



OFFICIAL GAZETTE

REPUBLIC OF SEYCHELLES

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GENERAL NOTICES

No. 1264 of 2022

ELECTIONS ACT (Cap 262)

Pursuant to its mandate under paragraph 1 of chapter 1 of schedule 3 to the Elections Act, the Electoral Commission is opening the following Registration Centre:

Registration Centre	Date	Time	Location
Anse Royale Youth Hostel	Thursdat 24 th November	5:00pm to 8:00pm	Anse Royale

Qualified citizens from the Anse Royale Youth Hostel are invited to submit their applications for *registration as a voter, transfer, change of name, correction or objections* at the registration centers.

Dated this 17th day of November, 2022.

Ms. Sheena Boniface
CHIEF REGISTRATION OFFICER

No. 1265 of 2022

FOUNDATIONS ACT**Section 99(1)**

Notice is hereby given pursuant to Section 99(1) of the Foundations Act, 2009 that the names of the below foundations will be struck off the register unless payment of annual fees and all penalty fees are paid within 90 days from 11th November, 2022.

Foundation Name	Reg. No.
Gofybr Holdings International Foundation	658
Steeple Foundation	809
Bantu Blockchain Foundation	895
For Bears Foundation	896
Fantasy Tech Foundation	987
ALPHA VISION FOUNDATION	990
Apex Foundation	991
C&L Holdings Foundation	992

Financial Services Authority

No. 1266 of 2022

FOUNDATIONS ACT**Section 99(2)**

Notice is hereby given pursuant to Section 99(2) of the Foundations Act, 2009 that the following foundations have been struck off the register, due to failure to pay its annual fees and penalty fees, with effect from 11th November, 2022.

Foundation Name	Reg. No.
Greenlight Foundation	107
The Jade Spider Foundation	870
CS Foundation	956
A Limitless Lifestyle Legacy Foundation	959

Financial Services Authority

No. 1267 of 2022

Curatelle Act**Notice of Appointment of Executor**

Notice is hereby given that on the **30th September 2022**, the Master appointed Eugenia Eveline Laval nee Cedras of Beoliere (N.I.N: 947-0067-1-0-75) as executrix of the succession of James Abraham Cedras under section 23 (2) of the Curatelle Act 2021.

Dated this **30th day of September, 2022.**

Master

No. 1268 of 2022

Curatelle Act**Notice of Appointment of Executor**

Notice is hereby given that on the **30th September 2022**, the Master appointed Marie Nadia Stephen of Mont Buxton (N.I.N: 972-0226-1-0-63) as executrix of the succession of Regis Francis Suzette and Marie Erica Suzette under section 23 (2) of the Curatelle Act 2021.

Dated this **30th day of September, 2022.**

Master

No. 1269 of 2022

Curatelle Act**Notice of Appointment of Executor**

Notice is hereby given that on the **30th September 2022**, the Master appointed Gaetanette Survanne Lawen of Morne Blanc as executrix of the succession of Guillaume Adonis under section 23 (2) of the Curatelle Act 2021.

Dated this **30th day of September, 2022**.

Master

No. 1270 of 2022

LAND RECLAMATION NOTICE

Mr. Julio Dominique Pool acting on his own behalf has applied for authority, under **Section 2** of Land Reclamation Act to fill in and reclaim an area of the foreshore of approximately **1287** square meters on **Praslin**, (adjacent to the Parcel PR561).

The proposed area to be reclaimed is bounded on the **Northern, Eastern and Western** side by the Sea, and **Southern Western** side by Parcel PR561.

The area to be reclaimed is demarcated as follows:

POINT NAME	EASTINGS	NORTHINGS
A	362869.74	9519631.24
A1	362866.74	9519638.68
A2	362863.16	9519647.55
A3	362886.17	9519653.22
A4	362896.19	9519654.74
A5	362911.74	9519646.24
A6	362913.08	9519617.85
A7	362901.34	9519617.33
BY14	362896.48	9519615.37
10	362878.91	9519630.78
9	362880.20	9519632.30
8	362879.06	9519633.27
7	362877.51	9519631.44
A	362869.74	9519631.24

All distances are approximate.

The plan of the area to be filled in and reclaimed deposited with this application, may be inspected at the Seychelles Planning Authority's Office at Independence House.

