

CONSOLIDATED TO 30 JUNE 2012

LAWS OF SEYCHELLES

NATIONAL BOTANICAL GARDENS FOUNDATION ACT

Act 30 of 2009

[30th December, 2009]

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PART 1 – PRELIMINARY

1. This Act may be cited as the National Botanical Gardens Foundation Act.

2. In this Act —

“authorised person” means a person authorised to perform functions under this Act;

“Board” means the Board established under section 13(1);

“Chairperson” means the Chairperson of the Board appointed under section 15;

“Chief Executive Officer” means the Chief Executive Officer appointed under section 7(1);

“Foundation” means the National Botanical Gardens Foundation established under section 3(1);

“Gardens” —

(a) means the Botanical Gardens, Victoria; and

(b) includes any other gardens or areas of important botanical value designated by the Minister on the recommendation of the Board, by Order published in the *Gazette*;

“member” means a member of the Board;

“Minister” means the Minister responsible for the environment and “Ministry” is construed accordingly.

PART II - ESTABLISHMENT OF FOUNDATION

3.(1) There is established a Foundation by the name of the National Botanical Gardens Foundation.

(2) The Foundation is a body corporate.

4. The functions of the Foundation are to —

(a) manage, develop and promote Gardens to maximize their potential;

(b) contribute to the conservation of endangered plants of Seychelles through *ex situ* conservation programmes;

- (c) undertake specialist services such as plant identification and offer specialist consultancy services;
- (d) deliver services of a high standard and in particular provide visitors with an enjoyable experience at the Gardens;
- (e) promote the participation of Government, the public and businesses in conservation work;
- (f) seek grants for project development and implementation;
- (g) provide gardening and landscaping services, guided tours, and similar services;
- (h) engage in commercial production and sale of plants; and
- (i) carry out other functions that are conducive to the attainment of the objects of this Act.

5. The Foundation has power to do all things necessary for or in connection with, or incidental to, the performance of its functions and, in particular the Foundation may —

- (a) receive funds due to the Foundation, and give full and valid discharge therefor;
- (b) own movable and immovable property;
- (c) with the consent of the Minister given in consultation with the Minister responsible for land use, lease immovable property belonging to the Foundation;
- (d) rent or take on lease any property on such terms as it thinks fit;
- (e) collect moneys accruing to the Foundation from its operations;
- (f) borrow moneys by way of loan, advance or overdraft;
- (g) invest money in —
 - (i) fixed deposit accounts with one or more banks;

- (ii) Government securities; and
 - (iii) any other manner, with the approval of the Minister granted in consultation with the Minister responsible for finance;
- (h) carry out fundraising activities;
- (i) enter into partnership or joint ventures or hold shares in or debentures of, any company with the consent of the Minister given after consultation with the Minister responsible for finance; and
- (j) do such other acts or things which may be necessary for the proper performance of its functions under this Act.

6.(1) The Minister may give to the Foundation directions in writing on the policy to be followed by the Foundation in the performance of its functions.

(2) A direction under subsection (1) shall not restrict or be inconsistent with the functions conferred on the Foundation by this Act.

7.(1) The President shall, subject to subsection (2), appoint a person to be the Chief Executive Officer of the Foundation on such terms and conditions as may be applicable to employees of a public body.

(2) The Chief Executive Officer shall be a person who is suitably qualified and has working experience in conservation, biology or management and other disciplines relevant to the functions of the Foundation.

(3) Subject to the directions of the Board, the Chief Executive Officer—

- (a) shall undertake executive responsibility for the effective functioning of the Foundation;
- (b) shall have supervision over and direction of the day to day affairs of the Foundation; and
- (c) may, delegate any function of the Chief Executive Officer to any employee of the Foundation.

8.(1) The Foundation may employ other persons necessary for the performance of its functions, on terms and conditions and according to the procedures applicable to employees of a public body.

(2) The employees of the Foundation shall be under the administrative control of the Chief Executive Officer.

9.(1) The Foundation shall open and maintain a bank account —

- (a) into which shall be paid the funds of the Foundation; and
- (b) out of which payments required to be made by the Foundation shall be effected.

