d) provide any other information or comply with any direction that the Council may prescribe.

Categories of Construction Professionals

14.(1) A person may be registered as a construction professional providing construction services as listed in the Schedule.

(2) The Minister may, in consultation with the Council, by statutory instrument add or remove a construction-related discipline set out in the Schedule.

Classification of Construction Professionals

15. A person may be registered in the register under the following classes of construction professionals —

- (a) a professional member;
- (b) a graduate member;
- (c) a corporate member; or
- (d) any other class as determined by the Minister, in consultation with the Council, by Order published in the Gazette.

Registration as a professional member

16.(1) A person shall be eligible for registration as a professional member if that person —

- (a) has a postgraduate degree from a recognized university in the construction-related discipline and at least 2 years' proven work experience in a specified construction service;
- (b) has an undergraduate degree from a recognized university in the construction-related discipline and at least 4 years

proven relevant work experience in a specified construction service; or

- (c) passed an examination set by the Council or recognized by the Council as an equivalent examination set by another authority and the person has demonstrated to the satisfaction of the Council that the person is proficient in a specified construction service and has at least 10 years working experience in the specified construction service.

(2) A person registered as a professional member is deemed to be an expert in the specified construction-related discipline but the work that the professional member can undertake may be limited by the grade of construction service that the person can provide, or such other conditions imposed by the Council.

(3) The Council may recognize as a specialty in a specified construction-related discipline any qualifications or distinction awarded to a person registered as a professional member.

Registration as a graduate member

17.(1) A person shall be eligible for registration as a graduate member if that person —

- (a) is the holder of a degree from a recognized university in a construction-related discipline;
- (b) does not have the practical experience that may qualify the person to be registered as a professional member; and
- (c) has complied with any requirement as may be specified by the Council.

(2) A person registered under this section shall be entitled to practice in a specified construction service under the employment, supervision and control of a registered professional member, the Government or a public body until the graduate member is registered a professional member.

(3) A graduate member may be eligible to register as a professional member if that member has —

- (a) completed a postgraduate degree from a recognised University and a period of 2 years under the employment, supervision and control of a professional member, the Government or a public body, but the Council may extend the period of supervision; or
- (b) completed an undergraduate degree from a recognised University and a period of 4 years in the employment of a corporate member, a professional member or the Government or a public body, or engaged under the supervision and control of a professional member but the Council may, subject to regulations, extend the period of supervision.

Registration as a corporate member

18.(1) No firm of construction professionals shall provide construction services in Seychelles unless the firm of construction professionals is registered as a corporate member and employs a professional member.

(2) A firm of construction professionals is eligible for registration as a corporate member if at least 1 of the directors, managers, partners, employees or persons in control of the firm of construction professionals is registered as a professional member.

(3) A firm of construction professionals shall only provide construction services that any professional member specified in subsection (2) is authorized to provide pursuant to this Act.

(4) The Registrar shall register the name of any professional member specified in subsection (2) next to the name of the corporate member and the professional member shall acknowledge in writing the liabilities that may be imposed on that professional member under section 36(3) or 38(4) if the firm of construction professionals is found to have committed a professional misconduct.

(5) Where a professional member specified in subsection (4) is no longer employed by the corporate member, the professional member shall immediately request that the Registrar removes the name of the professional

member that was inserted next to the name of the corporate member in the register.

Registration of persons who lack qualifications as a professional member

19.(1) Notwithstanding any provision under this Act, any person who does not possess the qualifications required under section 16, but who on an application made to the Council within 1 year of the commencement of this Act, satisfies the Council that —

- (a) the person has had, before the commencement of this Act, at least 10 years' experience in the practice of construction services; and
- (b) the person is a fit and proper person to be registered as a professional member;

may be registered as a professional member.

(2) In determining whether a person satisfies the requirements in subsection (1), the Council may conduct an investigation relating to the experience of that person as a construction professional, as it considers necessary and may require that person to undergo an examination.

Acknowledgment of receipt of an application

20.(1) The Council shall acknowledge the receipt of an application for registration as a construction professional as soon as possible and in any case not later than 30 working days from the date of the receipt of the application and if the applicant does not submit all the documentation, the Council shall inform the applicant accordingly.

(2) The Council shall give its reasoned decision in relation to an application for registration as a construction professional within 90 working days after the date on which the complete application is received, but the Council may extend this period by 30 working days, provided that the applicant is notified prior to the expiration of the original period established in this subsection.

(3) In the event that the Council does not give its decision within the

period established in subsection (2), this shall not imply tacit approval of the application.

- (4) The acknowledgement referred to in subsection (1) shall specify —
- (a) the time period within which the application shall be processed;
 - (b) the available means of redress for an applicant whose application was rejected; and
 - (c) a statement that in the absence of a response within the specified time period, the approval shall not be deemed to have been granted.

Provisional registration as a graduate member

21.(1) Notwithstanding section 20, the Council may on the application of a Seychellois, who is enrolled in the final year of his or her studies at a recognised institution but who has not obtained an academic degree or a diploma (or equivalent) from that recognized institution, cause the Seychellois to be registered in a register to be known as the provisional registration register for a period not exceeding 6 months.

(2) Sections 25 and 26 shall apply mutatis mutandis in respect of a registration under this section.

Additional qualifications

22. Every person registered under this Act who, subsequent to that person's registration, obtains any qualification or other designation relevant to that person's practice as a registered construction professional, shall be entitled, on payment of the prescribed fee, to have such qualification or other designation inserted in the register in substitution for or in addition to those previously entered.

Correction of register

23. It shall be the duty of the Registrar to —

- (a) remove from the register any entry which the Council directs the Registrar to remove;
- (b) restore to the register any entry which the Council directs the Registrar to restore;
- (c) correct any entry, omission, misdescription or error in the register which the Council directs the Registrar to correct;
- (d) remove from the register, with the approval of the Council, the name of any person who has died or who has for a period of at least one year ceased to be resident in Seychelles or who, in accordance with this Act, ceases to be a registered member.

Redress for reject applicants

24. An applicant aggrieved by the refusal of the Council to register the applicant as a construction professional may within 3 months of such refusal, appeal to the Appeals Board.

Certificate of registration

25.(1) Where the requirements for registration have been satisfied, the Council shall on receipt of the prescribed fee from the applicant, issue to the applicant a certificate of registration.

(2) A certificate of registration is valid for 12 months and shall be in such form as the Council may determine.

(3) A certificate of registration may be subject to such conditions as the Council may determine.

(4) A certified copy of a certificate of registration made by the Registrar shall be prima facie evidence that the person, to whom the certificate relates, is a registered construction professional.

(5) A letter signed by the Registrar stating that a person is not a registered construction professional, shall be prima facie evidence of that fact.

(6) The holder of a certificate of registration shall display it in a prominent position at the holder's office.

(7) Where a certificate of registration has been lost, destroyed or damaged, it may be replaced by the Council by the issue of a copy thereof on the application of the holder thereof, and on the payment of the prescribed fee.

(8) Where the Council refuses an application for registration as a registered construction professional, the Council shall provide reasons for such refusal.

Certificate of registration and valid licence as prerequisite to practice

26.(1) Save where this Act otherwise provides, a person shall not engage in any construction services in Seychelles unless that person possesses both a certificate of registration and a licence at the date of commencing construction services.

(2) A person who engages in any construction services in contravention of subsection (1) commits an offence.

(3) A licence shall be obtained from the Licensing Authority in accordance with the Licences Act or any other written law.

(4) Notwithstanding subsection (1), a registered professional member or graduate member who —

- (a) is a public officer; or
- (b) is employed by a corporate member;

is not required to obtain a licence to engage in construction services provided by the Government or corporate member, as the case may be.

(5) For the avoidance of doubt —

- (a) a corporate member shall obtain a licence to engage in construction services;

- (b) a registered construction professional, employed under a contract of employment by a registered professional member who owns a business other than a firm of construction professionals, is not required to obtain a licence.

(6) For the purposes of enforcing compliance under this Act, the Council and the Licensing Authority shall share information on all construction professionals who have obtained a licence or a certificate of registration in accordance with this Act.

PART 4

RIGHTS AND PRIVILEGES OF CONSTRUCTION PROFESSIONALS

Illegal practice

27.(1) Subject to this Act, a person shall not, in Seychelles, —

- (a) draw or prepare any architectural plan, drawing, tracing, design, specification or other document intended to govern the construction, enlargement or alteration of any building or part of a building;
- (b) engage in any of the prescribed branches of engineering work, or draw or prepare any plan, sketch, drawing, design, specification or other document relating to any of the prescribed branches of engineering work; or
- (c) supply or provide prescribed survey services,

unless the person has a certificate of registration.

(2) Any document that is signed in contravention of subsection (2) shall be invalid.

(3) Subject to this Act, no person shall —

- (a) use or cause or permit to be used any written words, titles or initials or any abbreviation thereof, such as “engineer”, “Er.”, “Engr.”, “architect”, or “surveyor”, which are be

intended to cause or may reasonably cause any person to believe that the person using them is authorized to supply construction services in Seychelles; or

- (b) advertise or conduct himself or herself in any way or by any means as a person authorized to supply construction services in Seychelles,

unless at the time of so doing the person is a professional member.

(4) A graduate member may use the words “graduate engineer”, “graduate architect”, “graduate surveyor” or similar title or description that does not mislead any person into believing that the graduate member is a professional member.

(5) A person who contravenes this section shall be liable on conviction to a fine of level 1 on the standard scale and, if the person is a repeat offender, to a fine of level 2 on the standard scale or to imprisonment for a term not exceeding 1 year or to both such fine and imprisonment.

Employment of unregistered construction professionals

28.(1) Subject to this Act, a person shall not employ as a construction professional —

- (a) in the case of a corporate member or a professional member, a construction professional who does not possess a certificate of registration;
- (b) in the case of any other person, a construction professional who does not possess both a certificate of registration and a valid licence.

(2) A person who contravenes this section shall be liable on conviction to a fine of level 2 on the standard scale unless the person can prove that he or she had reasonable cause to believe that the person employed as a construction professional was compliant with section 26.

Entitlement to recover fees

29.(1) Notwithstanding any other law, a construction professional who

breaches section 26 is not entitled to recover in any proceedings any fee, charge, gratuity, remuneration or other reward under an agreement for construction services.

(2) A person, who has made any payment to a construction professional who was not compliant with section 26 at the time of carrying out construction services, may recover the payment in a court of competent jurisdiction if the person did not know or have reason to believe, when making payment, that the construction professional breached section 26.

(3) Nothing in subsection (1) shall prevent any a person from taking action mentioned in that subsection in respect of anything lawfully done while such person was compliant with section 26.

Minor construction services

30. Nothing in this Act shall be construed to prohibit or prevent any person not registered under this Act from carrying out work in respect of the construction of or repairs to any building or part thereof in any case which plans are not required by any written law to be submitted to the Planning Authority.

PART 5 DISCIPLINE

Professional misconduct

31.(1) For the purposes of this Act, “professional misconduct” means, in relation to a construction professional, —

- (a) negligence;
- (b) failure to make reasonable provisions for the safeguarding of life, health or property of a person who may be affected by the construction service or any work for which the construction professional is responsible;
- (c) failure to correct or report a situation that the construction professional believes may endanger the safety or welfare of the public;

- (d) failure to make responsible provision for complying with applicable laws, standards and codes in connection with construction services or any work being undertaken by or under the construction professional;
- (e) undertaking construction services or any work which the construction professional is not competent to perform by virtue of the construction professional's training or expertise;
- (f) conduct or an act relevant to the practice of construction professionals which, having regard to the circumstances, would reasonably be regarded by the profession as disgraceful, dishonourable or unprofessional;
- (g) failure to abide by the terms or conditions of the certificate of registration issued to the construction professional;
- (h) permitting, counselling or assisting a person who is not registered under this Act to engage in the practice of construction services except as provided for in this Act;
- (i) procuring registration by a statement which is false in a material particular;
- (j) the repeated performance of defective construction services to which adequate checks have not been applied;
- (k) making any report in connection with the performance of construction services containing any information which the construction professional knows to be erroneous in any material particular; or
- (l) unjustified refusal to remunerate the services of any person contracted by the construction professional to carry out work on that professional member's behalf;
- (m) failure to maintain full professional indemnity insurance as specified in section 32 or to provide information in relation to the professional indemnity insurance as specified under section 33.

(2) In this section, “negligence” means an act or omission in the carrying out of construction services which constitutes a failure to maintain the standards which a reasonable and prudent construction professional would maintain in the circumstances.

Professional indemnity insurance

32.(1) The Minister may by Order published in the *Gazette* direct that a class, category or grade of registered construction professional shall maintain full professional indemnity insurance at all times during which the construction professional holds a licence to practise.

(2) The professional indemnity insurance policy shall cover —

- (a) loss or damage to the construction professional's equipment employed in the provision of the construction services;
- (b) civil liability for damage caused to third parties arising out the provision of the construction services;
- (c) accidental death, dismemberment or permanent disability resulting from bodily injury incurred in connection with the provision of the construction services; and
- (d) any other matter specified in the Order under subsection (1).

(3) The Council, on the approval of the Minister responsible for finance, may establish, administer, maintain or operate a professional insurance liability scheme for construction professionals for the purpose of subsection (2) and in respect of such scheme may —

- (a) determine classes of membership for insurance;
- (b) determine the insurance fee or contribution for members in each class;
- (c) determine the deductibles that apply in certain circumstances;
- (d) provide for payment of insurance fees by instalment or in advance; and

- (e) provide for specific types or values of transaction which require additional insurance fees or contributions to be paid.

Proof of insurance

33. The Council may at any time require a registered construction professional who holds a licence to practise to provide proof of —

- (a) the professional indemnity insurance;
- (b) the current status of the insurance policy including, proof of regular and up to date payment of premiums in respect of the insurance policy.