Any person having any objections to the proposed reclamation on any grounds specified in paragraph 5 of the 1st Schedule of the Act may lodge his or her objection in writing to the Chief Executive Officer Planning Authority at the Planning Authority's Office, Independence House no later than 14 days from date of the first publication of this notice.

Govin Pillay (Mr.)
Senior Engineer
FOR: CHIEF EXECUTIVE OFFICER

No. 1271 of 2022

LAND SURVEY NOTICE

The following surveys have been lodged with the Director of Surveys at Independence House, Victoria.

Parcel No.	Owner	Location
PR7545	Heirs Emmanuel Valentin	Baie Ste Anne, Praslin

Under Section 14 of the Land Survey Act (Cap. 109) any objection to the beacons and boundaries must be lodged in the Supreme Court within **two months** of the publication of this notice.

Antoine J. Ah-Kong
LAND SURVEYOR

No. 1272 of 2022

NOTICE

Notice is hereby given in pursuance of Section 96 of the Civil Status Act (Cap. 34) that the Chief Officer of the Civil Status has granted the under noted applications made under section 94 of Cap. 34.

Mrs. Maryna Morin-Adeline authorized to change her daughter's name from Veera Joy Morin-Adeline to Freya Veera Joy Morin-Adeline.

N. Flore
For: Chief Officer of the Civil Status

No. 1273 of 2022

CHANGE OF NAME

Notice is hereby given that I have applied to the Chief Officer of the Civil Status to change my name from Marion Shernaze Marie-Lourde Etienne to Marion Shernaze Marie-Lourde Etienne-Chaka agreeable with sections 94-99 of Cap. 34. Any person interested may oppose such application by filing a protest in writing setting forth his/her grounds of objections.

Ms Marion Etienne
Greenwich
Mont Buxton
Mahe
Seychelles

No. 1274 of 2022

CHANGE OF NAME

Notice is hereby given that I have applied to the Chief Officer of the Civil Status to change my name from Hycinta Lucil Peggy Joseph born Delorie to Hyacintha Lucile Peggy Joseph born Delorie agreeable with sections 94-99 of Cap. 34. Any person interested may oppose such application by filing a protest in writing setting forth his/her grounds of objections.

Ms Hycinta Joseph
Flat No.8
Ex-Winston Vital
Anse Aux Pins
Mahe
Seychelles

No. 1275 of 2022

CHANGE OF NAME

Notice is hereby given that I have applied to the Chief Officer of the Civil Status to change my daughter's name from Tiffany Astrid Jasmine Nicette to Tiffany Astrid Jasmine Gappy agreeable with sections 94-99 of Cap. 34. Any person interested may oppose such application by filing a protest in writing setting forth his/her grounds of objections.

Ms Astrid Nicette
Rue Des Freres Maristes
Mahe
Seychelles

No. 1276 of 2022

CHANGE OF NAME

Notice is hereby given that I have applied to the Chief Officer of the Civil Status to change my name from Ella, Samia Rita Pool to Ella, Samia, Rita Pool-Laurence agreeable with sections 94-99 of Cap. 34. Any person interested may oppose such application by filing a protest in writing setting forth his/her grounds of objections.

Ms Ella Pool
Bel Ombre
Mahe
Seychelles

No. 1277 of 2022

CHANGE OF NAME

Notice is hereby given that I have applied to the Chief Officer of the Civil Status to change my name from Zijun Zou to Bella Zijun Jiang-Chen agreeable with sections 94-99 of Cap. 34. Any person interested may oppose such application by filing a protest in writing setting forth his/her grounds of objections.

Ms. Zijun Zou
Eden Island
Mahe

No. 1278 of 2022

CHANGE OF NAME

Notice is hereby given that I have applied to the Chief Officer of the Civil Status to change my name from Josephina Confiance nee Dorothee to Josephina Juliana Confiance nee Dorothee agreeable with sections 94-99 of Cap. 34. Any person interested may oppose such application by filing a protest in writing setting forth his/her grounds of objections.

