

Seychelles

Proceeds of Crime (Civil Confiscation) Act, 2008

Proceeds of Crime (Civil Confiscation) (Procedure) Rules, 2016 Statutory Instrument 12 of 2016

Legislation as at 15 March 2016

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Seychelles

Proceeds of Crime (Civil Confiscation) Act, 2008

Proceeds of Crime (Civil Confiscation) (Procedure) Rules, 2016

Statutory Instrument 12 of 2016

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1. Citation

These Rules may be cited as the Proceeds of Crime (Civil Confiscation) (Procedure) Rules, 2016.

2. Interpretation

(1) Words and phrases in these Rules shall have the meanings ascribed to them by section 2 of the Act or section 2 of the Seychelles Code of Civil Procedure, as applicable.

(2) Notwithstanding subrule (1), in these Rules, unless the context otherwise requires—

"**Act**" means the Proceeds of Crime (Civil Confiscation) Act, 2008;

"**applicant**" means the FIU or any other person or persons making an application under the Act;

"**belief evidence**" means evidence admissible by virtue of section 9(1) of the Act;

"**Court day**" means any day other than a Saturday or *dies non*;

"**proceed by default**" means proceed without adjournment to hear an application on the basis of the documents already filed or oral evidence where the Court permits or directs, which may be in the absence of one or more parties;

"**respondent**" means the FIU or any other person or persons named as respondent to an application under the Act.

3. Procedure for matters under the Act

(1) These Rules shall apply to every matter commenced under the Act.

(2) The forms in the Schedule to these Rules shall be used, adapted as the circumstances may require.

(3) Other than as prescribed in the Act and these Rules, the Court may regulate its own procedure in the interests of the efficient administration of justice.

(4) The Court may on its own initiative or at the request of any party give directions as to procedure.

(5) Directions as to procedure which depart from the requirements of these Rules, including directions extending any time limit, may be made only for good cause.

(6) A request by a party for directions under subrule (4) shall be made orally in open Court or by notice of motion supported by a short affidavit.

- (7) Where a notice of motion is filed under subrule (6), the motion shall where practicable be listed and determined before any date fixed for hearing of the matter, and any notice of opposition or related pleading shall be filed on or before the return date for the motion.
- (8) Where a party materially fails to comply with any provision of these Rules, the Court shall—
 - (a) dismiss the matter;
 - (b) disregard any non-compliant document or part thereof; or
 - (c) proceed by default,unless the Court for good cause otherwise directs.

4. Commencing applications

- (1) An application to the Court under the Act shall be made by notice of motion in accordance with Form 1 supported by an affidavit.
- (2) An application made under section 4(3) of the Act by a person other than the respondent may be made by that person jointly with other persons claiming a similar interest.

5. Notice and service

- (1) Where the Act requires notice to be given of any application or order, the notice shall consist of a complete set of the application documents or an original or certified copy of the order.
- (2) Notice of an application or order under this Act shall be given without delay—
 - (a) in the case of an existing matter, to the attorney on record for the person (if any);
 - (b) to a natural person in Seychelles, by delivering or tendering it to the person or, if the person cannot be found, to any member more than sixteen years old of the family of the person residing with him or her;
 - (c) to a legal person in Seychelles, by complying with any applicable written law as to service of Court process on that person;
 - (d) in the case of a person outside Seychelles, by personal service or by delivering or tendering it to that person by international courier or registered mail (in the case of a legal person addressed to that person's registered office or principal place of business); or
 - (e) as the Court otherwise directs.
- (3) Where notice of an application has not been given in accordance with this rule within 21 Court days after filing the application, the Court may—
 - (a) direct that notice is given within a further period not exceeding 21 Court days;
 - (b) direct the filing of an affidavit as to the efforts made to locate the person who is required to be given notice;
 - (c) direct the addition or substitution of another respondent;
 - (d) dismiss the application; or
 - (e) give any combination of directions under paragraphs (a), (b) and (c) as the Court sees fit.
- (4) Where the Court is satisfied on affidavit evidence or otherwise that it is not reasonably possible to ascertain the whereabouts of a person who is required to be given notice, the Court shall direct the matter to proceed without that notice.
- (5) Any document filed in an *inter partes* matter under the Act, other than the application which commences the matter, shall be served in accordance with the procedure under subrule (2).