Complaints of professional misconduct

34.(1) A complaint that a construction professional has committed professional misconduct may be made to the Council by any person in such form as the Council may determine.

(2) If the Council is of the opinion that any complaint so made might, if established, call for the exercise of any of a disciplinary powers conferred by section 36, the Council shall appoint a disciplinary committee and shall refer the complaint to it.

Disciplinary Committee

35.(1) A Disciplinary Committee shall comprise 3 or more professional members who shall be appointed by the Council.

(2) In the conduct of the hearing of any complaint, the Disciplinary Committee shall commence a formal inquiry into any complaint and may require any person —

- (a) to attend at a specified time and place and give evidence before the Disciplinary Committee; and
- (b) to produce all books, documents and papers in the custody of such person or under the person's control which may be related to or be connected with the subject-matter of the formal inquiry.

(3) The Disciplinary Committee —

- (a) shall not be bound by the Evidence Act, Cap. 74, or by any other written law relating to evidence;
- (b) may administer an oath or affirmation to any person giving evidence before it; and
- (c) may regulate its own procedure for a formal inquiry.

(4) On an application made by the Disciplinary Committee to the Registrar of the Supreme, the Registrar of the Supreme Court may issue a summons for a person to appear before the Disciplinary Committee to give evidence where the person has failed to appear before the Disciplinary Committee on a previous occasion after having been given notice to do so.

(5) A Disciplinary Committee shall complete its inquiry not later than 6 months from the date of its appointment, unless the Council, on application of the Disciplinary Committee, allows otherwise.

(6) The decision of the Disciplinary Committee shall be by a majority of votes and shall be submitted in writing to the Council.

Disciplinary Powers of the Council

36.(1) On the hearing of a complaint, the Disciplinary Committee shall make its recommendations to the Council and the Council may either dismiss the complaint or make such order of a disciplinary nature as it thinks fit, and such order may, in particular, provide for any of the following matters in relation to the person complained against, that is to say —

- (a) removal of the construction professional's name from the register;
- (b) suspension of the construction professional's registration for a period not exceeding one year;
- (c) payment, by the construction professional, of a penalty to the council not exceeding SCR 100,000;

- (d) payment, by the construction professional, of costs or of such sum as the Council may consider to be reasonable contribution towards the costs incurred in connection with the hearing.

(2) Any payment ordered to be made by any person under paragraph (c) or (d) of subsection (1) may be enforced by the Council by ordering the construction professional's registration to be suspended until payment is made.

(3) Notwithstanding any written law, where an order under subsection (1)(a) or (b) is made against a corporate member, the Disciplinary Committee shall order that —

- (a) the name of the professional member identified under section 18 be removed from the register;
- (b) the professional member identified under section 18 be suspended.

Order of the Council

37.(1) Every order made by the Council under section 36 shall be prefaced by a statement of the Disciplinary Committee's findings on the facts of the case and shall be signed by the Chairperson of the Disciplinary Committee.

(2) Every such order shall be filed with the Registrar and shall take effect where —

- (a) no appeal under section 43 is brought against the order within the time limited for the appeal;
- (b) an appeal is brought and is withdrawn or struck out, on the withdrawal or striking out of the appeal;
- (c) an appeal is brought and is not withdrawn or struck out, if and when the appeal is dismissed and not otherwise.

(3) The Registrar shall cause a note of the effect of every order filed with the Registrar pursuant to subsection (2) to be entered in the register

against the name of the person to whom the order relates and, except in the case of an order making provision only for costs, shall forthwith on the taking effect of the order cause a notice stating the effect of the order to be published in the Gazette.

Power to order immediate suspension

38.(1) Notwithstanding section 37(2), the Council may make an order for removal or an order for suspension in respect of any construction profession if the Council is satisfied that to do so is necessary for the protection of members of the public or would be in the best interest of the construction professional.

(2) Where an order under subsection (1) is made in respect of a construction professional, the construction professional's registration shall be suspended or removed forthwith when the order is made.

(3) In this section “order for removal” means an order under section 36(1)(a) for the removal of a construction professional's name from the register and “order for suspension” means an order under that section 36(1)(b) for the suspension of a person's registration in the register.

(4) Notwithstanding any written law, where an order for removal or an order for suspension is made against a corporate member, the professional member identified under section 18 shall be suspended or the name of that professional member shall be removed from the register, as the case maybe.

Removal of name from register

39.(1) The Registrar shall remove particulars of a construction professional from the register on the —

- (a) application of the construction professional; or
- (b) taking effect of an order of the Council under section 38(2) or (4), in relation to that construction professional:

Provided that where a complaint has been made against any construction professional under section 34(1) the person's name shall not be removed under paragraph (b) of this subsection until the complaint, or any appeal in relation thereto, has been finally disposed of under this Act.

(2) Where the name of any construction professional has been removed from the register or the construction professional's registration has been suspended, any certificate of registration or licence issued to the construction professional shall cease to have effect for as long as that construction professional's name remains off the register or, as the case may be, suspension continues in force.

(3) The Registrar shall cause the name of any construction professional whose name has been removed from the register or who has been suspended to be published in the *Gazette*.

(4) Where the name of any construction professional has been removed from the register, the Council shall, in writing, require that construction professional to return to the Registrar any certificate of registration issued to the person.

(5) Any person who fails without reasonable excuse to return the certificate of registration issued to the person, as required by subsection (4), commits an offence and is liable to pay to the Council a fine of SCR 1,000 and to a further fine of SCR 50 for each day during which the offence continues.

Restoration of name to the register

40.(1) The Council may at any time, on application being made by a construction professional whose name has been removed from the register or whose registration has been suspended, determine if the Council thinks fit, that such person's name shall be restored to the register or, as the case may be, that the person's suspension shall cease with effect from such date as the Council may appoint and shall forthwith give notice of any such determination to the Registrar.

(2) On receipt of the notice of a determination made by the Council under subsection (1) in relation to any person, the Registrar shall forthwith cause the name of that person to be restored to the register or, as the case may be, cause a note of the cessation of the suspension to be entered therein, and in either such case —

- (a) shall cause notice of the determination of the Council to be published in *Gazette*; and

- (b) shall cause the certificate of registration returned under section 39(3) to be reissued to that person.

Appeal of Orders

41. Any person dissatisfied with any order or decision of the Council, made under this Part shall first appeal to the Appeals Board within 3 months from the date of receipt of the order or decision.

PART 6 APPEALS

Establishment of Appeals Board

42.(1) There is established an Appeals Board appointed by the Minister.

(2) Subject to subsection (3), the Appeals Board shall comprise of —

- (a) an Attorney at Law or a State Counsel nominated by the Bar Association;
- (b) an officer of the Fair Trading Commission nominated by the Chief Executive Officer;
- (c) a representative of the Seychelles Chamber of Commerce and Industry nominated by its Chairperson

(3) Where the member nominated by the Fair Trading Commission or Seychelles Chamber of Commerce and Industry is unavailable to sit on the Appeals Board for any reason, the member may be substituted by such other suitable person as the Minister may appoint.

(4) A decision of a majority of the members of the Appeals Board is the decision of the Appeals Board.

(5) The Appeals Board shall regulate its own proceedings.

Grounds of appeal

43.(1) A person directly affected by a decision of the Council, including a decision in relation to an application for registration or a decision of the

Council based on a report made by a committee, may within 3 months of such decision, appeal the decision to the Appeals Board on the following grounds that —

- (a) the Council failed to comply with the provisions of this Act or any regulations or rules made under this Act and that the failure amounted to a significant breach of such procedures;
- (b) the decision of the Council is based on information that is substantially incorrect or is of insufficient weight to support the decision; or
- (c) the decision of the Council is arbitrary or unreasonable, or inconsistent with or unsupported by the policies of the Council.

Powers of the Appeals Board

44.(1) At the hearing of an appeal, the Appeals Board may —

- (a) confirm the decision of the Council;
- (b) set aside the decision of the Council; or
- (c) set aside the decision of the Council and substitute any other decision that the Council has authority to take as the Appeals Board specifies.

(2) At the hearing of an appeal, the Appeal Board may seek the opinion of an expert in any relevant construction-relation discipline.

PART 7 GENERAL PROVISIONS

General offences

45. A person who —

- (a) fraudulently makes, causes or permits to be made, any false or incorrect entry in the register or any copy of it;

- (b) fraudulently procures or attempts to procure the entry on the register of any name or other particulars whether on the person's own behalf or on behalf of any other person;
- (c) fraudulently procures or attempts to procure a certificate of registration or a licence;
- (d) knowingly being unqualified to conduct any construction services conducts any such service;
- (e) knowingly makes any statement which is false in a material particular or misleading, with a view to gaining any advantage under this Act;
- (f) forges or submits any document purporting to be an academic qualification;
- (g) impersonates any person registered under this Act;
- (h) having been duly summoned to appear, refuses or fails without good excuse to appear at a hearing of the Disciplinary Committee;
- (i) obstructs or hinders a member of the Council or a Committee of the Council in the exercise of the person's powers or the performance of the person's functions under this Act,

commits an offence and is liable on conviction to a fine of level 4 on the standard scale.

Funds and resources of the Council

46.(1) The funds and resources of the Council shall consist of —

- (a) monies received by the Council in connection with the performance of its functions;
- (b) special grants or other funds as may from time to time be provided by the government or any other entity or agency, whether national or international;

- (c) such amounts as may be appropriated by the National Assembly; and
- (d) all other property and assets duly acquired by the Council.

(2) The funds of the Council shall be applied in defraying the following expenditure —

- (a) the emoluments, remuneration, fees or allowances of the Council, staff of the Council, members of committees and the Appeals Board established by the Council;
- (b) the capital and operating expenses, including maintenance and insurance, of the property of the Council;
- (c) the making and maintenance of investments of the Council; and
- (d) any other expenditure authorised by the Council in the discharge of its functions.

Accounts of the Council

47.(1) The Council shall keep proper accounts and records of the funds of the Council and shall prepare for each financial year a statement of accounts.

(2) The accounts of the Council shall be audited annually by the Auditor General or by an auditor authorised by the Auditor General.

(3) As soon as the accounts and statements of accounts of the Council have been audited under subsection (2), the Council shall send to the Minister a copy of the statement of accounts together with a copy of any report made by the auditor on the statement or on the accounts of the Council.

Protection of action taken in good faith

48. A member of the Council, the Registrar or any person acting under the authority of the Council under this Act shall not be liable to any

loss, damage, claim or be subjected to any legal action for any function performed in good faith.

Law inconsistent with this Act

49. Where any provision of any law is in conflict or inconsistent with any provision of this Act, the provision of this Act shall prevail.

Powers to make Regulations

50. The Minister may, in consultation with the Council, make regulations —

- (a) prescribing the form of and the method of keeping the Construction Professional Register;
- (b) prescribing the particulars which the Construction Professional Register shall contain;
- (c) prescribing the form of any application, certificate of registration or other document required for the purposes of this Act;
- (d) prescribing the form of any application, certificate of registration or other document required for the purposes of this Act;
- (e) prescribing the fees payable in respect of the registration of applicants, the issue, renewal and replacement of certificates of registration, and any alterations or additions to the Construction Professional Register;
- (f) regulating any matters in relation to the grade, class or category of construction professional;
- (g) regulating the employment or supervision of graduate members;
- (h) regulating the proceedings of the Council and any other matter necessary for the efficient discharge of its functions;

- (i) for establishing criteria for the registration of the construction professionals;
- (j) prescribing general standards of conduct for construction professionals;
- (k) regulating all matters in relation to architectural draughtspersons or technicians;
- (l) regulating all matters in relation to project managers;
- (m) for any other matter for the better carrying out of the purposes of this Act which may be or is required to be prescribed under this Act.

Transitional provision

51. A person who is practising as a construction professional in Seychelles may continue to do so without being registered or without holding a certificate of registration or licence issued under this Act —

- (a) for a period of 10 months from the date of commencement of this Act; and
- (b) if before the expiration of the period specified in paragraph (a) the person applies for registration under this Act, until the person is registered and a certificate of registration, as the case may be, is issued or until such application is refused or withdrawn.

SCHEDULE

Construction Services

- (a) architect;
- (b) engineer;
- (c) surveyor.

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 18th October, 2022.



Ms. Alexandria Faure
Deputy Clerk to the National Assembly

BENEFICIAL OWNERSHIP (AMENDMENT) BILL, 2022

(Bill No.42 of 2022)

OBJECT AND REASONS

The object of this Bill is to ensure continued compliance with the international standards set by the Financial Action Task Force (“FATF”) and Organization for Economic Cooperation and Development (“OECD”) which require jurisdictions to maintain beneficial ownership information which shall be accessible and made available upon request to competent authorities, for the administration or enforcement of their relevant legislations in order to combat financial crimes. In addition the Bill seeks to improve the efficiency of implementation of existing systems as well as making monetary sanctions that are in the Bill more punitive and dissuasive.

In this Bill, though listed companies are exempted from the application of the Beneficial Ownership Act, the Bill creates a framework for the collection of certain minimal beneficial ownership information to be uploaded on the database which will facilitate searches on a “complete” database. Further to this, the Bill makes provision that listed companies should be exempted only if there are applicable disclosure requirements providing adequate beneficial ownership information on those listed companies.

An object of this Bill is to align the provisions relating to trusts, with the new Trusts Act. It then addresses disclosure of beneficial ownership information by trustees in order to comply with FATF Recommendation 25.4 by allowing trustees to provide beneficial ownership information to competent Authorities as well as FIs and DNFBPs upon request.

Further, this Bill introduces the concept of a registrable legal person which is purely for administrative convenience in order to allow for the effective implementation of this Act in relation to compliance with FATF recommendations. Of particular importance is a new provision under this amendment which has been inserted to guarantee that before the name of a registrable legal person is entered on the register of beneficial owners, the legal person has already submitted its beneficial ownership information with the Financial Intelligence Unit, should there be the need to access this information. This will reduce the risk of information on the natural persons behind the registrable legal person not being available.