(2) The funds of the Foundation shall consist of —

- (a) moneys accruing to the Foundation from its operations or other payments;
- (b) such moneys as are from time to time received by the Foundation by way of loans, donations or grants; and
- (c) moneys due on any investment made by the Foundation.

(3) The funds of the Foundation shall be applied in —

- (a) the payment or discharge of the costs, expenses and other obligations of the Foundation; and
- (b) the payment of remuneration, fees and allowances payable to its members, employees and any person co-opted to advise the Board under section 20.

(4) The Foundation shall make adequate provision from its funds, for—

- (a) the acquisition or replacement of its assets;
- (b) the depreciation of its assets;
- (c) the repayment of loans and advances to it;
- (d) the repayment of interest on all charges and expenses incurred in connection with loans to it; and

(e) any matter which it considers necessary.

10.(1) Subject to subsection (2), the financial year of the Foundation shall be a period of 12 months ending on 31 December of any year.

(2) The first financial year of the Foundation shall end on 31 December 2009.

11.(1) The Foundation shall prepare estimates of the income and expenditure of the Foundation, including its capital budget for every financial year or such longer period which the Minister may from time to time require, and submit the estimates to the Board for its approval.

(2) The Board may approve with or without modification the estimates submitted to it under subsection (1).

(3) After the Board approves the estimates under subsection (2), it shall submit the estimates to the Minister who may, acting after consultation with the Minister responsible for finance, approve with or without modification such estimates for the period for which they are prepared, and the estimates so approved shall be the estimates of the Foundation for that period.

12.(1) The Foundation shall keep proper accounts and records of accounts, and prepare in respect of each financial year, a statement of such accounts in such form as the Minister responsible for Finance may direct.

(2) Article 158 of the Constitution shall apply in respect of the auditing of the accounts of the Foundation.

(3) As soon as the accounts and statement of such accounts of the Foundation in respect of any financial year of the Foundation have been audited pursuant to subsection (2), the Foundation shall send to the Minister and to the Minister responsible for finance, a copy of the statement together with a copy of any report made by the auditor on the statement or on the accounts of the Foundation.

PART III - BOARD OF FOUNDATION

13.(1) The President shall appoint a Board to manage the Foundation.

(2) The functions of the Board are to —

(a) give general directions on matters concerning the business and direction of the Foundation;

- (b) have oversight of the management of the Foundation;
- (c) study proposals, plans and recommendations regarding the establishment of any garden and submit them to the Minister;
- (d) approve and oversee the management and development plans of the Gardens;
- (e) approve budgets and accept donations and grants;
- (f) appoint other professional advisers where necessary;
- (g) authorise the signing of documents, including agreements through authorised persons;
- (h) approve projects for the development of the Gardens; and
- (i) do such other acts or things necessary for the proper and efficient management of the Foundation.

14.(1) The Board consists of the following members —

- (a) the Chief Executive Officer of the Foundation who shall be an exofficio member;
- (b) a representative of the Ministry;
- (c) a representative from the tourism sector;
- (d) a representative of the Ministry of Finance; and
- (e) three other persons who have knowledge and experience likely to contribute to the successful direction of the affairs and operations of the Foundation.

(2) The President shall appoint the members referred to under subsection (1) and cause a notice of their names to be published in the *Gazette*.

(3) A member shall hold office for a period of 3 years and is eligible for re-appointment.

15. The President shall appoint a Chairperson from among the members of the Board.

16.(1) The Chairperson may resign from office by a letter addressed to the President and the resignation shall take effect from the date on which the President receives the letter.

(2) A member other than the Chairperson may resign from office by a letter addressed to the President and transmitted through the Chairperson, and the resignation shall take effect from the date on which the President receives the letter.

(3) The President may remove a member from office upon being satisfied that the member —

- (a) is, for whatever reason, permanently incapable of discharging the duties of a member;
- (b) has been absent without leave of the Board from 3 consecutive meetings of the Board;
- (c) has neglected the duties of a member; or
- (d) is guilty of misconduct.

(4) Where a member resigns or is removed from office, the President shall appoint a person to hold office for the remaining period of office of that member and cause the name of that person to be published in the *Gazette*.