- (6) The Court shall in making any order under this Act provide for notice of the order to be given in accordance with the Act.

6. Rules for affidavits

- (1) The deponent of an affidavit shall only aver as to facts within his or her personal knowledge.
- (2) An affidavit shall contain sufficiently specific averments verifying the grounds on which an application is made or opposed to enable the court to effectively adjudicate the matter in accordance with the Act.
- (3) All documents relied on in an affidavit shall be exhibited to the affidavit.
- (4) The original of any document sought to be relied on in an affidavit shall be exhibited unless the Court accepts any explanation averred as to its non-production, in which case a notarised or otherwise duly authorised or certified copy shall be exhibited.
- (5) After a matter has been fixed for preliminary hearing, further affidavits may be filed only by leave of the Court or the consent of all parties.
- (6) Without detracting from the generality of subrule (2), the affidavit in support of an application under section 7(1) of the Act shall include averments specifying—
 - (a) the property of which the applicant is in possession or control; and
 - (b) the income, and the sources of the income, of the applicant during the period of three years ending on the date of the application.

7. Procedure for *ex parte* applications

- (1) Ex parte applications under the Act shall be listed and heard as a matter of urgency.
- (2) Notwithstanding rule 4(1), the Court may, in cases of urgency, hear an application under section 3(1) of the Act on oral evidence. An affidavit containing the evidence upon which an order was granted on oral evidence under this sub-rule shall be filed without delay and in any event within 21 Court days after the granting of the order.
- (3) The notice of motion in an *ex parte* application may include a request for directions under section 9(4) or (5) of the Act.
- (4) The identity of a person who is the subject of an *ex parte* application shall not be published by the Court in a causelist or otherwise before the hearing of the application unless the Court for good cause otherwise directs.

8. Procedure for *inter partes* applications

- (1) A respondent other than the FIU who has received notice of an *inter partes* application under the Act shall enter an appearance in Form 2 within seven Court days.
- (2) Where a respondent fails to comply with subrule (1), the Court shall proceed by default against that respondent unless the non-compliance has been sufficiently explained in Court.
- (3) A respondent shall file a reply affidavit within 14 Court days after entering an appearance or, where the respondent is the FIU, within 21 Court days after receiving notice of the application.
- (4) Extension of time for filing reply affidavits may be granted only for good cause, on a request made in advance by notice of motion filed in accordance with rule 3(6).
- (5) Where a respondent fails to file a reply affidavit within time, the Court shall proceed by default unless an extension of time is granted in accordance with subrule(4).

- (6) Where a respondent has filed a reply affidavit, the Court shall list the matter for preliminary hearing to fix a hearing date and to give any directions required to ensure the matter is ready for hearing on that date.
- (7) Where a respondent fails to appear at the preliminary hearing, the Court shall proceed by default.
- (8) Where an affidavit before the Court fails to comply with rule 6 or manifestly fails to verify the grounds on which an application is made or opposed, the Court may on its own initiative or at the request of a party dismiss the application or proceed by default at the preliminary hearing disregarding all averments or exhibits in the affidavit that do not comply with these Rules.
- (9) The Court may on its own initiative or at the request of a party direct at the preliminary hearing that the deponent of an affidavit shall attend on the hearing date and be available for cross-examination.
- (10) Statement of agreed facts and issues and any point of law may be filed at any time before the matter is called for preliminary hearing, and thereafter only by leave of Court.
- (11) Any point of law filed before the preliminary hearing shall be argued at the preliminary hearing unless the Court directs that it be heard at the hearing.

9. Hearing of *inter partes* applications

- (1) The hearing of an application under the Act may be adjourned only for good cause on the Court's own initiative or on a request made by a party in advance by notice of motion filed in accordance with rule 3(6) unless all other parties consent to an adjournment to the next available date.
- (2) Any written submissions shall be filed no later than five Court days before the hearing unless the Court otherwise directs.
- (3) Where a party fails to appear or is not ready to proceed, the Court shall proceed by default unless all other parties consent to an adjournment to the next available date.
- (4) Any point of law filed in accordance with rule 8(10) shall be argued at the beginning of the hearing and shall not delay the hearing or determination of the application.
- (5) Following argument on any point of law, the respondent may, where the Court so permits or directs, proceed to cross-examine the deponents of affidavits for the applicant, and the applicant may then, where the Court so permits or directs, proceed to cross-examine the deponents of affidavits for the respondent.
- (6) Where a deponent fails to appear for cross-examination as directed, the affidavit sworn by that deponent shall be disregarded by the Court.
- (7) Following any cross-examination, the applicant may make oral submissions, to which the respondent and any other parties may reply.