The Bill goes on to provide clarity of procedures and specifies more clearly other requirements in the principal Act. These include providing clarity on the requirement that every legal person and legal arrangement must keep their register

of beneficial owners indefinitely, whereas the declaration and the written notice must be kept for at least 7 years from the date the person ceases to be a beneficial owner. Also, once a legal person or arrangement dissolves or ceases to exist, the obligation will now be on the resident agent to keep custody of these records for at least 7 years. Then where a person ceases to be a resident agent, all these records will be handed over to the competent authority.

In addition, this Bill is to require that information on nominees or nominator be inserted in an annex to the Register rather than in the Register itself. Further, it provides for the information to be kept in the register in respect of registrable legal persons which will include, amongst other things, the name, incorporation number, date of incorporation, registered address and the date on which a person became or cease to be a registrable legal person.

Finally, an object of this Bill is to give Competent Authorities the power to issue guidelines, codes and directions given that numerous provisions of the Act and Regulations shall be extended through guidelines or codes, and they will have the force of law. Sanctions will apply in case of non-compliance.

Dated this 12th day of December, 2022.

**NAADIR HASSAN
MINISTER OF FINANCE,
NATIONAL PLANNING AND TRADE**

BENEFICIAL OWNERSHIP (AMENDMENT) BILL, 2022

(Bill No.42 of 2022)

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Amendment of section 2
3. Amendment of section 3.
4. Amendment of section 4.
5. Amendment of section 5.
6. Amendment of section 7.
7. Amendment of section 8.
8. Amendment of section 9.
9. Amendment of section 10.
10. Amendment of section 11.
11. Amendment of section 12.
12. Amendment of section 13.
13. Amendment of section 14.
14. Insertion of new section.
15. Amendment of section 15.
16. Insertion of new section.
17. Amendment of section 18.
18. Amendment of First Schedule.

BENEFICIAL OWNERSHIP (AMENDMENT) Bill, 2022

(Bill No.42 of 2022)



A BILL

FOR

AN ACT TO AMEND THE BENEFICIAL OWNERSHIP ACT, 2020 AND TO PROVIDE FOR THE ALIGNMENT OF THE PROVISIONS RELATING TO TRUSTS WITH THE TRUSTS ACT; TO PROVIDE FOR INTRODUCE THE CONCEPT OF REGISTRABLE LEGAL PERSON; TO OUTLINE PROCEDURES THAT BRING CLARITY TO THE REQUIREMENTS OF THE ACT; TO PROVIDE FOR MORE PUNITIVE PENALTIES; TO PROVIDE FOR THE INCREASE OF VARIOUS TIMELINES TO ALLOW FOR COMPLIANCE; TO PROVIDE FOR THE STRENGTHENING OF THE ENFORCEMENT POWERS OF COMPETENT AUTHORITIES; AND TO PROVIDE FOR MATTERS CONNECTED TO OR INCIDENTAL TO THE FOREGOING.

ENACTED by the President and the National Assembly.

Short title

1. This Act may be cited as the Beneficial Ownership (Amendment) Act, 2022.

Amendment of section 2

2. Section 2 of the Beneficial Ownership Act, 2020, (hereinafter referred to as the “principal Act”) is amended in—

(a) subsection (1) by repealing subsection (1)(b)(i) and substituting it with the following—

“(i) a trustee of a trust under the Trusts Act, 2021 (Act 34 of 2021);”

(b) subsection (2)—

(i) in the chapeaux, by repealing the words “This Act” and substituting them with the words “Subject to section 13(5A), this Act”;

(ii) by repealing paragraph (a) and substituting it with the following paragraph—

“(a) a listed company that is subject to adequate disclosure requirements in terms of transparency of beneficial ownership;

(iii) in paragraph (b) by repealing the full-stop and substituting it with a semicolon;

(iv) by inserting after paragraph (b), the following paragraph —

“(c) any legal person that has been struck-off from the register, under its respective statutory legislation, on the date of commencement of this Act:

Provided that when the legal person is restored to the register under its respective statutory legislation, the provisions of this Act shall be applicable to such legal person even for the struck-off period.” ;

Amendment of section 3**3.** Section 3 of the principal Act is amended —

- (a) by inserting after the definition of “beneficial owner”, the following definition—

“beneficial ownership information” means the information specified under section 5 (1), which is collected on beneficial owners and the relevant information of registrable legal persons;”

- (b) by inserting after the definition of “customer” the following definition —

“database” means the Seychelles Beneficial Ownership database referred to in section 13;

- (c) in the definition of “listed company”, in paragraph (b), by repealing the words “which is a subsidiary” and substituting them with the words “which is a wholly-owned subsidiary”;

- (d) by the repeal of the definition of “registrable particulars” and the insertion of the following definitions—

“registrable legal person” means a legal person whose name may be entered in the register of beneficial owners as a registrable legal person provided that —

- (a) the legal person —

(i) is subject to its own disclosure requirements under this Act and is in compliance with section 13 ; and

(ii) is a licensee under the International Corporate Service Providers Act; or

- (b) the legal person is a listed company;

“registrable particulars” means the information entered in the register of beneficial owners;”;

- (e) in the definition of “resident agent” —
 - (a) in paragraph (c), by repealing the words “section 39” and substituting them with the words “section 164”;
 - (b) by repealing paragraph (e) and substituting it with the following —
 - “(e) an approved trustee of a trust under the Trusts Act, 2021.”;
 - (c) by repealing paragraph (f) and substituting it with the following —
 - “(f) a registered agent under section 6A of the Limited Partnerships Act; or”

Amendment of section 4

- 4. Section 4 of the principal Act is amended —
 - (a) in subsection (2) in paragraph (b) by repealing the full-stop and substituting it with a semi colon;
 - (b) in subsection (2) by inserting after paragraph (b) the following—
 - “(c) examine and make copies or extracts of the documents belonging to or in the possession of the resident agent, that in the opinion of the Competent Authority relates to documents or information required to be kept by a legal person, legal arrangement or resident agent under this Act;
 - (d) seek information and explanations from the officers, employees, agents and representatives of the resident agent, if any, whether verbally or in writing in relation to information required to be kept by a legal person, legal arrangement or resident agent under this Act.”
 - (c) by inserting after subsection (2) the following subsection—

“(2a) The Competent Authority may, where it appears to it, that the circumstances are justifiable, exercise its powers under subsection (2) without giving notice to the legal person or legal arrangement.”

- (d) in subsection (3), by repealing the words “offence and is liable upon conviction to fine of not less than SCR50,000” and substituting them with the words “offence and is liable upon conviction to a fine not exceeding SCR150,000”;

Amendment of section 5

5. Section 5 of the principal Act is amended —

- (a) in subsection (1)—
- (i) by inserting in the chapeaux after the words “at the principal place of business of its resident agent”, the words “in Seychelles”;
- (ii) by repealing, in paragraph (a), the words “and nationality” and substituting them with the following words “,nationality, national identification number or equivalent (if any) and tax identification number or equivalent (if any)”;
- (iii) by inserting after paragraph (d), the following—
- “(d1) where a nominee or nominator has been appointed or ceased to be a nominee or nominator—
- (i) the date on which the nominee or nominator has been appointed;
- (ii) the date on which the nominee or nominator has ceased to be a nominee or nominator”;
- (iv) in paragraph (e)—
- A. in the chapeaux by inserting after the words “holds interest on behalf of the beneficial owner” the words “, the following particulars

shall be included in an annexure to the register of beneficial owners”;

- B. by repealing subparagraph (i) and substituting it with the following—

“(i) in the case of —

- A. a natural person—

the name, residential address, service address, date of birth, nationality, national identification number or equivalent (if any) and tax identification number or equivalent (if any) of each nominee holding the interest on behalf of the beneficial owner and the particulars and details of the interest held by the nominee;

- B. a legal person—

the name, registered address, incorporation or registration number, date of incorporation or registration, jurisdiction of incorporation or registration, tax identification number or equivalent (if any) and the information and details of the interest held by the nominee; and”;

- C. in paragraph (ii) by the repeal of “natural person who ultimately owns or controls” and substitution of “beneficial owner”;

- (v) by inserting after paragraph (e) the following—

“(f) in the case of any registrable legal person—

- (i) the name of the registrable legal person;
 - (ii) the incorporation number or its equivalent of the registrable legal person;
 - (iii) the date of incorporation of the registrable legal person;
 - (iv) the registered address of the registrable legal person;
 - (v) the basis upon which the legal person is designated as a registrable legal person;
 - (vi) the date on which a person became a registrable legal person; and
 - (vii) the date on which a person ceased to be a registrable legal person.
- (b) by inserting after subsection (1), the following subsection—
- “(1a) A legal person or legal arrangement shall not include the name of a registrable legal person in the register of beneficial owners unless it has received sufficient proof that—
- (a) the person has uploaded its accurate and up to date beneficial ownership information on the database under section 13; or
 - (b) where the registrable legal person is a listed company, the person has complied with the requirements under section 13(5A).”;
- (c) by inserting after subsection (2) the following subsection—

“(2a) The information under subsection (1) shall only be entered in the register of beneficial owners once all the required information of that beneficial owner has been confirmed by the beneficial owner.”

- (d) in subsection (3)—
- (i) by repealing the words “commits an offence and”;
 - (ii) by repealing “SCR50,000” and substituting with “SCR150,000”;
- (e) in subsection (4)—
- (i) by repealing the words “commits an offence and”;
 - (ii) by repealing “SCR50,000” and substituting with “SCR150,000”;
- (f) in subsection (5) by repealing paragraphs (a) and (b) and substituting as follows—
- “(a) “nominee” means a person who has been instructed to act on behalf of another person (the nominator) in a certain capacity regarding a legal person, and includes a person who holds legal title over shares or other membership interests in a legal person on behalf of another person (the nominator); and
 - (b) “nominator” means a person who instructs a nominee to act on the nominator’s behalf in a certain capacity regarding a legal person, and includes a person who instructs a nominee to hold legal title over shares or other membership interests or any other control in a legal person on the nominator’s behalf.”
- (g) by repealing subsection (6) and substituting as follows—
- “(6) The resident agent shall, within 14 days of the establishment of the register of beneficial owners (including the annexures to the register of beneficial owners) cause the information to be uploaded on the database.”

(h) by repealing subsection (7) and substituting it as follows—

“(7) A person who fails to comply with the provisions of subsection (6), shall be liable to a penalty not exceeding SCR150 000.”

Amendment of section 7

6. Section 7 of the principal Act is amended by repealing the word “maintaind” and substituting it with the word “maintained”.

Amendment of section 8

7. The principal Act is amended by repealing section 8 and substituting it as follows—

“Retention period

8. (1) Every legal person and legal arrangement (including a legal person that has been struck-off) shall keep—

- (a) during its lifetime, its register of beneficial owners; and
- (b) for at least 7 years at the principal place of business of its resident agent in Seychelles —
 - (i) a declaration of beneficial ownership made in terms of section 10(1);
 - (ii) a written notice made in terms of sections 9 and 10(3) and a copy of any response received thereof; and
 - (iii) any supporting documents verifying the identity of a beneficial owner pursuant to section 9(1),

from the date on which that person ceased to be a beneficial owner of the legal person or legal arrangement, as the case may be.

(2) Where a resident agent of a legal person or legal arrangement specified in Part A of the First Schedule ceases to be the

resident agent of that legal person or legal arrangement, that resident agent shall preserve all the records required to be kept under this Act, in respect of that legal person or legal arrangement, including —

- (a) the register of beneficial owners of the legal person or legal arrangement;
- (b) a copy of the declaration of beneficial ownership under section 10(1);
- (c) a copy of the written notice under sections 9 and 10(3), and a copy of any response received thereof; and
- (d) a copy of any supporting documents verifying the identity of a beneficial owner pursuant to section 9(1),

until such time that the records are transferred to the new resident agent.

(3) Where a legal person or legal arrangement specified in Part A of the First Schedule dissolves or ceases to exist or continues outside Seychelles, the resident agent shall hand over all the records required to be kept under this Act, in respect of that legal person or legal arrangement, including —

- (a) the register of beneficial owners of the legal person or legal arrangement;
- (b) a copy of the declaration of beneficial ownership under section 10(1); and
- (c) a copy of the written notice under sections 9 and 10(3) and a copy of any response received thereof; and
- (d) any supporting documents verifying the identity of a beneficial owner pursuant to section 9(1),”

to the Competent Authority, within 30 days from the date that the legal person or legal arrangement has been dissolved or ceased to exist or continued outside Seychelles.

(4) Where a legal person or legal arrangement specified in Part B of the First Schedule dissolves or ceases to exist or continues outside Seychelles, its resident agent shall keep, for at least 7 years from the date on which the legal person or legal arrangement is dissolved or ceased to exist or continued outside Seychelles, all the records required to be kept under this Act, including—

- (a) the register of beneficial owners of the legal person or arrangement;
- (b) a copy of any declaration of beneficial ownership made in terms of section 10(1); and
- (c) a copy of any written notice made under sections 9 and 10(3) and a copy of any response received thereof; and
- (d) any supporting documents verifying the identity of a beneficial owner pursuant to section 9(1),”

(5) Where a person —

- (a) is a resident agent of a legal person or legal arrangement specified in Part B of the First Schedule; and
- (b) ceases to hold a licence under the International Corporate Service Providers Act, 2003 (Act 10 of 2003),

that person shall hand over all the records required to be kept under this Act, relating to every legal person or legal arrangement under its administration (including legal persons or legal arrangements to which subsection (3) applies), to the Competent Authority, within 30 days from the date that it ceases to be a resident agent or it ceases to operate unless the records have been transferred to a newly appointed resident agent prior to the records being handed over to the Competent Authority.