17. A member may be paid such remuneration as may be determined by the President.

18.(1) The Board shall meet —

- (a) at such times as the Chairperson may determine; and
- (b) not less than six times in any calendar year.

(2) The Chairperson shall preside at meetings of the Board at which he or she is present and in the absence of the Chairperson from a meeting, the members present shall elect from among themselves a member to preside, and the member has and may exercise with respect to such meeting and any other business transacted at that meeting, all the powers of the Chairperson.

(3) A decision of the Board shall be taken by a simple majority of votes of the members present and voting, and each member shall have one vote but in the event of an equality of votes, the Chairperson or other person presiding at the meeting shall have in addition to an original vote, a casting vote.

19. One half of the number of members of the Board shall constitute a quorum for a meeting of the Board.

20.(1) The Board may co-opt a person to advise the Board on matters of a technical nature where the Board is satisfied that the experience or qualifications of that person are likely to assist it.

(2) A person co-opted under subsection (1) has no right to vote on any matter before the Board.

21. A member who is directly or indirectly interested in a matter being dealt with by the Board shall —

- (a) disclose the nature of his or her interest at a meeting of the Board; and
- (b) not take part in any deliberation or decision of the Board with respect to that matter.

22.(1) Subject to the provisions of this Act, the Board may regulate its own proceedings.

(2) No act, decision or proceeding of the Board shall be questioned on account of any vacancy in the membership of the Board, or on account of any defect in the qualification or appointment of any member of the Board, if the act was done or authorised or the decision was taken or the proceeding took place by or in accordance with a majority vote of the members who at that time were present.

23.(1) The Board may at any time cause to be constituted a specialised standing or adhoc committee to consider and report to the Board on any matter relevant to the objects of the Board referred to it by the Board.

(2) A specialised standing or adhoc committee constituted under subsection (1) shall consist of members or other suitably qualified persons or both.

(3) A decision of a specialised standing or adhoc committee shall not be acted upon unless approved at a meeting of the Board.

PART IV - MISCELLANEOUS

- 24.**(1) The Government may vest in or transfer to the Foundation such—
- (a) movable and immovable properties vested in the Government immediately before the coming into operation of this Act and used or managed by the Department of Environment of the Ministry; and
 - (b) assets, rights, interests, privileges, liabilities and obligations of the Government, relating to the Department of Environment,

as the Minister considers appropriate without any formality.

(2) Where a question arises as to whether a particular movable or immovable property, asset, right, interest, privilege, liability or obligation has been transferred to or vested in the Foundation under subsection (1), a certificate under the hand of the Minister shall be conclusive evidence that the movable or immovable property, asset, right, interest, privilege, liability or obligation was or was not so transferred or vested.

(3) All agreements, deeds, bonds or arrangements which fall within the scope of the objects and functions of the Foundation, to which the Government is a party, subsisting immediately before the date of coming into operation of this Act, shall continue in force on and after that date, and shall be enforceable by or against the Foundation as if it had been a party to such deeds, bonds, agreements or arrangements.

25. Where anything has been done or commenced by or under the authority of the Government with respect to the Department of Environment of the Ministry prior to the date of commencement of this Act and such thing is within the powers of the Foundation, such thing may be carried on and completed by, or under the authority of the Foundation.

26. All members and employees of the Foundation shall be deemed to be employed in the public service for the purpose of sections 91 to 96 of the Penal Code.

27. No civil or criminal liability shall attach to the Foundation, a member or employee of the Foundation in respect of an act done or an omission made in good faith in the performance of the functions of the Foundation, member or employee.

28.(1) The Minister may make regulations for the better carrying out of the objects of this Act.

(2) Without limiting the generality of subsection (1), regulations made under subsection (1) may —

- (a) provide for bye-laws for any purpose connected with the powers, duties and functions of the Foundation under this Act and penalties for breach of any such bye-laws;
- (b) provide for fees or charges payable in respect of matters arising under or provided for or authorised by this Act; or
- (c) provide for fines or penalties.

NO SUBSIDIARY LEGISLATION
