

**PROCEEDS OF CRIMES (CIVIL CONFISCATION)
(AMENDMENT) BILL, 2020**

(Bill No. 22 of 2020)

OBJECTS AND REASONS

The Proceeds of Crimes (Civil Confiscation) Act, 2008 (Cap 298) (POCCCA) was enacted to put in place a regime of civil confiscation which will provide a statutory process whereby the benefits from criminal conduct will be identified in a court process, frozen and then ultimately transferred to the Republic of Seychelles on the civil standard of proof. The POCCCA was last amended by Act 10 of 2017.

The Financial Action Task Force (FATF), an inter-governmental body established in 1989 by the Ministers of the member jurisdictions has set out the standards to promote effective implementation of the measures for combating money laundering activities. The Eastern and South Africa Anti-Money Laundering Group (ESAAMLG), a regional body has been, *inter alia*, tasked by the FATF to oversee the implementation of FATF Recommendations in the Region. The said ESAAMLG evaluated the steps taken for implementation of FATF recommendations and submitted its Mutual Evaluation Report (MER) in September, 2018. In the said MER, the ESAAMLG observed various short comings in different legislations covering the recommendations of the FATF. In furtherance of the said MER, FATF Recommendations and other related reports, the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020 (Act 5 of 2020) (AML Act, 2020) was enacted to meet the observations made by the ESAAMLG in its MER.

In view of the enactment of the AML Act, 2020 (Act 5 of 2020), the other procedural laws, which are the tools for implementing the said AML Act are required to be harmonized to sync with the provisions of the new AML Act. Accordingly, it is proposed to amend the POCCCA, to harmonise the provisions with the new AML Act.

This Bill seeks to amend sections, 2, 4 and 5 and repeal sections 25 and 26 of the Proceeds of Crimes (Civil Confiscation) Act, 2008 (Cap.298).

Dated this 21st day of July, 2020.

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

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A BILL

FOR

AN ACT to amend the Proceeds of Crime (Civil Confiscation) Act (Cap. 298).

ENACTED by the President and the National Assembly.

1. This Act may be cited as the Proceeds of Crime (Civil Confiscation) (Amendment) Act, 2020 and shall come into operation on such date as the Minister may by notice in the *Gazette*, appoint.

Short title and commencement

2. The Proceeds of Crime (Civil Confiscation) Act (Cap. 298) is hereby amended as follows —

Amendments
to Cap. 298

(a) In section 2 —

(i) for the definition of “criminal conduct”, the following definition shall be substituted —

“criminal conduct” means conduct which —

(a) constitutes any act or omission against any law of the Republic including the financing of terrorism as referred to in the Prevention of Terrorism Act, and for the avoidance of doubt includes the offence of money laundering established by section 3 of the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020 (Act 5 of 2020), whether committed in the Republic or elsewhere;

(b) where the conduct occurs outside the Republic, would constitute such an offence if it occurred within the Republic and also constitutes an offence under the law of the country or territorial unit in which it occurs;

(c) includes any act or omission against any law of another country or territory whether committed in that other country or territory or

elsewhere, unless the Attorney General certifies in writing that it would not be in the public interest to take action in the Republic in relation to an act or omission as defined in this sub-section; and

- (d) includes participation in such conduct, including but not limited to, aiding, abetting, assisting, attempting, counselling, conspiring, concealing or procuring the commission of such conduct;
- (ii) for the definition of “benefit from criminal conduct”, the following definition shall be substituted —

“benefit from criminal conduct” means money or property derived, obtained or realized, directly or indirectly, by any person from criminal conduct;

- (iii) for the definition of “Minister”, the following definition shall be substituted —

“Minister” means the Minister responsible for Home Affairs;

- (iv) for the definition of “property”, the following definition shall be substituted —

“property” includes money and all property, real or personal, heritable or moveable, including tangible or intangible or incorporeal property or a virtual asset and any reference to the property shall be construed as including

reference to any interest in property, and includes property outside the Republic where by virtue of its domestic jurisdiction generally, *in rem or in personam* or by virtue of an arrangement with any other country or territory, the Court might be in a position to enforce or secure compliance with any order it might make or where it might otherwise exercise jurisdiction in relation to that property to comply with an arrangement or a request from another country or territory;

- (b) In section 4, after subsection (8), the following subsection shall be added —

“(9) Where a restraint order, a forfeiture order or a pecuniary penalty order under the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020 (Act 5 of 2020), is made that relates to any property that is the subject of an interim order, or an interlocutory order, that is in force, the interim order or the interlocutory order shall —

- (a) if it relates only to that property, stand discharged; or
- (b) if it relates also to the other property, stand varied by the exclusion from it of that property.”;
- (c) In section 5, after subsection (6), the following subsection shall be added —

“(6A) Where the Court in a disposal order has specified that the property be transferred to

the Republic, the receiver appointed on behalf of the Republic may sell or otherwise dispose of the property transferred to the Republic under this section as the Minister may direct, and any proceeds of such a disposition and any moneys transferred to it under this section shall be paid into the Consolidated Fund.”;

- (d) Repealing sections 25 and 26.