(6) All records submitted to the Competent Authority shall be in digital form unless otherwise agreed upon between the Competent Authority and the resident agent.

(7) An entry relating to a former beneficial owner of a legal person or legal arrangement may be removed from the register of beneficial owners after 7 years from the date on which that person ceased to be a beneficial owner of the legal person or legal arrangement, as the case may be.

(8) In case of contravention of the provisions of this section —

- (a) every legal person or legal arrangement;
- (b) every former director, general partner, trustee or councilor of the legal person or legal arrangement;
- (c) every resident agent;
- (d) every former resident agent or former director of the resident agent,

shall be liable to a penalty not exceeding SCR150,000 for each contravention.”;

Amendment of section 9

8. Section 9 of the principal Act is amended —

- (a) in subsection (1)—
 - (i) by inserting after the words “beneficial owners” the words “and registrable legal persons”;
 - (ii) by inserting after the word “verify” the words “the identity of”;
- (b) in subsection (2) —
 - (i) by inserting in the chapeaux after the words “believe that the person is a beneficial owner” the words “or a registrable legal person”;
 - (ii) in paragraph (a), by inserting, after the words “beneficial owner” the words “or a registrable legal person”;

- (c) by inserting a new subsection (2a) after subsection (2)–

“(2a) A legal person or legal arrangement is not required to take steps or give notice under subsection (2) with respect to a beneficial owner, if the legal person or legal arrangement has already been informed in writing of the person’s status as a beneficial owner in relation to it, and has been supplied with all the registrable particulars.”;

- (d) in the subsection (3)—

(i) by repealing the words “A resident agent may also give” and inserting therefor the words “A legal person or legal arrangement may give”;

(ii) by repealing the words “the resident agent knows” and inserting therefor the following words “the legal person or legal arrangement knows”;

(iii) by inserting after the words “identity of a beneficial owner” the words “or a registrable legal person”;

- (e) in subsection (4), in paragraph (a), by inserting after the words “beneficial owner” the words “, or a registrable legal person”;

- (f) by inserting after subsection (5) the following —

“(6) Within 30 days of a person receiving a notice given by the legal person or legal arrangement under subsection (5), he or she shall comply with such notice by providing in writing, to the legal person or legal arrangement, the information requested in the notice.

(7) Where a person fails to comply with subsection (6), the legal person or the legal arrangement, shall take action after giving the legal or beneficial owner, an opportunity of being heard and furnishing to the legal or beneficial owner, in writing the decision of the legal person or the legal arrangement, including but not limited to —

- (a) the placing of such restrictions as it thinks fit on the rights attached to the legal owner's interest in the legal person or the legal arrangement, as the case may be, including—
 - (i) any right to transfer or assign shares or other interest;
 - (ii) any voting rights;
 - (iii) any right to acquire further shares in addition to shares already held;
 - (iv) any right to payment due in respect of the legal owner's interest, whether in respect of capital or otherwise;
 - (v) in the case of a limited partnership with legal personality, any right to take part in the management of the partnership;
 - (vi) in the case of a foundation, any benefit to which the legal owner becomes entitled under the foundation in accordance with the foundation instrument or the foundation rules; or
- (b) the cancellation of the legal owner's interest in the legal person or the legal arrangement, as the case may be.

(8) Any action taken under subsection (7) shall be appropriate and dissuasive to compel compliance and a record of the action taken in that regard shall be maintained.

(9) Where—

- (a) a person fails to comply with subsection (6); or

- (b) an action is taken under subsection (7),

the legal person or legal arrangement shall inform the Competent Authority in writing, through its resident agent of the failure or action taken, as the case may be, within 21 days of the failure or having taken the action.

(10) Any person aggrieved by a decision taken pursuant to subsection (7), may appeal to the Supreme Court to set aside any restriction or cancellation.

(11) Upon receipt of an appeal under subsection (10), the court may make such order as it thinks fit, to require any person who fails to comply with a notice issued under subsection (2) or subsection (3) to —

- (a) provide the information sought; or
- (b) confirm or correct the registrable particulars sought.

(12) A person who contravenes subsection (1), (2), (7), (8) or (9) shall be liable to a penalty not exceeding SCR150,000, for each contravention.

(13) A person who contravenes subsection (6), commits an offence and is liable on conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding SCR200,000 or to both.”;

Amendment of section 10

9. Section 10 of the principal Act is amended —

- (a) by repealing marginal note and substituting therefor the following marginal note—
- “Declaration of beneficial ownership information”;
- (b) in subsection (1), by repealing the words “14 days” and substituting therefor the words “21 days”;
- (c) in subsection (2)—

- (i) in the chapeaux by inserting after the words “receipt of the declaration of beneficial ownership” the words “under subsection (1) or a notice under subsection (3)”;
 - (ii) in paragraph (a), by inserting after the words “beneficial ownership” the words “under subsection (1) or a notice under subsection (3)”;
 - (iii) in paragraph (b), inserting after the word “declaration” the words “or notice”;
- (d) in subsection (3)—
- (i) by repealing the words “14 days” and substituting with the words “21 days”;
 - (ii) by repealing the words “register of beneficial ownership” and substituting with “register of beneficial owners”
- (e) by inserting a new subsection after subsection (3) as follows—
- “(3a) The resident agent shall, within 14 days of effecting any change to the register of beneficial owners under subsection (2), cause the information to be uploaded on the database.”;
- (f) in subsection (4), by repealing the words “relevant change is not disclosed under subsection (3), the legal person or the legal arrangement, as the case may be, may take any action it deems appropriate” and substituting with the words “person fails to comply with provisions of subsections (1) or (3), the legal person or the legal arrangement, as the case may be, shall take action”;
- (g) inserting a new subsection after subsection (4) as follows—
- “(4a) Any action taken under subsection (4) shall be appropriate and dissuasive to compel compliance and a record of the action taken in that regard shall be maintained.

(4b) Where—

- (a) a person fails to comply with subsections (1) and (3); or
- (b) an action is taken under subsection (4),

the legal person or legal arrangement shall inform the Competent Authority in writing, through its resident agent, of the failure to comply or action taken, as the case may be, within 21 days of the failure to comply or having taken the action.”;

(h) inserting a new subsection after subsection (5) as follows—

“(5a) Upon receipt of an appeal under subsection (5), the court may make such order as it thinks fit, to require any person who fails to comply with a notice issued under subsection (1) or subsection (3) to—

- (a) provide the information sought; or
- (b) confirm or correct the registrable particulars sought.”

(i) by repealing subsection (7) and substituting therefor the following subsections—

“(7) Any person who contravenes subsections (3a), (4), (4a) and (4b) shall be liable to a penalty not exceeding SCR150, 000 for each contravention.

(7a) Any person who contravenes subsections (1), (2), (3) and (6), commits an offence and is liable on conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding SCR150,000 or to both.”

(j) in subsection (8)—

- (a) in paragraph (a), by repealing the word “or” after the words “may be;”;

- (b) in paragraph (b), by repealing the full-stop (.) and replacing thereof with “; or”;
- (c) by inserting the following after paragraph (b) —
 - “(c) the person becomes aware of an error or inaccuracy in the beneficial ownership information formerly uploaded on the database.”

Amendment of section 11

10. Section 11 of the principal Act is amended —

- (a) in subsection (1) as follows—
 - (i) in paragraph (d), by repealing the word “thepartnership; and” and substituting with the words “the partnership;”;
 - (ii) in paragraph (e), by repealing the full-stop at the end and substituting thereof the word “; and”;
 - (iii) by inserting after paragraph (e) the following paragraph—
 - “(f) a director, or an authorised representative of the director, of a registrable legal person whose name is entered in the register of beneficial owners.”
- (b) in subsection (4)—
 - (i) by inserting after the words “resident agent” the word “unreasonably”;
 - (ii) by repealing the words “not less than SCR50,000.” and substituting with the words “not exceeding SCR50,000.”;

- (c) in subsection (5), by repealing the word “arrangement” and substituting with the word “arrangement”;

Amendment of section 12

11. Section 12 of the principal Act is amended —

- (a) by inserting after the words “If any beneficial owner” the words “or registrable legal person”;
- (b) by inserting after the words “the beneficial owner” the words “or registrable legal person”;

Amendment of section 13

12. Section 13 of the principal Act is amended —

- (a) in subsection (1) by repealing the words “by populating the beneficial ownership information (including the periodic update requirements) reported by the legal persons or the legal arrangements, through their resident agent ” and substituting with the words “containing the beneficial ownership information, including the annexure to the register of beneficial owners”;
- (b) in subsection (4) by repealing the words “data base” and substituting therefor the word “database”;
- (c) by inserting after subsection (5) the following—

“(5a) Notwithstanding section 2(2), a listed company shall, through its resident agent, upload on the database —

- (a) the name and registered address of the company;
- (b) the incorporation number or registration number of the company;
- (c) the date of incorporation or registration of the company;

- (d) the fact that the company is a listed company;
 - (e) the jurisdiction where the company is listed, if not in Seychelles; and
 - (f) a certification that the listed company is subject to adequate disclosure requirements in terms of transparency of beneficial ownership in the jurisdiction where it is listed.”;
- (d) in subsection (6), by repealing the words “SCR100,000” and substituting therefor the words “SCR150,000”;

Amendment of section 14

13. Section 14 of the principal Act is amended —

- (a) in subsection (1)—
 - (i) in the chapeaux by inserting after the words “as the case may be,” the following—

“to provide any information required to be maintained in terms of this Act or to inspect the register, including any other documents, so maintained in terms of this Act,” ;
 - (ii) in paragraph (g)—
 - A. by the deletion of the hyphen with the substitution of a semi colon;
 - B. by the repeal of sub-paragraphs (i) and (ii);
- (b) in subsection (2), by repealing the words “SCR50,000” and substituting with the words “SCR150,000”;
- (c) in subsection (3), by repealing the words “SCR50,000” and substituting therefor the words “SCR150,000”;

Insertion of new sections

14. The principal Act is amended by inserting the following new sections after section 14—

“Disclosure of beneficial ownership information by trustees

14A.(1) Notwithstanding section 14, a trustee shall disclose beneficial ownership information in respect of its trusts, upon request, to—

- (a) a financial institution; or
- (b) a designated non-financial business or profession;

for the purpose of the financial institution’s or designated non-financial business’ or profession’s obligation under the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020 (Act 5 of 2020).

(2) For the purpose of this section, the terms “financial institution” and “designated non-financial business or profession” shall have the meanings defined respectively under the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020 (Act 5 of 2020).

Request for Information between trustees

14B.(1) Where a trust is administered by more than one trustee, the trustee may request for any relevant beneficial ownership information in respect of the trust from any of the other trustees of the trust.

(2) A trustee shall comply with a request for information made under subsection (1) within the timeframe specified in the request.

(3) A trustee who or which fails to comply with subsection (2) shall be guilty of an offence and liable to a fine not exceeding SCR 200,000.”

Imposition of penalty

14C.(1) Before, imposing any penalty under the provisions of this Act, a Competent Authority shall give the parties concerned a notice in writing—

- (a) of the nature of the non-compliance;
- (b) of the intention to impose a penalty; and
- (c) an opportunity to make a written representation to show cause as to why a penalty should not be imposed within a period of not less than 14 days after the date of the notice.

(2) A Competent Authority shall not impose a penalty under the provisions of this Act if it is satisfied that the person concerned has shown good cause to the satisfaction of the Competent Authority why a penalty should not be imposed.

(3) Any penalty imposed under this Act shall be paid within the period and in the manner as may be specified by the Competent Authority.

(4) If a person fails to pay a penalty imposed under this Act within the specified period and an appeal has not been filed within the required period, the Competent Authority may forthwith initiate steps for recovery of such penalty amount.

(5) Any penalty imposed by the Financial Services Authority under this Act shall be paid to the Financial Services Authority.

(6) Any penalty imposed by the Financial Intelligence Unit under this Act shall be paid to the Government's Consolidated Fund.”

Amendment of section 15

15. Section 15 of the principal Act is amended by repealing the words “AML Act” and substituting thereof with the words “Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020”.

Insertion of new section

16. The principal Act is amended by inserting after section 17 the following sections—

“Power to issue guidelines or codes

17A.(1) A Competent Authority may issue guidelines or codes not inconsistent with this Act or any relevant laws for all matters which by or under this Act are required or permitted to be issued or necessary to be provided for to carry out or give effect to the provisions of this Act or any Regulations made thereunder.

(2) Every person shall comply with any guidelines or codes issued by a Competent Authority.

(3) Any person who contravenes the provisions of subsection (2) shall be liable to a penalty not exceeding SCR150,000 for each contravention.

Power to issue directions

17B.(1) A Competent Authority may issue a direction to a legal person or legal arrangement or resident agent, as it considers appropriate to ensure compliance with the provisions of this Act.

(2) The direction under this Act, may specify the time by which, or period during which, it shall be complied with.

(3) A Competent Authority may revoke a direction issued under this section at any time.

(4) Any person who fails to comply with a direction issued under this section, shall be liable to a penalty not exceeding SCR150, 000.

Amendment of section 18

17. Section 18 of the principal Act is amended—

- (a) by the deleting the marginal note “Transitional provision” and substituting the marginal note with “Transitional provision”

- (b) by the insertion of the following new subsections, with the existing section being numbered as (1)—

“(2) Every legal person and legal arrangement shall comply with the requirements of the amendment to section 5(1)(a) made under this Act, within 12 months from the date of promulgation of this Act.

(3) Every legal person and legal arrangement shall comply with the requirements of the amendment to section 5(1)(e) made under this Act, within 12 months from the date of promulgation of this Act.”

