

MUTUAL ASSISTANCE IN CRIMINAL MATTERS (AMENDMENT) BILL, 2021

(Bill No. 4 of 2021)

OBJECTS AND REASONS

The Mutual Assistance in Criminal Matters Act, 1995 (Cap 284) was enacted to make provision for the purposes of implementing the Commonwealth Scheme relating to mutual assistance in criminal matters within the Commonwealth and to make provision with respect to mutual assistance in criminal matters between Seychelles and a foreign country other than a Commonwealth Country. The Mutual Assistance in Criminal Matters Act came into operation on the 1st day of July, 1995 (S.I. 7 of 1995).

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. Recommendation No.'s 37 and 38 of the said recommendations relates to “Mutual Legal Assistance” and Mutual Legal Assistance: Freezing and Confiscation” respectively. The Eastern and Southern 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, *inter alia*, observed that criterion No. 37.1 has not met and 37.2 has been partly met and criterion No.'s 37.3 to 37.8 have been met and criterion No. 38.1 and 38.3 have been partly met and criterion No. 38.1 and 38.4 have not met with the recommendations of the FATF. In order to meet with the said observations, it is proposed to amend section 2 and section 6 of the Mutual Assistance in Criminal Matters Act (Cap.284). The salient features of the proposed Bill are as follows:

- (A) Amendment of section 2 (Definitions): The proposed Bill provides to re-define the term “criminal investigation”; to give reference of the offence under section 3 of the Anti-Money Laundering and Countering the Financing of Terrorism Act,

2020 (Act 5 of 2020) (hereinafter the “AMLCFT Act, 2020”); including the terrorist financing activities or financing of terrorism as referred to in section 5 of the Prevention of Terrorism Act in the definition of “criminal matter”; and to provide a definition to the term “terrorist financing activities” by giving reference to the definition provided in the AMLCFT Act, 2020.

- (B) Amendment of section 6: It is proposed to insert a new subsections (4) to (8) to provide for any request received from a foreign country shall be processed and disposed in a time bound manner in such time and manner; to have a case management register both manual and digital copies of the data regarding the mutual assistance cases dealt with in the Attorney General's Office; to extend application of section 153C of the Criminal Procedure Code Act for the forfeiture of any property or the property of corresponding value; and to provide for sharing of confiscated property with other countries and to re-number existing subsection (4) as subsection (9).

Dated this 19th day of February, 2021.

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

**MUTUAL ASSISTANCE IN CRIMINAL MATTERS
(AMENDMENT) BILL, 2021**

(Bill No. 4 of 2021)



**A BILL
FOR**

AN ACT to amend the Mutual Assistance in Criminal Matters Act (*Cap. 284*).

ENACTED by the President and the National Assembly.

Short title and commencement

1. This Act may be cited as the Mutual Assistance in Criminal matters (Amendment) Act, 2021 and shall come into operation on such date as the Minister may by notice in the *Gazette*, appoint.

Amendments to Cap. 284

2. The Mutual Assistance in Criminal Matters Act (Cap.284) is hereby amended as follows —

(a) in section 2, —

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

‘ “criminal investigation” for the purposes of this Act means an investigation into criminal matters and institution of the prosecution thereof in such cases where it is believed that the offence has been committed;’;

(ii) in the definition of “criminal matter”, after paragraph (b), the following paragraph shall be added —

“(ba) a matter relating to any offence under section 3 of the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020 (Act 5 of 2020), terrorist financing activities as defined under section 2 of the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020 (Act 5 of 2020, and terrorist financing activities under section 5 of the Prevention of Terrorism Act (Cap. 179);”;

(iii) after the definition “serious offence”, the following definition shall be added —

‘ “terrorist financing activities” shall have the same meaning assigned to it in section 2 of the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020 (Act 5 of 2020);’;

(b) in section 6, —

(i) subsection (4) shall be re-numbered as subsection (9);

- (ii) after subsection (3), the following subsections shall be added —

“(4) Notwithstanding anything in any other law in force and subsection (3) of this section and subject to section 7, any request received from a foreign country shall be processed and disposed in a time bound manner.

(5) The Attorney General shall maintain a case management system in manual and electronic form to be known as “register of mutual assistance cases”, with such details and in such form as the Attorney General may determine.

(6) Subject to section 153 of the Criminal Procedure Code (Cap. 54) and provisions of any other law, where a request has been received from any foreign country for forfeiture of any property or property of corresponding value, the provisions of section 153A of the Criminal Procedure Code shall be applied and the property shall be forfeited as per the provisions of section 153B of the said Code and the provisions of section 153C of the Code shall be applicable in such cases.

(7) For the purposes of subsection (6), “property of corresponding value” means any other property of the accused equivalent to the value of property involved in the offence, for which forfeiture has been ordered and for all material purposes, provisions of section 153B (13) shall be mutatis mutandis applicable for forfeiture of such property.

(8) Notwithstanding anything in any other law in force, if the confiscated property is directly or indirectly a result of co-Notwithstanding anything in any other law in force, if the confiscated property is directly or indirectly a result of co-ordinated law enforcement

actions by the State or any of its enforcement agencies and a foreign country, the said confiscated property or the proceeds of the said confiscated property shall be shared with such foreign country in the proportion as may be decided by mutual agreement between the Government of Seychelles and the foreign country.”.