

**CUSTODY, MANAGEMENT AND DISPOSAL OF SEIZED,
FORFEITED OR CONFISCATED PROPERTIES ACT, 2021**

(Act 61 2021)

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**CUSTODY, MANAGEMENT AND DISPOSAL OF SEIZED,
FORFEITED OR CONFISCATED PROPERTIES ACT, 2021**

(Act 61 of 2021)



I assent

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

Wavel Ramkalawan
President

17th December, 2021

AN ACT TO PROVIDE FOR THE CUSTODY, MANAGEMENT AND DISPOSAL OF SEIZED, FORFEITED OR CONFISCATED PROPERTIES AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

ENACTED by the President and the National Assembly.

**PART 1
PRELIMINARY**

Short title and commencement

1. This Act may be cited as the Custody, Management and Disposal of Seized, Forfeited or Confiscated Properties Act, 2021 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint and different dates may be appointed for different provisions of the Act.

Interpretation

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

“AMLCFT Act” means the Anti-Money Laundering the Countering the Financing of Terrorism Act, 2020 (Act 5 of 2020);

“Asset Management Unit” means the Asset Management Unit established under section 3 of this Act;

“Consolidated Fund” means the fund established by that name under article 151 of the Constitution;

“court” means a court of competent jurisdiction established by or under the authority of the Constitution;

“domestic authorities” means the authorities under different Ministries and Departments dealing with seizure, freezing, forfeiture and confiscation of the properties;

“Minister” means the Minister responsible for Finance and the term “Ministry” shall be construed accordingly;

“notified date” means a date notified by the Minister to take over the properties frozen, seized, forfeited or confiscated to the Republic under various laws in force in the Republic;

“offence” shall have the same meaning assigned to it in the AMLCFT Act (Act 5 of 2020);

“Property” shall have the same meaning assigned to it in the AMLCFT Act (Act 5 of 2020) and the term “properties” shall be construed accordingly;

“realizable property” means property liable to be taken into possession and disposed of under section 10 of this Act and includes property in the custody or possession of a person other than the beneficial owner; and

“Republic” means the Republic of Seychelles.

PART 2

ASSET MANAGEMENT UNIT

Asset Management Unit

3.(1) There shall be established a Unit to be known as the Asset Management Unit in the Ministry of Finance.

(2) The composition of the officers and staff of the Asset Management Unit shall be decided by the Minister and the same shall be notified to all the concerned Ministries and Departments.

Functions of Asset Management Unit

4. The functions of the Asset Management Unit shall be —
- (a) to collaborate with the authorities to identify, trace and evaluate realizable property that is subject to seizure, forfeiture or confiscation;
 - (b) to collaborate with all Ministries, Departments and Authorities which shall be dealing with properties seized, frozen, forfeited or confiscated to the Republic under Acts in force in the Republic;
 - (c) to take custody of realizable properties frozen, seized, forfeited or confiscated in furtherance of any law in force in the Republic;
 - (d) to maintain the properties frozen, seized, forfeited or confiscated until they are disposed of under the provisions of this Act or the regulations made hereunder;
 - (e) to take measures for the disposal of forfeited or confiscated properties and also for disposal of any property upon an order of the court;
 - (f) to take steps for filing appropriate applications before the courts for freezing or seizing properties to prevent dealing with or transfer or disposal of such properties;

- (g) to take steps to counter actions taken by other parties seeking to prevent the Republic from taking steps to freeze, seize or recover property that is liable for forfeiture or confiscation;
- (h) to support the domestic authorities in taking appropriate investigate measures to identify properties that are to be frozen or seized;
- (i) to support and administer the identification, tracing and evaluation of property that is subject to forfeiture or confiscation;
- (j) to support the administration of provisional measures, such as freezing or seizing, to prevent any dealing, transfer or disposal of property subject to forfeiture or confiscation;
- (k) to maintain proper records of the properties frozen, seized, forfeited or confiscated to the Republic;
- (l) to take steps for identifying auctioneers for the disposal of the forfeited or confiscated property;
- (m) to take steps for identifying persons, agencies or institutions to maintain frozen or seized property;
- (n) to assist the Attorney General's Office in coordinating with other countries in the freezing, seizure and forfeiture of properties and disposal of the properties between the countries when the forfeiture or confiscation is directly or indirectly a result of co-ordinated law enforcement actions;
- (o) to assist the domestic authorities to implement a coordinated mechanism for disposal of forfeited or confiscated properties;
- (p) to take all necessary measures to protect the rights of bona fide third parties;