Amendment of First Schedule

17. The principal Act is amended in the First Schedule in Part B—

- (a) in paragraph (1)(b) by deleting “incorporated” and substituting with “incorporated”.
- (b) in paragraph (2) by repealing subparagraph (a) and substituting it with the following—

“(a) A trustee of a trust under the Trusts Act.”;

EARLY CHILDHOOD DEVELOPMENT ACT, 2022

(Act 25 of 2022)

ARRANGEMENT OF SECTION

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EARLY CHILDHOOD DEVELOPMENT ACT, 2022

(Act 25 of 2022)



I assent

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

Wavel Ramkalawan
President

6th December, 2022

AN ACT TO ESTABLISH AN INSTITUTE OF EARLY CHILDHOOD DEVELOPMENT AND TO SET UP A FRAMEWORK FOR EARLY CHILDHOOD CARE AND EDUCATION TO PROMOTE THE HOLISTIC DEVELOPMENT OF THE CHILD AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

ENACTED by the President and the National Assembly.

PART I - PRELIMINARY

Short title and commencement

1. This Act may be cited as the Early Childhood Development Act, 2022 and shall come into operation on such date as the Minister, by Notice published in the *Gazette*, appoints.

Interpretation

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

“Appeals Board” means the Appeals Board established under section 25;

“Board” means the Board of the Institute established under section 18;

“Certificate of Registration” means a certificate issued to a child minder under section 6;

“child care centre” means premises on which a manager renders a child care service;

“child care service” means an Early Childhood Care and Education service which may include an overnight service, offered by a child minder or manager;

“child minder” means a person who, in a home and in exchange for remuneration, renders a child care service;

“crèche” means premises on which children of and between the ages of three to five are offered public or private Formal Early Childhood Education;

“early childhood” means the period from birth to below the age of eight years;

“Early Childhood Care and Education” means the process of giving systematic instruction to a child in his or her early childhood for his or her holistic development and meeting the child's social, emotional, cognitive and physical needs;

“Formal Early Childhood Education” means the rendering of Early Childhood Education on a formal basis with a holistic approach to support the child's early cognitive, physical, social

and emotional development and to introduce him or her to organised instruction outside of the family context in preparation for compulsory education;

“Formal Early Childhood Education Service” means the rendering of Formal Early Childhood Education;

“home” means the child minder's home or other premises on which he or she renders a child care service;

“inspection” means the process of critically examining and evaluating, for quality assurance purposes, a service rendered by a child minder, Manager or person operating a crèche or the premises wherein the child care service or the Formal Early Childhood Education service is rendered;

“Inspector” means a person appointed as an Inspector under section 14;

“Institute” means the Institute of Early Childhood Development established under the Institute of Early Childhood Development Act, 2014 and which continues in operation hereunder this Act;

“licence” means a licence granted or renewed under this Act authorising the manager to render the child care service specified in the licence;

“manager” means a person who, in a child care centre, cares for more than fifteen children of and below the age of three;

“member” means a member of the Board established under section 18 and includes the Chairperson and Vice Chairperson;

“Minister” means the Minister responsible for education;

“non-compulsory education” means Early Childhood Care and Education provided to children between the ages of zero to five, before prescribed compulsory education is rendered;

“relevant partner in Early Childhood Care and Education” means a person who, being interested in Early Childhood Care and Education, provides a service related *inter alia* to education, health, social affairs, community development, family affairs, safety or finance;

“service provider” means a person who, in terms of this Act, renders a child care service or a Formal Early Childhood Education service;

“quality assurance” means the maintenance of the prescribed standards in a service rendered in terms of this Act;

“quality assurance system” means the mechanism by which quality assurance is carried out.

PART II - INSTITUTE OF EARLY CHILDHOOD DEVELOPMENT

Continuation of operation of Institute

3. The Institute established as a body corporate under the repealed Institute of Early Childhood Development Act, 2014 shall remain and continue in operation as though established under this Act save performing the functions stated under section 4.

Functions of Institute

- 4.(1) The Institute shall —
- (a) advise the government as to the development of policies, standards and guidelines for Early Childhood Care and Education;
 - (b) register child care services and maintain a register thereof;
 - (c) maintain a register of all programmes and trainings that may by regulations, be prescribed;
 - (d) approve of premises on which a child care service is or is to be rendered;

- (e) issue certificates of registration and licences;
- (f) ensure, in collaboration with relevant partners in Early Childhood Care and Education, that service providers comply with standards in relation to child care services and premises on which the child care services are rendered;
- (g) design, develop and implement a quality assurance system for non-compulsory education;
- (h) review and develop standards and contribute to the development of learning programmes for Formal Early Childhood Education;
- (i) conduct inspections in terms of section 12 of this Act;
- (j) subject to other provisions of this Act or any other law, manage financial schemes and render financial assistance, in a manner that may by regulations be prescribed, to service providers who are registered or licensed under this Act;
- (k) promote environments conducive to the safety, wellbeing and holistic development of the child in his or her early childhood;
- (l) coordinate, implement, monitor and evaluate early childhood development programmes and projects in collaboration with relevant partners in Early Childhood Care and Education;
- (m) engage such persons having expertise in the field of Early Childhood Care and Education to provide training and professional development to service providers
- (n) advise parents, educators, interested institutions and the relevant partners in Early Childhood Care and Education on matters relating to early childhood development;

- (o) advocate for and promote understanding of the importance of early childhood development and provide information and advice on good practices;
- (p) mobilise funds for the purpose of fulfilling the functions of the Institute;
- (q) undertake research and establish a national database on early childhood development in order to provide relevant data for policy formulation and programme development;
- (r) collaborate with relevant national and international authorities pertaining to matters of Early Childhood Care and Education;
- (s) liaise with and enter into agreements with organisations concerned with Early Childhood Care and Education;
- (t) perform such other functions as may by regulations be prescribed.

(2) The Institute shall, in addition to the functions under subsections (1), perform such other functions and meet such objectives in terms of any agreement entered by the Republic of Seychelles with the United Nations Educational, Scientific and Cultural Organisation (UNESCO) or any other agreement relating to Early Childhood Care and Education.

Directions by the Minister

5. The Minister may give written directions to the Institute on matters of policy and the Institute shall comply.

PART III - CHILD CARE SERVICES

Child minder and issuance of certificate of registration

6.(1) A child minder, not being a person concerning which a familial or other arrangement outside of this Act is made, shall not render or operate a child care service in his or her home without having been registered in terms of this Act and issued a certificate of registration by the Institute.

(2) A person providing a child care service to less than four children may apply for registration as a child minder under this Act.

(3) Notwithstanding the provisions under subsection (1), a person shall be liable to the penalty stipulated in terms of section 17 of this Act if he or she palpably renders a service which ought, according to the Institute, to be registered under this Act.

(4) An application for registration under subsection (1) shall be made to the Institute in such form and manner and shall contain such information as may by regulations be prescribed.

(5) The Institute may upon evaluation of the application and assessment of the extent of the applicant's adherence to the standards and to the conditions of a certificate of registration that may be prescribed —

- (a) uphold the application and grant the applicant a certificate of registration; or
- (b) reject the application if the applicant or home wherein the child care service is proposed to be rendered fails to meet the requirements of this Act or the standards hereunder prescribed.

(6) A certificate of registration shall be valid for a period of three years and may upon application to the Institute, be renewable.

(7) Where the Institute refuses an application, it shall provide the applicant with the reasons for refusal.

(8) The Institute may charge such fees as may by regulations be prescribed for the registration and renewal of the certificate of registration.

Renewal of certificate of registration

7.(1) A child minder, who intends to renew his or her certificate of registration shall submit, to the Institute, an application for renewal three months prior to the date of its expiry.

(2) The Institute shall, upon receiving the application under subsection (1), direct the relevant partners in Early Childhood Care and Education, to furnish to the Institute the relevant documents pertaining to the applicant and the application.

(3) Notwithstanding subsection (1), the Institute may grant an applicant an extension of time to submit the application, which shall not exceed 3 months of the expiry date of the certificate issued pursuant to section 6, where —

- (a) an application for renewal has been submitted within the time specified under subsection (1) and it is being processed by the Institute; or
- (b) no application has been submitted under subsection (1), but within the time specified the child minder has given the Institute written notice of his or her intention to apply for renewal of his or her certificate of registration.

(4) During the time within which the Institute considers an extension in terms of subsection (3), the applicant's certificate of registration shall remain valid.

Manager and issuance of licence

8.(1) A manager shall not render or operate a child care service in a child care centre without a licence issued by the Institute.

(2) An application for a licence under subsection (1) shall be made to the Institute in such form and manner and shall contain such information as may, by regulations, be prescribed.

(3) The Institute may upon evaluation of the application and assessment of the extent of the applicant's adherence to the standards and to the conditions of a licence that may be prescribed —

- (a) uphold the application and grant the applicant a licence; or
- (b) reject the application if the applicant or child care centre wherein the child care service is proposed to be provided

fails to meet the requirements of this Act or the standards hereunder prescribed.

(4) A licence shall be valid for a period of six years and may upon application to the Institute, be renewable.

(5) Where the Institute refuses an application, it shall provide the applicant with the reasons for refusal.

(6) The Institute may charge such fees for the renewal of the licence as may, by regulations, be prescribed.

Renewal of licence

9.(1) A manager, who intends to renew his or her licence shall submit to the Institute a renewal application three months prior to the date of its expiry.

(2) The Institute shall, upon receiving the application under subsection (1), direct the relevant partners in Early Childhood Care and Education, to furnish to the Institute the relevant documents pertaining to the applicant and the application.

(3) Notwithstanding subsection (1), the Institute may grant an applicant an extension of time to submit the application, which shall not exceed 3 months of the expiry date of the licence issued pursuant to section 8, where —

- (a) an application for renewal has been submitted within the time specified under subsection (1) and it is being processed by the Institute; or
- (b) no application has been submitted under subsection (1), but within the time specified the manager has given the Institute written notice of his or her intention to apply for renewal of his or her licence.

(4) During the time within which the Institute considers an extension in terms of subsection (3), the applicant's licence shall remain valid.

Register

10. The Institute shall cause to be kept and maintained a register of persons who have, in terms of this Act been issued a certificate of registration or a licence.

Financial assistance

11.(1) The Institute may provide financial assistance to a child care service provider and a parent whose child or children are registered in a child care service under this Act.

(2) Financial assistance provided in accordance with subsection (1) shall be in the amount and based on criteria, which the Minister by notice in the Gazette specifies.

Responsibilities of relevant partners

12.(1) Where the Institute has issued a written direction in accordance with sections 7(2) and 9(2), the relevant partners shall ensure that the information required are furnished by the date specified in the direction.

(2) The Institute shall not be held liable for a failure by the relevant partners to meet their obligation under subsection (1).

PART IV - INSPECTION

Inspection of non-compulsory education premises

13.(1) The Institute shall at least once every six months and whenever a complaint is lodged by a person, or whenever necessary, cause an inspection to be made of a registered home and child care centre.

(2) Notwithstanding subsection (1), the Institute shall at least once a year or whenever necessary, cause an inspection to be made of Formal Early Childhood Education premises.

(3) An inspection carried out under subsections (1) and (2) shall be conducted for quality assurance purposes and for the determination of the extent of adherence to the prescribed standards and a report thereof shall be

shared with the relevant partners and the relevant body under which the Formal Early Childhood Education service is registered.

(4) The Institute shall, following a complaint by a person cause an inspection to be made of an unregistered home, child care centre or a crèche.

Appointment and powers of Inspectors

14.(1) The Institute may appoint such number of Inspectors as may be necessary for carrying out the provisions of this Act or regulations made hereunder.

(2) The Institute shall provide the Inspector with an identification card which the Inspector shall, upon request produce before exercising power under this Act.

(3) An Inspector may, at all reasonable times, enter a home or child care centre to perform inspections under section 13.

(4) The Inspector may inquire into a complaint concerning amongst other matters —

- (a) a person who renders a child care service without a certificate of registration or a licence; or
- (b) non-compliance with the prescribed standards to which a child under the care of a service provider is exposed.

(5) Where the Inspector upon inquiry finds that the service provider fails to meet the prescribed standards or renders a child care service without a certificate of registration or a licence, the Inspector shall, within 10 working days, report in writing his or her findings to the Institute or, as the circumstances so warrant, to any other relevant body under which the service provider is registered.

Compliance notice and suspension

15.(1) The Institute may issue the service provider with a compliance notice directing him or her to comply with the registration requirements or

standards hereunder prescribed within the period specified in the notice where the Institute, upon report of inspection by an Inspector or a complaint, determines that the service provider —

- (a) offers a child care service without a certificate of registration or a licence; or
- (b) has not complied with the prescribed standards.

(2) Where the service provider fails to comply with the compliance notice issued under subsection (1), the Institute may —

- (a) after giving him or her an opportunity to show cause as to why the certificate of registration or licence should not be suspended, suspend the certificate of registration or licence if the certificate or licence is issued in terms of this Act, until such period as he or she complies with the compliance notice; or
- (b) where the service provider is registered not in terms of this Act, refer for appropriate action the matter to the relevant body under which the service provider is registered.

(3) Notwithstanding subsection (2)(a), a suspension period shall not exceed three months.

(4) Where the Institute is of the opinion that a non-compliance of a service provider to the prescribed standards may result in a threat to life, safety or health of a child, the Institute may —

- (a) suspend the certificate of registration or licence at the time the notice under subsection (1) is issued if the certificate or licence is issued in terms of this Act, until such period as the child minder or manager complies with the standards; or
- (b) where a service provider is registered not in terms of this Act, refer for appropriate action the matter to the relevant body.

(5) The Institute may in lieu of suspending a certificate of registration or a licence, withdraw the financial assistance it provides to a service provider until such time as the service provider adheres to the compliance notice issued in terms of Section 15.