10. Order of issues where belief evidence submitted

- (1) Where an application relies on belief evidence, the Court shall first consider whether there are reasonable grounds for the averred beliefs, and shall then consider whether the evidence tendered for the applicant discloses a *prima facie* case in terms of section 3(1) or 4(1) of the Act, as applicable.
- (2) In an application under section 4 of the Act, the Court shall then proceed to consider whether evidence tendered by the respondent or any other person constitutes proof to the civil standard of a fact that empowers the Court to decline to make the order sought.

11. Consent orders

Where all the parties to any matter under the Act sign and file a consent, the Court shall treat that consent as an application under section 19(b) of the Act and may make orders in accordance with the consent

under section 19 of the Act. The consent shall be incorporated by reference in the judgment and remain on the Court file.

12. Appeals

- (1) For the avoidance of doubt, no independent appeal shall lie from a direction given by the Court under these Rules in a pending matter.
- (2) Where an order made under this Act is or is likely to be appealed, the Court may order a stay of execution or give any other directions necessary to preserve the status quo pending appeal.

13. Transitional provision

Nothing in these Rules shall affect the validity of any step taken or any other thing done in a matter under the Act which was pending immediately before the commencement of these Rules. Such matters shall be continued and completed in accordance with these Rules except where the Court for good cause otherwise directs.

Schedule (Rule 4(1))

Form 1: Notice of motion for applications under the Act

In the Supreme Court of Seychelles

In re the Proceeds of Crime (Civil Confiscation) Act, 2008

Between

[Name and address of applicant]

Applicant

and

[Name and address of respondent/s]

Respondent/s

Miscellaneous Cause no. ____ of 201 ____

Notice of motion for [insert nature of order sought]

Take notice that this Honourable Court will be moved on the ____ day of ____ 201 ____ or as soon thereafter as Counsel can be heard, for the following orders—

[state orders sought in numbered paragraphs]

Which application shall be grounded upon the enclosed affidavit of [full name] sworn on [date] and such further affidavits or other evidence as shall be submitted.

[Additional text for applications where the FIU is not the respondent] And take notice that if you wish to oppose this application, you must enter an appearance in the prescribed form within seven Court days of receipt of notice of this application. In addition, you must file and serve an affidavit complying with the requirements of the Proceeds of Crime (Civil Confiscation) Rules, 2016 within 14 Court days after you enter an appearance. If you fail to enter an appearance or file a reply affidavit in time, or if you fail to attend or be represented in Court, the Court may proceed by default against you.

[Additional text for applications where the FIU is the respondent] And take notice that if you wish to oppose this application, you must file and serve an affidavit complying with the requirements of the Proceeds of Crime (Civil Confiscation) Rules, 2016 within 21 Court days after you receive notice of this application. If you fail to

file a reply affidavit in time, or if you fail to attend or be represented in Court, the Court may proceed by default against you.

Dated this _____ day of _____ 201_____

[Name and address of attorney]

To:

The Registrar

Supreme Court of Seychelles

Ile du Port

Mahe

And to:

The Respondent[s]

[End of form 1]

Form 2: Entry of appearance

In the Supreme Court of Seychelles

In re the Proceeds of Crime (Civil Confiscation) Act, 2008

Between

[Name and address of applicant]

Applicant

and

[Name and address of respondent]

Respondent

Miscellaneous Cause no. _____ of 201_____

Entry of appearance

Take notice that [*full name of respondent or respondents*] hereby enters an appearance in this matter.

Dated this _____ day of _____ 201 _____

[*Name and address of attorney in Seychelles or, if unrepresented, name and address for service in Seychelles of respondent or respondents*]

To:

The Registrar

Supreme Court of Seychelles

Ile du Port

Mahe

And to:

The Respondent[s]

[*End of form 2*]