Mrs Josephina Confiance nee Dorothee
Val Dan Dor
Mahe
Seychelles

No. 1279 of 2022

NOTICE OF INTENTION TO APPLY FOR
CITIZENSHIP OF SEYCHELLES

Notice is hereby given that I, Marie, Ednee, Marlene Morel of Takamaka, Intendance, Mahe whose further particulars appear below, being a person eligible to apply for citizenship under *Article 10/12 of the Constitution / Section 5(2)/5A/5B/5C and 6 of the Citizenship Act (Cap 30) have applied for *Registration/Naturalisation as a citizen of Seychelles and any person who knows any lawful reasons why the application should not be granted may forward a written and signed statement of the reasons within 28 days of the last publication of this notice to the Citizenship Officer, Immigration Division, Independence House, Victoria.

Further particulars:

- a) I am also known as Meme Morel.
- b) My present nationality is Mauritian.
- c) The date of my first entry into Seychelles is August 1993.

- d) The date of my last entry into Seychelles before the present application is 13-10-2021.
 - e) The special circumstance which qualifies me to make this application is I am married to a citizen Seychelles for thirty years (30).
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S.I. 122 of 2022**BROADCASTING AND TELECOMMUNICATION ACT***(Cap 19)***Broadcasting and Telecommunication Act (Quality of Service)
Regulations, 2022****Arrangement of Regulations****Regulations**

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or Mobile Access**Schedule 5** - Indicators for all Services with Fixed Access or
Mobile Access

S.I. 122 of 2022**BROADCASTING AND TELECOMMUNICATION ACT***(Cap 19)***Broadcasting and Telecommunication (Quality of Service)
Regulations, 2022**

In exercise of the powers conferred by section 38 of the Broadcasting and Telecommunication Act, the Vice-President being the Minister for Information Communications Technology makes the following regulations —

Citation

1. These Regulations may be cited as the Broadcasting and Telecommunication (Quality of Service) Regulations, 2022.

Interpretation

2. In these Regulations, unless the context otherwise requires —

“access technology” means a class of closely related transmission techniques; it can be GSM/GPRS/EDGE, UMTS/WCDMA/HSPA or LTE/LTE-A/LTE-U;

“broadband internet” means the class of services in which a service provider, supports data transfers between the equipment of customers and a public network, and in which the service provider advertises the Services as providing “broadband” or as having Data Transfer Rates of at least 1,000,000 bits per second in some conditions;

“business hour” means an hour starting at 8:00, 9:00, 10:00, 11:00, 12:00, 13:00, 14:00 or 15:00 on a working day;

“campaign test” means a field test that does not use the equipment of customers but that might use equipment typical of customers;

“crowd test” means a field test that uses the equipment of customers;

“customer” means a person who is provided with a service by a service provider under a contract;

“data transfer rate” means the speed at which data is transferred, as calculated by dividing the quantity of data transferred by the time taken to transfer the data;

“downlink” means the direction in which data is transferred to the equipment of a customer;

“field test” means a test of access to communications facilities typical for customers at a time and place typical for customers;

“fixed access” means the class of services that are not designed to let customers continue perceptible access to communications while moving within the area for which the service provider holds a licence;

“indicator” means a measurable characterisation of the quality of an aspect of a service;

“licence” means a permit issued by the Seychelles Licensing Authority to authorise the provision of a service by a service provider;

“measurement” means a measurement of an Indicator made using a Measurement Method for the Indicator;

“measurement agent” means an agent appointed to make measurements on behalf of a service provider or the Minister;

“measurement domain” means a class of services that for any service provider are not likely to differ perceptibly in the quality of a particular aspect and can therefore be classed together in the characterisation of that quality;

“measurement method” means a method for measuring an indicator by performing field tests or collecting system readings;

“measurement result” means the value of an indicator obtained by making measurements;

“Minister” means the minister responsible for broadcasting and telecommunication;

“mobile access” means the class of services that are designed to let customers continue perceptible access to communications while moving within the area for which the service provider holds a licence;

“participating provider” means a service provider that undertakes, or is legally obliged, to comply with these Regulations;

“reporting area” means an area for which the Minister requires a participating provider to report measurement results;

“reporting period” means a period of time for which the Minister requires a participating provider to report measurement results;

“representative sample” means a collection of measurements that the Minister requires to be made at different times and places in order to represent a reporting period and a reporting area adequately;

“service” means a broadcasting or telecommunication service in Seychelles;

“service provider” means an organisation that provides a service to the general public or to other service providers;

“subscription television” means the class of services in which a service provider provides visual content to the equipment of customers according to a programmed schedule;

“system reading” means a reading obtained from data accumulated without special tests in the network or support systems of a service provider;

“target” means a value of an Indicator that signifies a satisfactory level for the quality of the aspect of a service characterised by the Indicator;

“telephony” means the class of services in which a service provider supports voice calls between the equipment of customers and a public network;

“uplink” means the direction in which data is transferred from the equipment of a customer; and

“working day” means a day other than a Saturday, a Sunday or a public holiday.