Revocation of certificate of registration and licence

16.(1) The Institute may, after serving the service provider with a notice to show cause as to why his or her certificate of registration or licence should not be revoked, revoke the certificate of registration or licence, if the certificate of registration or licence is issued in terms of this Act, where —

- (a) upon inspection of the premises wherein the child care service is rendered or on evaluation of the child care service, it is found that the premises or the service rendered fails to meet the prescribed standards despite the service provider having been given an opportunity to rectify the default within a suspension period;
- (b) the service provider refuses an Inspector access to the child care premises;
- (c) non-compliance subsists after the elapsing of a suspension period; or
- (d) the service provider solicits, advertises, invites or offers a child care service within the period his or her certificate of registration or licence is suspended.

(2) The Institute may refer for appropriate action, a matter which in its opinion warrants revocation of a certificate of registration or a licence with regards to a service provider registered not in terms of this Act, to the relevant body.

(3) A referral made in terms of subsection (2) shall be accompanied by a report based on the Inspector's findings.

(4) The service provider may, within ten working days of being

notified of a revocation by the Institute, submit reasons as to why his or her certificate of registration or licence should not be revoked.

(5) If the Institute is not satisfied with the reasons submitted by the service provider, or the service provider does not submit within the period specified under subsection (4) the reasons for which his or her certificate of registration or licence should not be revoked, it may according to the circumstances, revoke the certificate of registration or the licence.

(6) A service provider who is dissatisfied with the decision of the Institute may, in such form and manner and accompanied by such fees as may by regulations be prescribed, appeal the decision to the Appeals Board of the Institute established under section 25.

Offences

17. A person commits an offence and is liable on conviction to a term of imprisonment not exceeding two years and to a fine concomitant to level 3 of the standard scale in terms of the Criminal Offences (Standard Scales of Fines) Act, 2021 or both if he or she operates a child care service without having been registered under this Act, without a certificate of registration or without a licence.

PART V - BOARD OF THE INSTITUTE

Establishment and composition of the Board

18.(1) There is established a Board of the Institute appointed by the President in consultation with the Minister of Education consisting of seven members, who shall hold office for a period of three years and who shall be eligible for reappointment.

(2) In appointing members of the Board, the President may as far as possible give due consideration for representation by persons whose experiences, expertise and contributions are deemed valuable to Early Childhood Care and Education.

(3) The President shall from among the members appoint a Chairperson and a Vice-chairperson.

(4) The President shall cause a notice of the names of the members to be published in the *Gazette*.

(5) The Vice-Chairperson shall, in the absence of the Chairperson, assume the responsibilities of the Chairperson.

(6) The members of the Board shall be paid such allowances as the President determines.

Functions of the Board

19. The Board shall —

- (a) govern and provide strategic direction to the Institute;
- (b) approve the programmes, activities and management plans of the Institute;
- (c) authorise the signing of documents, including agreements;
- (d) ensure that the Institute performs its functions within the policy framework of the Government;
- (e) prepare the budget, accounts and reports of the Institute;
- (f) ensure that necessary mechanisms are in place to co-ordinate the development, delivery and monitoring of inter-sectoral Early Childhood Care and Education programmes, projects and initiatives; and
- (g) approve decisions in relation to the suspension and revocation of certificates of registration and licences issued in terms of this Act.

Termination of appointment of members

20.(1) The President may at any time terminate the appointment of a member who —

- (a) has been found guilty of misconduct, default or breach of trust in the discharge of a duty;
- (b) has been convicted of an offence and sentenced to a term of imprisonment of three months or more;
- (c) is mentally or physically incapable of carrying out his or her functions under this Act;
- (d) has been absent from three consecutive meetings of the Board without prior permission of —
 - (i) the Chairperson;
 - (ii) the Vice-Chairperson, in the absence of the Chairperson; or
 - (iii) the Minister, in the absence of the Chairperson; or
- (e) has in any way demonstrated incompetency or an inability to effectively carry out his or her functions as a member of the Board.

(2) A member whose appointment has been terminated under subsection (1) is not eligible for re-appointment.

Resignation from the Board

21.(1) A member may, at any time, resign from office by a letter addressed to the President and such member shall cease to be a member on the date the President accepts the resignation.

(2) A member is deemed to have vacated office if he or she is absent without leave from the Board for three consecutive meetings of the Board.

(3) Where a member resigns or vacates office, the President may appoint another person to hold office for the remaining period which the member would have otherwise held office.

Meetings of the Board

22.(1) The Board shall observe such rules of procedure in regard to the business transactions at its meetings as the Chairperson so determines.

(2) The Board shall meet at such time and place as the Chairperson may determine provided that at least four meetings are held in a year.

(3) The Chairperson may, by a written 14 days' notice to the members, convene a special meeting of the Board for the purpose therein specified.

(4) Notwithstanding subsection (3), a special meeting may, where the circumstances so warrant, be convened following a shorter notification period.

(5) Where 4 members, by written notice to the Chairperson, request a meeting of the Board for any purpose therein specified, the Chairperson shall, within 10 working days from receiving of the notice, convene a meeting for that purpose.

(6) In a meeting of the Board, two-thirds of the number of members present shall constitute a quorum.

(7) A decision of the Board shall be taken by a majority of the votes of the members present and voting.

(8) In the event of an equality of votes, the Chairperson shall have a casting vote.

(9) A member who has a direct or indirect financial, personal or other interest in a matter before the Board, shall —

- (a) prior to the date of the meeting or at the commencement of the meeting, disclose the nature of the interest; and
- (b) recuse himself or herself from deliberations in respect of that matter and abstain from voting thereon.

Powers of the Board

23.(1) The Board may delegate to the Chief Executive Officer such of its powers as it deems necessary for the proper functioning of the Institute.

(2) The Board may, for the purpose of effectively fulfilling its oversight responsibilities on specific technical matters, establish coordination and technical committees on Early Childhood Care and Education comprising of members from the Institute, ministries and agencies providing an Early Childhood Care and Education service.

(3) The committee members appointed under subsection (2) may, be paid such allowances as the Institute in consultation with the Ministry responsible for finance determines.

PART VI - APPOINTMENT OF CHIEF EXECUTIVE OFFICER AND EMPLOYMENT OF STAFF

Appointment of Chief Executive Officer

24.(1) The President shall, on such terms and conditions he deems appropriate, appoint as the Chief Executive Officer, a person having experience and expertise in the field of Early Childhood Care and Education and early childhood development.

(2) The Chief Executive Officer shall be an *ex officio* member of the Board and shall attend and participate in the meetings of the Board but shall have no voting rights.

(3) The Chief Executive Officer shall be the chief accounting officer of the Institute and shall —

- (a) be accountable to the Board for the discharge of the functions delegated by the Board;
- (b) be responsible for the implementation of the decision of the Board and for the management of the day-to-day affairs of the Institute;

- (c) be responsible for the organisation, control and management of all staff of the Institute;
- (d) perform such functions as the Board may, from time to time, assign.

(4) The Chief Executive Officer shall, with the approval of the Board, appoint staff of the Institute as he or she deems necessary for the efficient discharge of the functions of the Institute.

(5) The Chief Executive Officer may, with the approval of the Board—

- (a) execute documents on behalf of the Board; and
- (b) delegate duties and responsibilities to employees of the Institute,

PART VII - APPEALS BOARD

Appeals Board

25.(1) There is established an Appeals Board comprising of —

- (a) a Chairperson with qualifications and experience in law; and
- (b) two individuals with adequate experience in the field of quality assurance and Early Childhood Care and Education.

(2) The President shall appoint the Chairperson and other members of the Appeals Board on such terms and conditions as the President determines and shall cause their appointment to be published in the *Gazette*.

(3) The Chairperson and other members of the Appeals Board shall hold office for three years and are eligible for reappointment.

(4) The members of the Appeals Board shall be paid such allowances as the President determines.

(5) The President may at any time terminate the appointment of the Chairperson or a member of the Appeals Board who has been found guilty of —

- (a) misconduct, default or breach of trust in the discharge of his or her functions; or
- (b) an offence which warrants termination of his or her appointment.

(6) The Appeals Board may co-opt a person, who has specialised knowledge or experience in the field of Early Childhood Care and Education as advisor for a specific appeal to assist the Appeals Board in its deliberations.

(7) The Appeals Board may, after considering an appeal —

- (a) confirm the decision of the Institute;
- (b) vary the decision of the Institute;
- (c) quash the decision of the Institute; or
- (d) order the Institute to reconsider the decision.

(8) Subject to this section, the Appeals Board shall regulate its own proceedings.

PART VIII - FUNDS, FINANCES, ACCOUNTS AND REPORTS

Funds of the Institute

26.(1) The Funds of the Institute shall consist of —

- (a) moneys appropriated by the National Assembly for the use of the Institute;
- (b) moneys accruing to the Institute from its operations or other payments; and

- (c) moneys received by the Institute from time to time by way of donations, gifts or grants.
- (2) The Funds of the Institute shall be applied for —
- (a) the discharge of expenses, debts and other obligations incurred in the performance of the functions of the Institute;
 - (b) the remuneration of members, officers and other employees of the Institute; and
 - (c) other expenses, as may be authorised by the Board, for the purpose of carrying out the provisions of this Act.

Accounts, audit and annual report

27.(1) The Institute shall in such form and in such manner as may by regulations be prescribed, prepare an income and expenditure statement and maintain throughout the year proper accounts and records.

(2) Notwithstanding subsection (1), the accounts of the Institute shall be audited by the Auditor General in accordance with Article 158 of the Constitution.

(3) Where the accounts and statement of accounts of the Institute in respect of any financial year have been audited, the Institute shall furnish the Minister with a copy of the statement of accounts together with a copy of the report by the Auditor General on the statement of accounts of the Institute.

(4) The Institute shall prepare and forward to the Minister once every calendar year, in such form and within such time as may, by regulations, be prescribed the following —

- (a) an annual report giving details of its activities from the previous year; and
- (b) not later than three months from the start of the financial

year, copies together with the audited statement of accounts referred to under subsection (3).

(5) The Minister shall cause to be tabled before the National Assembly the documents referred to under subsection (4).

(6) The Institute shall at least 90 days prior to the beginning of each financial year, prepare and submit to the Minister and the Minister responsible for finance, an annual budget for the next financial year delineating —

- (a) its estimated revenue;
- (b) its estimated expenditure; and
- (c) capital from Government following budget allocation.

(7) The financial year of the Institute shall be the period of 12 months ending on 31st December.

Plan of activities

28.(1) The Institute shall, at the beginning of each financial year, prepare a plan of activities which shall be submitted to the Minister for endorsement.

- (2) The plan of activities shall contain —
- (a) the strategy of the Institute;
 - (b) the short term and medium term objectives of the Institute;
 - (c) its operational, financial and human resource plans.

PART IX - MISCELLANEOUS

Confidentiality

29.(1) A member of the Board or any other person assisting the Board shall observe and preserve the confidentiality of all matters before the Board,

and such confidentiality shall subsist after the termination of the term of office or mandate of such member or person.

(2) Any member of the Board or any person to whom confidential information is disclosed as a result of an interaction with the Board or committee of the Board shall not disclose that information to any other person unless he or she is required to do so in terms of any written law or for the purpose of judicial proceedings.

Protection against Legal proceedings

30. Civil or criminal liability shall not lie against the Institute, a member of the Board, a member of the Appeals Board, a committee constituted thereby or employees of the Institute in respect of an act done or omitted to be done in good faith in the exercise or performance or purported exercise or performance of a power or function or duty conferred by or under this Act or regulations made hereunder.

Employment in public service

31. A member of the Board, the Chief Executive Officer, an Inspector or any other member of staff or person acting under the direction of the Institute shall be deemed to be employed in the public service for the purpose of sections 91 to 96 of the Penal Code.

Request for information

32.(1) The Institute may, by notice in writing request, from any person or public authority, such information as the Institute deems necessary, for the purpose of performing its functions under this Act.

(2) A person or public authority required to furnish information under subsection (1) shall do so as soon as is reasonably practicable.

(3) A person required to obtain information for the Institute and who receives such information under this provision shall take every reasonable step to ensure that such information is kept in such manner as to ensure that its contents are kept confidential and used solely for the purposes of performing the functions of the Institute.

Regulations

33.(1) The Minister may, in consultation with the Institute, make regulations for carrying into effect the purposes and provisions of this Act.

(2) Without limiting the generality of the foregoing provision, the Minister may make regulations pertaining to —

- (a) the procedure by which an Inspector is to carry out an inspection;
- (b) the procedure for registration of a child care service;
- (c) fees and charges payable in terms of this Act and the payment procedures therefor;
- (d) standards;
- (e) conditions for the granting of a certificate of registration and a licence;
- (f) the compounding of offences; and
- (g) any matter which, under this Act, is to be or is necessary to be prescribed.

Compounding of Offences

34. Where the Institute or any other person agrees in writing to the compounding of an offence under this Act, which is an offence punishable on conviction by a fine, the Institute, in consultation with the Attorney General, may compound the offence in the manner as may, by regulations be prescribed.

Publications

35. The Institute shall publish in the national newspaper and on its online platforms —

- (a) by the end of March of each year, the list of all registered child care services;

- (b) the decisions it has taken to suspend or revoke a certificate of registration or licence, giving reasons for such decisions; and
- (c) child care services operating without having been registered under this Act.

Operation of child care services

36. A person who offers a child care service shall operate his or her services based on a child care service framework provided by the Institute.

Enrollment in crèche

37. All children turning three by the 31st of December shall be eligible for enrollment in crèche in the following year.

Transitional

38. A person who is registered as a Day Care Operator in accordance with the Education Act shall on the commencement of this Act, be deemed to be registered hereunder and such registration shall continue until its expiry whereupon the provisions of this Act shall forthwith apply.

Repeal and saving

39.(1) The Institute of Early Childhood Development Act, 2014 is hereby repealed.