- (q) to take all necessary steps for the proper management of frozen or seized properties;
- (r) to issues policies, procedures and guidelines related to management of properties subject to freezing, seizing, forfeiture or confiscation actions undertaken by the domestic authorities;
- (s) to act as the primary mechanism for managing, and when necessary, disposing of property frozen, seized, forfeited or confiscated; and
- (t) to have any other functions as may be necessary for the custody, management and disposal of any realizable property.

Taking over of properties by Asset Management Unit

5.(1) Every Ministry, Department and Authority upon freezing, seizure, forfeiture or confiscation of property to the Republic shall provide the data of such properties to the Asset Management Unit within 2 working days from the date of freezing, seizure, forfeiture or confiscation, as the case may be.

(2) Every Ministry, Department and Authority that has powers to freeze, seize, forfeit or confiscate properties shall appoint a liaison officer, who shall be in charge of liaising and shall be responsible to coordinate the freezing and seizing actions with the Asset Management Unit and providing the data under subsection (1).

(3) If a liaison officer knowingly fails to provide the data to the Asset Management Unit, this shall be regarded as a dereliction of duties and necessary action may be taken against the liaison officer in accordance with the provisions of Public Services Order.

(4) The Asset Management Unit established under section 3 shall take over all the properties that are frozen, seized, forfeited or confiscated under any law in force in the Republic as on the notified date.

(5) Every Ministry or Department, which is in custody of properties as on the notified date shall hand over all the properties in their possession to

the Asset Management Unit with all the relevant documents available for taking further actions against the properties.

(6) The Asset Management Unit shall continue the process started by the respective Ministry or Department for disposal of such properties without the necessity for the process to be recommenced.

(7) The Asset Management Unit shall dispose of the properties in accordance with the provisions of this Act.

(8) The Asset Management Unit shall not institute or proceed with actions and measures that are detrimental to the rights of bona fide third parties.

Steps to prevent funds or assets to designated persons

6.(1) Notwithstanding any other law in force, the Asset Management Unit shall take all necessary steps to prevent the availability of funds or assets to designated persons under the Prevention of Terrorism Act (Cap. 179) and the regulations made thereunder.

(2) The Asset Management Unit shall coordinate with the respective law enforcement agency responsible for designation of persons under the Prevention of Terrorism Act (Cap. 179) and with the Attorney General's Office, while taking any steps under subsection (1) to prevent the availability of funds or assets to the designated persons.

Coordination with other countries in the seizure, forfeiture or confiscation of the properties

7.(1) The Asset Management Unit shall act as a coordinating agency to support the Attorney General's Office in arranging for coordination with other countries for seizure and forfeiture or confiscation of properties.

(2) The Asset Management Unit shall coordinate with the Attorney General's Office and with other countries, in reaching an agreement or arrangement for disposing of properties between the countries when the forfeiture or confiscation is directly or indirectly a result of coordinated law enforcement action.

(3) The Asset Management Unit shall issue guidelines for coordination between domestic authorities for the custody, management and disposal of properties subject to this Act.

Policies and procedures for management of seized business

8. The Asset Management Unit shall, as warranted from time to time, devise policies and procedures with the approval of the Minister for the management of seized businesses.

Measures to trace, identify and evaluate the property

9. The Minister may by regulations prescribe procedures to trace, identify and evaluate properties subjected to forfeiture or confiscation.