Application of Regulations

3.(1) All service providers holding a licence under the Licences (Broadcasting and Telecommunication) Regulations, 2021, whether they operate their own networks or whether their Licences contain quality of service requirements, shall be bound by these Regulations.

(2) A service provider shall be a participating provider if it holds a licence and provides a telephony, broadband internet or subscription television service to the general public for monetary consideration.

(3) Notwithstanding a requirement imposed to the contrary by the Minister through any law, these Regulations shall prevail over all broadcasting and telecommunication quality of service requirements except requirements for the reporting of statistical market information.

Measurement coverage by a participating provider

4.(1) A participating provider shall, within twelve months of the coming into operation of these Regulations, ensure that for each Indicator applicable to a service of a participating provider obtained from system

readings as defined in Schedule 1, Schedule 2 and Schedule 5, a measurement result is obtained in each measurement domain, in each reporting period and in each reporting area.

(2) A participating provider shall ensure that each of its measurement result is obtained from all the measurements made using the measurement method described for the measurement result in the applicable schedules in one measurement domain, one reporting period and one reporting area.

(3) Notwithstanding subregulation (2), the Minister may accept exclusions of measurements on the grounds that the measurements are inaccurate, irrelevant or obsolete.

(4) A participating provider shall ensure that each of its measurement result is obtained from measurements that form a representative sample unless the Minister accepts that the circumstances make this obligation impractical to carry out or the measurement method described for the measurement result in the applicable schedules do not involve sampling.

Measurement coverage by the Minister

5.(1) The Minister shall, within twelve months of the coming into operation of these Regulations ensure that a measurement result is obtained in each measurement domain, in each reporting period and in each reporting area for each indicator which depends on field tests for its calculation.

(2) The Minister may appoint a measurement agent for the purpose of subregulation (1).

(3) The Minister or a measurement agent appointed under subregulation (2) shall have access to a participating provider's fixed networks to connect necessary equipment to those networks to obtain measurements in accordance with this regulation.

Measurement planning

6.(1) At least 30 days before the beginning of a reporting period, a

participating provider shall submit to the Minister the plan of approximately when and where it expects its measurements to be made.

- (2) The Minister may request revisions to the plan.

Measurement reporting

7.(1) Within one month after the end of a reporting period, a participating provider shall submit to the Minister in a manner approved by the Minister, its measurement results and any supplementary information required in the Schedules for that reporting period.

(2) The Minister shall cause the measurement results to be audited whenever the need arises after it has been published.

Record keeping

8.(1) A participating provider and the Minister shall hold records about their respective measurements for at least thirty six months after the reporting period in which the measurements were made.

(2) The records shall include the times and places of the measurements, the observations and calculations underlying the measurements and any fault report or service complaint which necessitated the measurements.

(3) The Minister shall have access to the records of a participating provider for the purpose of verification and auditing.

Measurement publication

9.(1) A Participating Provider shall display prominently on its website in a manner approved by the Minister, its measurement results and any associated explanatory remarks for that reporting period, within two months after the end of every Reporting Period.

(2) The Minister shall display prominently on its website, its Measurement Results obtained in accordance with regulation 5 and any associated explanatory remarks for that Reporting Period, within two months after the end of every reporting period.

(3) Before the Minister audits the measurement results, the measurement results thus published shall be marked clearly as not yet approved.

(4) If after an audit the Minister refuses to approve the measurement results, the measurement results so published shall be removed.

(5) The Minister may refuse to approve measurement results only if they have not been obtained in accordance with these Regulations.

(6) The explanatory remarks referred to in subregulation (1) may include matters relating to —

- (a) the failure to reach targets;
- (b) the deficiencies in services that are due wholly or partly to other service providers;
- (c) the changes in environmental, financial or operating circumstances that could not have been reasonably foreseen;
- (d) the times and places where the measurements are made;
- (e) the expectations about quality that are appropriate to the pricing of the service;
- (f) the performance of popular applications;
- (g) plans to improve services; and
- (h) arrangements for paying credits or rebates as compensation.