(2) Notwithstanding the repeal under subsection (1) and in accordance with section 3 —

- (a) an act done or commenced under the repealed Act, where such act remains within the powers and functions of the Institute, shall continue and be construed as if it were carried on under this Act;
- (b) a statutory instrument made under the repealed Act shall, to the extent that it is not inconsistent with this Act, continue in force until amended or repealed by the relevant statutory instrument issued under this Act;

- (c) all officers or employees of the Institute appointed under the repealed Act shall be deemed to be officers and employees of the Institute under this Act and shall be employed on terms and conditions no less favourable than those subsisting immediately prior to the commencement of this Act;
- (d) all moveable property, assets, rights, interests, privileges, liabilities and obligations vested in the Institute established under the repealed Act immediately prior to the commencement of this Act shall vest in the Institute established hereunder this Act;
- (e) any agreement or contract executed by the Institute prior to the date of the repeal of the Act shall continue to have effect in accordance with its terms; and
- (f) any right, privilege, obligation or liability acquired or incurred by a person under the repealed Act shall not be affected by the repeal, and any legal investigation, legal proceeding or remedy in respect of such right, privilege, obligation or liability may be instituted, continued or enforced by or against Institute.

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 7th September, 2022.



Ms. Alexandria Faure
Deputy Clerk to the National Assembly

SEYCHELLES HOME CARE AGENCY BILL, 2022

(Bill No.41 of 2022)

EXPLANATORY STATEMENT ON OBJECTS AND REASONS OF THE BILL

The core objective of this Bill is to provide a legislative framework which modernises the existing Home Care Programme in pursuit of the objective of this Bill which seeks to establish the Seychelles Home Care Agency (the “Agency”), a body corporate that will administer and manage home care.

The Agency will, amongst other things—

- (a) receive and process all applications for home care and financial assistance;
- (b) receive and process all applications for the registration as home care givers;
- (c) maintain a register of persons who have applied for home care or to be registered as home care givers, persons who are eligible for home care and who have been granted financial assistance and persons who have been registered as home care givers;
- (d) appoint monitoring officers to monitor the provision of home care services by the registered home care givers; and
- (e) resolve disputes that may arise between beneficiaries and home care givers.

The Bill seeks to provide for a proper legislative framework for the assessment of an applicant’s eligibility for home care and the applicant’s eligibility for financial assistance to pay a home care giver to provide home care services to the applicant.

The Bill gives a person aggrieved by a decision of the Agency a right to appeal against the decision to an Appeals Board established under the Act.

The objective of the Bill is not solely to provide for a legislative framework but to also modernise the existing scheme of provision of home care and the level of financial assistance so as to ensure proper management and accountability.

Finally, the Bill takes into consideration the existing scheme that is managed by the Agency for Social Protection and provides for the continuation of their benefit and the provision of home care services subject that within a period of 12 months of the coming into operation of the Act, both the existing beneficiaries and home care givers submit their relevant applications which will be processed in accordance with the provisions of this Act.

Dated this 12th day of December, 2022

**MARIE-CELINE ZIALOR
MINISTER OF YOUTHS,
SPORTS AND FAMILY**

SEYCHELLES HOME CARE AGENCY BILL, 2022

(Bill No.41 of 2022)

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SCHEDULE

SEYCHELLES HOME CARE AGENCY BILL, 2022

(Bill No.41 of 2022)



A BILL

FOR

AN ACT TO ESTABLISH THE SEYCHELLES HOME CARE AGENCY THAT WILL REGISTER BENEFICIARIES OF HOME CARE SERVICES AND HOME CARE GIVERS AND ADMINISTER AND REGULATE THE PROVISION OF HOME CARE SERVICES AND FOR OTHER CONNECTED OR INCIDENTAL MATTERS.

ENACTED by the President and the National Assembly.

PART I - PRELIMINARY

Short title and commencement

1. This Act may be cited as the Home Care Agency 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 —

“Appeals Board” means the Appeals Board established under section 27;

“Agency” means the Seychelles Home Care Agency established under section 3;

“beneficiary” means a person whose application for home care has been granted or who is receiving home care under this Act;

“Board” means the Board of the Agency established under section 21;

“certificate of competency” means a certificate evidencing competency in home care on an elementary, intermediate or advanced level;

“Chief Executive Officer” means the Chief Executive Officer appointed under section 18;

“familial arrangement” means an arrangement made for the care of a person based on a moral obligation to ensure the safety and wellbeing of that person and concerning which financial assistance under this Act is not provided;

“financial assistance” means financial assistance determined in accordance with section 13;

“home” means the place where a beneficiary resides, whether permanently or temporarily for the purpose of receiving home care;

“home care” means flexible and personal daily care and support provided by a home care giver to a beneficiary for varying lengths of time;

“home care giver” means a person who provides home care to a beneficiary;

“means assessment” means an assessment into the means of a person applying for financial assistance under this Act;

“Minister” means the minister responsible for family affairs;

“needs assessment” means an assessment made by a medical or health professional into the needs of an applicant under section 10 to determine if an he or she is eligible for home care and where the applicant is eligible, the level of home care that the applicant will require;

“needs assessment report” means a report of the needs assessment;

“prescribed” means prescribed by regulations made by the Minister;

“registered home care giver” means a home care giver registered under this Act;

PART II - SEYCHELLES HOME CARE AGENCY

Establishment of the Seychelles Home Care Agency

3.(1) There is established a body corporate to be known as the Seychelles Home Care Agency.

(2) The Agency shall administer and manage home care, and shall be accountable to the Board established under section 21.

Functions of Agency

4. The Agency shall—

- (a) regulate home care;
- (b) receive and process applications for home care and financial assistance;
- (c) receive and process applications for registration as home care givers;
- (d) issue certificates of registration pursuant to section 6;
- (e) establish and maintain registers in accordance with this Act;
- (f) monitor home care provided by home care givers;

- (g) recommend standards in relation to home care to the Minister;
- (h) approve training providers in home care for home care givers;
- (i) draw up contracts in accordance with section 12;
- (j) hear and determine any dispute between a beneficiary and his or her home care giver;
- (k) subject to other provisions of this Act or any other law, manage financial schemes provided under this Act;
- (l) perform such other functions as may be prescribed.

Directions by the Minister

5. The Minister may give written directions to the Agency on matters of policy which the Agency shall implement.

PART III - HOME CARE

Certificate of registration

6.(1) A home care giver, not being a person concerning which a familial or other arrangement outside of this Act is made, shall not provide home care without having applied for registration and been registered under this Act and accordingly issued a certificate of registration by the Agency.

(2) An application for registration under subsection (1) shall be made to the Agency in the prescribed form, accompanied by a certificate of competency.

(3) An application made under subsection (1) may be made through an agent.

(4) The Agency shall upon evaluation of the application and an assessment into the applicant's suitability —

- (a) grant the application and issue the applicant with a certificate of registration; or
- (b) reject the application where the Agency is satisfied that the applicant does not meet the requirements of this Act.

(5) A certificate of registration shall be valid for a period of three years and subject to section 7, may upon application to the Agency be renewed.

(6) Where the Agency refuses an application, it shall provide the applicant with reasons for such refusal.

(7) The Agency may charge such fees as may be prescribed for the registration and renewal of a certificate of registration.

(8) A person aggrieved by a decision of the Agency made under subsection (5) may appeal such decision to the Appeals Board.

(9) Notwithstanding subsection (1), a person shall be liable to the penalty under section 28 if he or she palpably provides home care which ought, according to the Agency, to be registered under this Act.

Renewal of certificate of registration

7.(1) A home care giver whose certificate of registration has expired and who intends to renew the certificate, shall no later than three months prior to the date of its expiry, lodge a renewal application to the Agency.

(2) A renewal application under subsection (1) shall be made to the Agency in the prescribed form.

Register

8.(1) The Agency shall establish and maintain a register of -

- (a) persons who have applied for home care;
- (b) persons who have applied to be registered as home care givers under this Act;
- (c) beneficiaries; and
- (d) registered home care givers.

(2) A person whose name does not appear in the register of registered home care givers may provide home care in accordance with a home care scheme that may be prescribed.

Responsibilities of a home care giver

9.(1) A home care giver in providing home care to a beneficiary shall ensure that the service is offered in such a way as to —

- (a) promote and maintain the beneficiary's health, function, integration in society, and independence; and
- (b) enable the beneficiary to lead the best life possible and to remain fit and active for a longer period.

(2) Standards may be prescribed for carrying into effect the purpose and provisions of subsection (1).

Application for home care

10.(1) A person wishing to apply for home care under this Act shall lodge an application to the Agency in the form and manner as may be prescribed, accompanied by a needs assessment report.

(2) An application pursuant to subsection (1) may be made by the person's guardian or anyone interested in his or her wellbeing

(3) The Agency may upon evaluation of the application—

- (a) grant the application subject to any condition;
- (b) attach conditions prior to granting the application; or
- (c) reject the application.

(4) Where the Agency grants an application pursuant to subsection (3), the Agency shall determine, based on a means assessment, if the applicant is eligible for financial assistance and where the applicant is eligible, the level of financial assistance required.

(5) An applicant aggrieved by a decision of the Agency in relation to an application under subsection (1) or a decision under subsection (4), may appeal against such decision to the Appeals Board.

Allocation of home care givers

11.(1) The Agency shall allocate home care givers to a beneficiary from the register of registered home care givers maintained under section 8.

(2) In allocating a home care giver to a beneficiary, the Agency shall have regard to the extent of the beneficiary's need and the home care giver's competency in home care in accordance with his or her certificate of competency.

Contract

12.(1) A home care giver and the beneficiary shall enter into a contract drawn up by the Agency for the provision of home care.

(2) Where a beneficiary is unable to enter into the contract, the contract may be entered into for and on behalf of the beneficiary, by his or her guardian or a close relative.

(3) The contract shall set out the obligations of the parties and the conditions under which it is to be performed based on the needs assessment report.

(4) A home care giver shall, for the purpose of this Act, be an independent service provider.

(5) The Minister may prescribe terms and conditions that will apply to the provision of home care and which terms and conditions shall be deemed to be part of every contract for provision of home care to which they relate, save where the contract provides for terms and conditions more favourable than those prescribed, those conditions more favourable shall apply unless otherwise prohibited under this Act.

Financial assistance

13.(1) Financial assistance shall be determined in accordance with the formula set out in the Schedule.

(2) The Agency shall provide financial assistance to a beneficiary who is eligible for financial assistance for the purpose of assisting the beneficiary with his or her payment obligations to a home care giver—

- (a) in terms of the contract entered into under section 12;
or
- (b) based on any other home care scheme that may be prescribed.

PART IV - MONITORING OF HOME CARE

Monitoring of home care

14.(1) The Agency shall cause monitoring officers appointed under this Act to perform home visits to a home —

- (a) on a regular basis;
- (b) whenever a complaint is lodged by a person against the home care giver; or
- (c) whenever the Agency deems it necessary.

(2) Home visits carried out under subsection (1) shall be conducted for the determination of the extent of adherence by a home care giver to this Act and to the standards that may be prescribed.

Appointment and powers of monitoring officers

15.(1) The Agency may appoint such number of monitoring officers as may be necessary for carrying out its monitoring functions under this Act.

(2) The Agency shall provide the monitoring officers with an identification card which the monitoring officers shall, upon request, produce before exercising powers under this Act.

(3) Monitoring officers and other staff of the Agency authorised by the Chief Executive Officer may, at all reasonable times, enter a home for the purpose of carrying out home visits under section 14.

(4) The monitoring officers may inquire into a complaint concerning, amongst other matters—

- (a) a person who provides home care in contravention of this Act; or
- (b) a contravention of the prescribed standards.

(5) A monitoring officer upon inquiring into a complaint under subsection (4), shall within 10 working days of such inquiry, report in writing his or her findings to the Chief Executive Officer.

Enforcement notice and suspension

16.(1) The Agency may issue the registered home care giver with an enforcement notice directing him or her to comply with the requirements of this Act or standards hereunder prescribed within the period specified in the notice where the Agency, upon report of a monitoring officer or a complaint, determines that—

- (a) a registered home care giver provides home care to a person other than a beneficiary allocated to him or her; or
- (b) a registered home care giver has not complied with the prescribed standards.

(2) Where the home care giver fails to comply with the enforcement notice issued under subsection (1), the Agency may, after giving him or her an opportunity to show cause as to why the certificate of registration should not be suspended, suspend the certificate of registration until such period as he or she complies with the enforcement notice.

(3) Notwithstanding subsection (2), a suspension period shall not exceed three months.

(4) Where the Agency is of the opinion that the non-compliance of a home care giver with the requirements or prescribed standards under this Act may result in a threat to the life, safety or health of a beneficiary, the Agency may suspend the certificate of registration at the time the notice under subsection (1) is issued until such period as the home care giver complies with the prescribed standards.

Revocation of certificate of registration

17.(1) The Agency may, after serving the home care giver with a show cause notice giving him or her an opportunity to show cause as to why his or her certificate of registration should not be revoked, revoke the certificate of registration, where —

- (a) non-compliance subsists 48 hours immediately following the elapsing of a suspension period;
- (b) the home care giver refuses a monitoring officer access to the home; or

- (c) the home care giver solicits, advertises, invites or offers to provide home care within the period his or her certificate of registration is suspended.

(2) The home care giver shall furnish reasons in response to a show cause notice within ten working days of being notified of the revocation.

(3) Where a home care giver fails to furnish a response within the time stipulated under subsection (2), the Agency may revoke his or her certificate of registration.

(4) A home care giver who is dissatisfied with the decision of the Agency to suspend or revoke a certificate of registration may, in such form and manner and accompanied by such fees as may be prescribed, appeal the decision to the Appeals Board.

PART V - APPOINTMENTS AND STAFF

Appointment of Chief Executive Officer

18.(1) The President may appoint, on such terms and conditions as he may determine, a person having experience and expertise in the field of home care as Chief Executive Officer of the Agency.