Measures to manage, maintain and dispose of properties subjected to seizure, forfeiture or confiscation

10.(1) The Minister may by regulations prescribe the procedures to manage, maintain or dispose of properties which were subjected to seizure, forfeiture or confiscation.

(2) While disposing of the properties under regulations made under subsection (1), the Asset Management Unit shall have due regard to bona fide third parties and take measures to protect their rights.

PART 3 ASSET RECOVERY FUND

Establishment of Asset Recovery Fund

11.(1) The Asset Recovery Fund referred to in section 93 of the AMLCFT Act shall be the Asset Recovery Fund (hereinafter referred to as the ARF), established under this Act.

(2) The Ministry responsible for Finance shall be the administrator of the ARF.

(3) The Minister may by regulations regulate the administration and management of the ARF.

(4) The ARF shall be audited by the Auditor-General in accordance with the provisions of Article 158 of the Constitution.

Receipts and disbursements from the ARF

12.(1) There shall be credited to the ARF —

- (a) all moneys derived from the fulfilment of forfeiture or confiscation under any law in force;
- (b) all moneys derived from the fulfilment of pecuniary penalty orders under the AMLCFT Act;
- (c) any sums of money allocated to the ARF by the National Assembly from time to time by due appropriation of the funds;
- (d) any income derived from the investment of amounts that are credited to the ARF; and
- (e) any sharing of confiscated or forfeited property and funds received from other states.

(2) The Minister may, in accordance with regulations made under this Act, authorise payments out of the ARF to —

- (a) compensate victims who suffer losses as a result of offences under respective laws in force;
- (b) pay expenses relating to recovery, management and disposition of property under the provisions of any law in force, including mortgages and liens against relevant property, and the fees for receivers, trustees, managers, institutions or other professionals providing assistance;
- (c) allocate funds to the Attorney General's Office to meet the expenses of the prosecution division;
- (d) with the approval of the Cabinet, return assets to the original owner;

- (e) supplement the resources to any law enforcement agency, Ministry or Department, supervisory authority under AMLCFT Act or the FIU;
- (f) pay innocent third parties for any interest they have in the property, as appropriate;
- (g) authorise payment for community projects and training; and
- (h) pay compensation ordered by a Court.

(3) The Minister shall, after making adequate provisions at the end of each financial year for the application of funds and resources under subsection (2), pay out any excess funds from the ARF to the Consolidated Fund.

(4) The Minister shall, not later than three months after the end of the financial year, prepare an annual report on the activities of the Asset Management Unit during that year and submit a copy of the report to the National Assembly, and the Auditor General shall audit the accounts of the Asset Management Unit in accordance with section 158 of the Constitution (Cap 42).

PART 4 MISCELLANEOUS

Protection of action taken in good faith

13. Any suit or other legal proceedings shall not lie against any officer or other employee of the Ministry for anything done or intended to be done in good faith in pursuance of this Act.

Regulations

14.(1) The Minister may make regulations for the purpose of carrying out the provisions of this Act.

(2) Without prejudice to the generality of the power under subsection (1), such regulations may provide for —

- (a) the procedures to trace, identify and evaluate the property, which is subjected to forfeiture or confiscation under section 9;
- (b) procedures to manage and maintain or dispose of the properties, which were subject to seizure, forfeiture or confiscation under section 10(1); and
- (c) any other matter which is required to be, or may be, prescribed for implementation of this Act.

Transitional Provision

15.(1) All the properties under seizure, forfeiture or confiscation and liable to be disposed of shall be transferred to the Asset Management Unit, on and from the date as may be notified by the Minister and shall be dealt with in accordance with the provisions of this Act.

(2) Notwithstanding any other provision of this Act, if a receiver has been appointed by the Court under any other law in force in the Republic to take custody and dispose of any property, the receiver so appointed shall coordinate with the Asset Management Unit for the disposal of such property and the proceeds of sale of such property shall be credited to the Asset Recovery Fund.

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 14th December, 2021.



Mrs. Tania Isaac
Clerk to the National Assembly