Field tests

10.(1) The Minister shall use campaign tests for any required field tests, unless it is deemed appropriate to use crowd tests.

(2) The Minister may make the use of crowd tests instead of campaign tests in a reporting area only if at least 80% of the customers in the reporting area have equipment and subscriptions that enable the download and execution of accurate, free and widely used programmes implementing the crowd tests.

Reporting periods

11.(1) (a) A reporting period shall start on the same day for all participating providers and shall extend for a period of 1 year, from the first day of the first month to the last day of the twelfth month, unless the Minister determines otherwise.

(b) There shall be one reporting period, within a period of 12 months, unless the Minister determines otherwise.

(2) Subregulation (1) shall apply to the Minister when making measurement coverage in accordance with regulation 5.

System readings

12. For the purpose of collecting system readings from a node in the network for a participating provider, the node shall be assigned to the reporting area where the participating provider expects that most of the users served by the node will be.

Reporting areas

13.(1) For the purpose of these Regulations, Mahé constitutes one reporting area, Praslin and La Digue constitute another reporting area.

(2) The outer islands shall be outside the reporting areas referred to under sub-regulation (1).

Representative samples

14.(1) Every representative sample shall comprise measurements made on every working day in only one reporting period and shall consist of measurements made in at least one occurrence of each business hour.

(2) For any representative sample, at most 20% of the measurements shall be made on any single working day and at most 20% of the measurements shall be made in occurrences of any single business hour.

(3) For any representative sample, measurements shall be made in only one reporting area and at least 2% of the measurements made on Mahé or at least 20% of the measurements made on Praslin and La Digue, shall be made in any single administrative district.

(4) Every representative sample shall include at least four hundred measurements.

Bearing of cost

15. A participating provider shall bear his or her own costs for complying with the requirements of these Regulations and for satisfying the requirements imposed under the sanctions under these Regulations.

Governance

16.(1) The Minister may establish and chair working groups to discuss quality of service requirements, such as the detailed obligations implicit in measurement methods.

(2) A participating provider may take part in working groups.

(3) Notwithstanding subregulation (2), a participating provider shall as and when the Minister so requests, take part in the working groups.

Customer awareness

17.(1) A participating provider shall promote among its current and prospective customers, awareness of the Indicators and targets and their significance to popular applications.

(2) A participating provider shall for each of its broadband internet services, identify a pair of downlink and uplink data transfer rates along with any likely constraints on the performance of popular applications.

(3) The Minister may conduct surveys among customers and review complaints by customers to determine how services are perceived or to consider instances where these Regulations need revision.

(4) The Minister shall display prominently on a website and publicise through the press and broadcasters, the measured values of indicators, outcomes of surveys and summaries of complaints.

(5) Before displaying or publicising measured values of indicators, outcomes of surveys and summaries of complaints, the Minister shall discuss every aspect of what will be displayed with the participating provider whose name will appear on the website or in any publication.

Obligation to reach target

18. An operator shall with regards to an indicator ensure that it reaches a target using the procedure named in the Schedule under “measurement result” and described under “measurement method”.

Contravention of regulations

19.(1) A participating provider commits a contravention of these Regulations if he or she fails to —

- (a) satisfy requirements imposed under these Regulations;
- (b) ensure that its measurement results reach each target stated in the Schedules; or
- (c) comply with regulations 3, 4, 6, 7, 8, 9, 16, 17 and 18.

(2) Where a participating provider commits a contravention of these Regulations, the Minister may impose the following sanctions —

- (a) require the publication of information about quality with contents and formats determined by the Minister;
- (b) require submission and implementation of plans to improve services;

- (c) require the payment of credits or rebates to customers; or
- (d) impose a penalty fine of R2000.

(3) Where a participating provider is found to have committed a contravention of these Regulations, the Minister may when applying sanctions, take into account the following factors —

- (a) the extent to which the sanctions can be expected to improve the choice, price or quality of services;
- (b) the number and nature of the services, reporting periods, reporting areas, indicators and targets to which the contravention relates;
- (c) the effects of the contravention on customers or other participating providers;
- (d) the effects of the contravention that are due wholly or partly to other service providers;
- (e) the environmental, financial and operating circumstances of the participating provider;
- (f) the effectiveness of competition with and by the participating provider;
- (g) credits or rebates that have been provided by the participating provider to customers in compensation for the contravention;
- (h) the extent to which the participating provider has complied with these Regulations;
- (i) the number and nature of sanctions that the Minister applied on past occasions when there were contraventions.