(2) The Chief Executive Officer, in addition to such other functions which the Board may from time to time assign, shall be responsible for the day to day affairs of the Agency.

(3) Subject to any direction of the Board, the Chief Executive Officer shall participate in the meetings of the Board but shall not have the right to vote.

Appointment of Deputy Chief Executive Officer

19.(1) The President may appoint a Deputy Chief Executive Officer on such terms and conditions as he may determine.

(2) The Deputy Chief Executive may act in the office of the Chief Executive Officer —

- (a) during the vacancy in the office of the Chief Executive Officer; or

- (b) during any period in which the Chief Executive Officer holding that office is absent from duty or from Seychelles or is, for any reason, unable to perform the functions of that office.

(3) While the Deputy Chief Executive is acting in the Office of the Chief Executive Officer, the Deputy Chief Executive Officer has and may exercise all the powers and perform all duties of the Chief Executive Officer under this Act.

(4) Where a power or function of the Chief Executive Officer under this Act is exercised or performed by the Deputy Chief Executive Officer, the power or function shall, for the purposes of this Act be deemed to have been exercised or performed by the Chief Executive Officer.

(5) The validity of anything done by the Deputy Chief Executive Officer shall not be called in question on the ground that the occasion for the appointment had not arisen, that there was a defect or irregularity in or with the appointment, that the appointment had ceased to have effect or the ground that the occasion for the Deputy Chief Executive Officer to act had not arisen or had ceased.

Staff of the Agency

20. The Agency may employ, on such terms and conditions as may be determined by the Agency, such officers and staff as are necessary for the performance of its functions.

PART VI - BOARD OF THE AGENCY

Establishment and composition of the Board

21.(1) There is established a Board of the Agency to be appointed by the President in consultation with the Minister.

(2) The Board shall comprise five members who shall hold office for a period of three years and who shall be eligible for reappointment for two consecutive terms.

(3) In appointing members to the Board, the President may as far as possible give due consideration to representation by persons of good character whose experiences, expertise and contributions are deemed valuable to home care.

(4) The President shall from among the members appoint a Chairperson and a Vice-chairperson.

(5) The President shall cause a notice of the names of the members to be published in the *Gazette*.

(6) The Vice- chairperson, in the absence of the Chairperson, shall assume the responsibilities of the Chairperson and in the Vice-chairperson's absence, the members present shall nominate from among themselves a member as Chairperson.

(7) Every member of the Board shall be remunerated in accordance with government policy.

Functions of the Board

22. The Board shall —

- (a) govern and oversee the management of the affairs of the Agency;
- (b) assign functions to the Chief Executive Officer; and
- (c) make recommendations to the government on guidelines and policies.

Termination of appointment of members

23.(1) The President may at any time terminate the appointment of a member who —

- (a) has been found guilty of misconduct, default or breach of trust in the discharge of a duty;
- (b) has been convicted of an offence relating to dishonesty;
- (c) has in any way demonstrated incompetency or an inability to effectively carry out his or her functions as a member of the Board; or
- (d) has been absent from three consecutive meetings of the Board without prior permission of —
 - (i) the Chairperson;

- (ii) the Vice-chairperson, in the absence of the Chairperson; or
- (iii) the person so appointed by the members in the absence of the Vice-chairperson.

(2) A member whose appointment has been terminated under subsection (1) is not eligible for re-appointment.

Resignation from the Board

24.(1) A member may, at any time, resign from office by a letter addressed to the President and such member shall cease to be a member on the date the President accepts the resignation.

(2) Notwithstanding section 23(d), a member is deemed to have vacated office if he or she is absent without leave from the Board for three consecutive meetings of the Board.

(3) Where a member resigns or vacates office, the President may appoint another person to hold office for the remaining period which the member would have otherwise held office.

Meetings of the Board

25.(1) The Board shall meet at such time and place as the Chairperson may determine provided that at least four meetings are held in a year.

(2) The Chairperson may, by a written 14 days' notice to the members, convene a special meeting of the Board for the purpose specified in the notice.

(3) Notwithstanding subsection (2), a special meeting may, where the circumstances so warrant, be convened following a shorter notification period.

(4) Where 4 members, by written notice to the Chairperson, request a meeting of the Board for any purpose specified in the notice, the Chairperson shall, within 10 working days from receiving the notice, convene a meeting for that purpose.

(5) In a meeting of the Board, 3 members present shall constitute a quorum.

(6) A decision of the Board shall be taken by a majority of the votes of the members present and voting.

(7) In the event of an equality of votes, the Chairperson shall have a casting vote.

(8) A member who has a direct or indirect financial, personal or other interest in a matter before the Board, shall —

- (a) prior to the date of the meeting or at the commencement of the meeting, disclose the nature of his or her interest in the matter; and
- (b) recuse himself or herself from deliberations in respect of that matter and abstain from voting on it.

(9) The Board shall regulate its own proceedings.

PART VII - DISPUTE RESOLUTION

Dispute resolution

26.(1) A home care giver who is aggrieved by the manner in which he or she is treated by a beneficiary or a member of the beneficiary's family may file a written complaint to the Agency.

(2) Subsection (1) shall apply *mutatis mutandis* to a beneficiary who wishes to reach an amicable resolution before lodging a complaint under section 16.

(3) The Agency shall within 3 days of receipt of the complaint inquire into the matter.

(4) An inquiry under subsection (2) may necessitate a hearing held by the Chief Executive Officer accompanied by those monitoring officers who may have conducted visits at the relevant home.

(5) Where the Agency hears a case brought before it, it shall afford each party a fair hearing and an opportunity to respond to evidence brought against it.

(6) The Agency shall make a decision based on the facts presented before it and the parties shall comply.

(7) A person aggrieved by the decision of the Agency may appeal such decision to the Appeals Board.

(8) The Agency may —

- (a) delegate any of its powers under this section to a person or committee subject to such terms and conditions that it may itself impose; or
- (b) appoint a person or a committee to hear the complaint and make recommendation to the Agency.

PART VIII - APPEALS BOARD

Appeals Board

27.(1) There is established an Appeals Board appointed by the President, in consultation with the Minister.

(2) The Appeals Board shall comprise —

- (a) a Chairperson with qualifications and experience in law; and
- (b) two individuals with experience in health and social care and who are experienced in recognised civic work.

(3) The President shall cause the names of the appointees to be published in the *Gazette*.

(4) The Chairperson and other members of the Appeals Board shall hold office for a period two years and are eligible for reappointment.

(5) The President may at any time terminate the appointment of the Chairperson or a member of the Appeals Board who has been found guilty of—

- (a) misconduct, default or breach of trust in the discharge of his or her functions; or
- (b) an offence which warrants termination of his or her appointment.

(6) The Appeals Board may co-opt a person, who has specialised knowledge or experience in the field of health care, as advisor for a specific appeal to assist the Appeals Board in its deliberations.

- (7) The Appeals Board may, after considering an appeal —
- (a) confirm the decision of the Agency;
 - (b) vary the decision of the Agency;
 - (c) quash the decision of the Agency; or
 - (d) order the Agency to reconsider the decision.
- (8) The Chairperson and other members of the Appeals Board shall be remunerated in accordance with government policy.
- (9) The Appeals Board shall regulate its own proceedings.

PART IX - OFFENCES AND PENALTIES

Offences

- 28.** A person commits an offence and is liable on conviction to a term of imprisonment not exceeding two years or to a fine of level 3 on the standard scale or to both such fine and imprisonment if he or she —
- (a) provides home care without having been registered under section 6;
 - (b) being a home care giver, carries on providing home care despite a revoked certificate of registration; or
 - (c) being a home care giver registered with the Agency for Social Protection, provides home care beyond the period of 12 months stipulated under section 38 without being registered with the Agency.
 - (d) communicates information in contravention of section 31.

PARTX - FUNDS, FINANCES, ACCOUNTS AND REPORTS

Funds of the Agency

- 29.(1)** The Funds of the Agency shall consist of —

- (a) moneys appropriated by an Appropriation Act approved by the National Assembly for the purpose of the Agency;
 - (b) moneys accruing to the Agency from its operations or other payments; and
 - (c) moneys received by the Agency by way of donations, gifts or grants.
- (2) The Funds of the Agency shall be applied for —
- (a) the discharge of expenses, debts and other obligations incurred in the performance of the functions of the Agency;
 - (b) the remuneration of members of the Board, the Appeals Board, officers and other employees of the Agency;
 - (c) the disbursement of financial assistance in accordance with section 13; and
 - (d) other expenses, as may be authorised by the Board, for the purpose of carrying out the provisions of this Act.

Accounts, audit and annual report

30.(1) The Agency shall prepare an income and expenditure statement and maintain throughout the year proper accounts and records.

(2) Notwithstanding subsection (1), the accounts of the Agency shall be audited by the Auditor General in accordance with Article 158 of the Constitution.

(3) Where the accounts and statement of accounts of the Agency in respect of any financial year have been audited, the Agency shall furnish the Minister with a copy of the statement of accounts together with a copy of the report by the Auditor General on the statement of accounts of the Agency.

(4) The Agency shall after the expiration of each financial year submit to the Minister —

- (a) an annual report giving details of its activities from the previous year; and

- (b) not later than three months from the start of the financial year, copies together with the audited statement of accounts referred to under subsection (3).

(5) The Minister shall cause the documents referred to under subsection (4) to be tabled before the National Assembly.

(6) The financial year of the Agency shall be the period of 12 months ending on 31st of December.

PART XI - MISCELLANEOUS

Confidentiality

31. A person shall not without lawful authority or reasonable excuse communicate to another person information which the person has acquired while acting as a member or staff of the Agency.

Protection against legal proceedings

32. A civil or criminal liability shall not lie against the Agency, the Chairperson, the Vice-chairperson, a member of the Board, a committee, staff or officer of the Agency in respect of an act done or omitted to be done in good faith in the exercise or performance or purported exercise or performance of a power or function or duty conferred by or under this Act or regulations made under this Act.

Employment in public service

33. A member of the Board, Appeals Board, the Chief Executive Officer, a monitoring officer or any other member or staff or person acting under the direction of the Agency shall be deemed to be employed in the public service for the purpose of sections 91 to 96 of the Penal Code.

Regulations

34.(1) The Minister may, in consultation with the Agency make regulations for carrying into effect the purpose and provisions of this Act.

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

- (a) the procedure by which a monitoring officer is to carry out monitoring exercises under this Act;

- (b) fees and charges payable under this Act, the payment procedures associated therewith and the exemption of fees and charges ;
- (c) standards of care;
- (d) conditions for the granting of a certificate of registration;
- (e) the compounding of offences;
- (f) amendment of the Schedule;
- (g) any matter relating to the Appeals Board;
- (h) matters relating to the setting up and operation of home care as a business activity;
- (i) any matter which, under this Act, is to be or is required to be prescribed.

Compounding of offences

35. Where the Agency or any other person agrees in writing to the compounding of an offence under this Act, which is an offence punishable on conviction by a fine, the Agency, in consultation with the Attorney General, may compound the offence in the manner which may be prescribed.

Committees

36. The Agency may, establish committees comprising persons having special or technical knowledge to assist the Agency in the performance of its functions under this Act.

Information sharing

37.(1) In the exercise of its functions under this Act, the Agency may—

- (a) require any person or public authority to furnish any information on matters relating to an application under this Act;
- (b) call upon a person to appear before the Agency to answer questions and to produce such documents as the Agency may specify;

- (c) nominate, appoint or authorise any person or any public authority to enquire and report on any matter relating to —
 - (i) an application under this Act;
 - (ii) an alleged breach of a condition of home care;
 - (iii) a renewal, revocation or suspension of financial assistance; or
 - (iv) a complaint against an applicant or beneficiary;

(2) The Agency shall consult any person or public authority where it deems it fit to consult before exercising its powers under subsection (1).

Transitional provisions

38.(1) This section applies to a person who was registered as a home care giver with the Agency for Social Protection immediately prior to the commencement of this Act.

(2) A person who falls within subsection (1) shall, subject to the condition specified in subsection (3), be deemed to be a registered home care giver under this Act.

(3) The condition referred to in subsection (2) is that the person must apply for registration, and be registered, under section 6 of this Act within a period of 6 months from the commencement date to be specified in Section 1.

(4) Subject to subsections (5) and (6), the provisions of this Act shall apply to a person who is deemed to be a registered home care giver under subsection (2) as they would otherwise apply to a home care giver registered under this Act.

(5) Any means test undertaken by the Agency for Social Protection prior to the commencement of this Act in relation to a beneficiary shall continue to be valid for a period of 12 months from the commencement date to be specified under Section 1.

(6) Where a person is deemed to be registered as a home care giver under subsection (2), the beneficiary shall be entitled to financial assistance under section 13 for a period of 12 months whether or not a contract has been entered into between the home care giver and the beneficiary under section 12.

SCHEDULE

Formula determining financial aid

- (1) **HHI=Household income of immediate family members dwelling in the home + 20% income from other household members**

“Immediate family member” means father, mother, husband, wife, domestic partners and living in children.

“Other household member” means brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law and other family relatives and their partners.

- (2) **HHE = Household Expenditure = Utility Bills + Transport + Rental**

Whereby:

- (a) utility bills is considered if the bill bears the name of, and is paid by, one of the household members featured on the application;
- (b) transport expenditures are considered only for those immediate household members whose full income has been fully considered;
- (c) rental expenditures are considered only for those immediate household members whose full income has been fully considered;
- (d) loans are considered only for those immediate household members whose full income has been fully consider.

- (3) **SL = Subsistence level = 3945 *(b) + 1972.5*(c)**

Whereby:

B = number of adults earning an income

C = children below 18 years

Therefore, amount of financial assistance payable = ***Household Income (HHI) – HH expenditures (HHE) – Subsistence Level (SL)***