(4) The Minister shall not impose sanctions on a participating provider who commits a contravention that is due to “force majeure”.

SCHEDULE 1

Indicators for all services with Fixed Access

Indicator	Target	Measurement Result	Measurement Method
Service supply time	<7 working days for residential services and <5 working days for business services	The mean time in working days taken to fulfil relevant service orders	<p>This is applicable to Fixed Access. For residential services and business services (other than any for which customers have individual service level agreements) separately, there are the following Measurement Domains:</p> <ul style="list-style-type: none"> • Telephony. • Broadband Internet. • Subscription Television. <p>A service order may be submitted in writing, by phone or at a customer service centre. It is relevant if it is not solely about:</p> <ul style="list-style-type: none"> • services that the Service Provider does not supply within fifty (50) metres of the premises of the customer (in which case it is a service complaint). • services that have been ordered already (in which case it is a service complaint). <p>The time taken to fulfill a relevant service order is measured from when the Service Provider undertakes to provide the service by a specific date to when the service is available in normal working order for use by the customer.</p> <p>The service orders contributing to the Measurement Result are the relevant ones that according to System Readings are fulfilled in the Reporting Area during the Reporting Period. The Measurement Result is the sum of the times taken to fulfil such service orders divided by the number of such service orders. It, the number of such service orders, and the number of relevant service orders, are reported separately for each Measurement Domain in each Reporting Area.</p> <p>Service orders that are to be fulfilled at multiple times or places are counted as multiple service orders.</p>

Indicator	Target	Measurement Result	Measurement Method
Fault report ratio	<9% per quarter	The percentage of relevant fault reports submitted per customer	<p>This is applicable to Fixed Access. For residential services and business services separately (other than any for which customers have individual service level agreements), there are the following Measurement Domains:</p> <ul style="list-style-type: none"> • Telephony. • Broadband Internet. • Subscription Television. <p>A fault report may be submitted in writing, by phone or at a customer service centre. It is relevant if it is not solely about:</p> <ul style="list-style-type: none"> • Deficiencies that are not associated by the customer with particular network locations (in which case it is a service complaint). • Faults that have been reported already by the same customer (in which case it is a service complaint). • Faults that are not found when tested. • Equipment that is not supplied, connected or maintained by the Service Provider. • Faults that have arisen during, and because of, maintenance operations about which notice has been given through the press and broadcasters at least forty-eight (48) hours in advance. • Faults that have arisen because of a duly declared state of emergency. <p>The fault reports contributing to the Measurement Result are the relevant ones that according to System Readings are submitted in the Reporting Area during the Reporting Period. The Measurement Result is the number of such fault reports divided by the number of customers for Services in the Measurement Domain in the Reporting Area at the end of the Reporting Period. It, and the number of customers for services in the Measurement Domain in the Reporting Area at the end of the Reporting Period, are reported separately for each Measurement Domain in each Reporting Area.</p> <p>Fault reports about multiple paths are counted as multiple fault reports.</p>

Indicator	Target	Measurement Result	Measurement Method
Fault report clearance time	<72 hours for residential services and <24 hours for business services	The mean time in hours taken to clear relevant fault reports	<p>This is applicable to Fixed Access. For residential services and business services (other than any for which customers have individual service level agreements) separately, there are the following Measurement Domains:</p> <ul style="list-style-type: none"> • Telephony. • Broadband Internet. • Subscription Television. <p>A fault report may be submitted in writing, by phone or at a customer service centre. It is relevant if it is not solely about:</p> <ul style="list-style-type: none"> • Deficiencies that are not associated by the customer with particular network locations (in which case it is a service complaint). • Faults that have been reported already by the same customer. • Faults that are not found when tested. • Equipment that is not supplied, connected or maintained by the Service Provider. • Faults that have arisen during, and because of, maintenance operations about which notice has been given through the press and broadcasters at least forty-eight (48) hours in advance. • Faults that have arisen because of a duly declared state of emergency. <p>The time taken to clear a relevant fault report is measured from when the Service Provider receives the fault report to when the service is restored to normal working order for use by the customer.</p> <p>The fault reports contributing to the Measurement Result are the relevant ones that according to System Readings are cleared in the Reporting Area during the Reporting Period. The Measurement Result is the sum of the times taken to clear such fault reports divided by the number of such fault reports. It, and the number of such fault reports, are reported separately for each Measurement Domain in each Reporting Area.</p> <p>Fault reports about multiple paths are counted as multiple fault reports.</p>

SCHEDULE 2**Indicators for all Services with Mobile Access**

Indicator	Target	Measurement Result	Measurement Method
Community isolation		The durations of unplanned outages lasting at least an hour	<p>This is applicable to Mobile Access. For each Access Technology there is one Measurement Domain, comprising the services supported by that Access Technology.</p> <p>An outage is unplanned unless it occurs during, and because of, maintenance operations about which notice has been given through the press and broadcasters at least forty-eight (48) hours in advance.</p> <p>The unplanned outages contributing to the Measurement Result are those that according to System Readings could affect traffic to or from at least one (1) base station in the Reporting Area throughout at least one (1) hour during the Reporting Period. The Measurement Result is the list of the durations of such unplanned outages, along with when and where they occurred. It is reported separately for each Measurement Domain in each Reporting Area.</p> <p>Outages that take overlapping times but affect traffic to or from different base stations are counted as separate outages, with separate durations.</p>

Indicator	Target	Measurement Result	Measurement Method
Coverage		The received signal strengths in decibelmilliWatts at different times and places	<p>This is applicable to Mobile Access. For each Access Technology there is one Measurement Domain, comprising the services supported by that Access Technology.</p> <p>A signal strength is received if it is obtained as the value of:</p> <ul style="list-style-type: none"> • The Received Signal Strength Indicator (RSSI), if the Access Technology is GSM/GPRS/EDGE. • The Received Signal Code Power (RSCP), if the Access Technology is UMTS/WCDMA/HSPA. • The Reference Signal Receive Power (RSRP), if the Access Technology is LTE/LTE -A/LTE -U. <p>The received signal strengths contributing to the Measurement Result are those that are received according to Field Tests in the Reporting Area during the Reporting Period. The Measurement Result is the list of such received signal strengths, along with when and where they were obtained and whether they were obtained outdoors or indoors and at speeds of more or less than 10 kilometres/hour. It is reported separately for each Measurement Domain in each Reporting Area.</p>

SCHEDULE 3**Section 1.01 Indicators for Telephony with Mobile Access**

Indicator	Target	Measurement Result	Measurement Method
Unsuccessful call setup ratio	<3%	The percentage of attempted calls not set up successfully	<p>This is applicable to Mobile Access. For it there is one Measurement Domain, comprising the Telephony Services.</p> <p>A call setup is unsuccessful if, after providing a valid number properly following receipt of dial tone, the calling user does not receive the called user busy tone, ringing tone or answer signal within 30 seconds. The calls counted for this purpose are all of those to destinations in the country, regardless of the networks that host the destinations.</p> <p>The unsuccessful call setups contributing to the Measurement Result are those that are unsuccessful according to Field Tests in the Reporting Area during the Reporting Period. The Measurement Result is the number of such unsuccessful call setups divided by the number of attempted call setups in the Field Tests. It, and the number of attempted call setups, are reported separately for each Measurement Domain in each Reporting Area.</p> <p>The proportion of test calls going off-net should be approximately the proportion of live traffic going off-net.</p>

Indicator	Target	Measurement Result	Measurement Method
Dropped call ratio	<2%	The percentage of successfully setup calls not continued until ended by a user	<p>This is applicable to Mobile Access. For it there is one Measurement Domain, comprising the Telephony Services.</p> <p>A call is dropped if, after successful setup, it does not continue until it is ended by a user or until it lasts for 120 seconds (whichever is the sooner). The calls counted for this purpose are all of those to destinations in the country, regardless of the networks that host the destinations.</p> <p>The dropped calls contributing to the Measurement Result are those that are dropped according to Field Tests in the Reporting Area during the Reporting Period. The Measurement Result is the number of such dropped calls divided by the number of successful call setups in the Field Tests. It, and the number of successful call setups, are reported separately for each Measurement Domain in each Reporting Area.</p> <p>The proportion of test calls going off-net should be approximately the proportion of live traffic going off-net.</p>

SCHEDULE 4**Indicators for Broadband Internet with Fixed Access or Mobile Access**

Indicator	Target	Measurement Result	Measurement Method
Latency	<p><250 milliseconds for services using cable connections to and from Seychelles and</p> <p><1,000 milliseconds for Services using satellite connections to or from Seychelles</p>	The mean time in milliseconds taken to complete successful round trip data transfers, for each remote end point	<p>This is applicable to Fixed Access and Mobile Access separately. For each of them and for each pair of Downlink and Uplink Data Transfer Rates separated out by the advertising of the Service Provider there is one Measurement Domain, comprising the Broadband Internet Services advertised with that pair of Data Transfer Rates.</p> <p>Separate Measurement Results are provided for two remote end points approved by the Minister. Each of these end points should be such that the traffic between Seychelles and places easily accessed from the end point is a significant proportion of the traffic carried by the Service Provider.</p> <p>A round trip data transfer is successful if is completed without error in a certain time period. The Minister may change the time period, the protocol for the data transfer and the payload size for the data packets. Unless the Minister does this, the time period is 2 seconds for a round trip, the protocol is the Internet Control Message Protocol (ICMP) and the payload size is between 32 and 96 bytes (depending on the time stamps carried).</p> <p>The successful round trip data transfers contributing to the Measurement Result for a given remote end point are those that are successful according to Field Tests in the Reporting Area during the Reporting Period. The Measurement Result is the sum of the times taken to complete such successful round trip data transfers divided by the number of such successful round trip data transfers. It, and the number of such successful round trip data transfers, are reported separately for each remote end point for each Measurement Domain in each Reporting Area.</p>

Indicator	Target	Measurement Result	Measurement Method
Packet loss ratio	<1%	The percentage of attempted round trip data transfers not completed successfully, for each remote end point	<p>This is applicable to Fixed Access and Mobile Access separately. For each of them and for each pair of Downlink and Uplink Data Transfer Rates or each Access Technology separated out by the advertising of the Service Provider there is one Measurement Domain, comprising the Broadband Internet Services advertised with that pair of Data Transfer Rates.</p> <p>Separate Measurement Results are provided for two remote end points approved by the Minister. Each of these end points should be such that the traffic between Seychelles and places easily accessed from the end point is a significant proportion of the traffic carried by the Service Provider.</p> <p>A round trip data transfer is unsuccessful if it is not completed without error in a certain time period. The Minister may change the time period, the protocol for the data transfer and the payload size for the data packets. Unless the Minister does this, the time period is 2 seconds for a round trip, the protocol is the Internet Control Message Protocol (ICMP) and the payload size is between 32 and 96 bytes (depending on the time stamps carried).</p> <p>The unsuccessful round trip data transfers contributing to the Measurement Result for a given remote end point are those that are unsuccessful according to Field Tests in the Reporting Area during the Reporting Period. The Measurement Result is the number of such unsuccessful round trip data transfers divided by the number of attempted round trip data transfers in the Field Tests. It, and the number of attempted round trip data transfers, are reported separately for each remote end point for each Measurement Domain in each Reporting Area.</p>

Indicator	Target	Measurement Result	Measurement Method
Throughput	<20%	The percentage of successful file access data transfers for which the measured Data Transfer Rate is less than the advertised Data Transfer Rate, for the Downlink and Uplink for each remote end point	<p>This is applicable to Fixed Access and Mobile Access separately. For each of them and for each pair of Downlink and Uplink Data Transfer Rates separated out by the advertising of the Service Provider there is one Measurement Domain, comprising the Broadband Internet Services advertised with that pair of Data Transfer Rates.</p> <p>Separate Measurement Results are provided for the Downlink and Uplink for two remote end points approved by the Minister. Each of these end points should be such that the traffic between Seychelles and places easily accessed from the end point is a significant proportion of the traffic carried by the Service Provider.</p> <p>A file download or upload is successful if it is completed without error in a certain time period. The Minister may change the time period, the protocol for the file download or upload and the file size. Unless the Minister does this, the time period is 120 seconds, the protocol is HyperText Transfer Protocol (HTTP) over single Transmission Control Protocol (TCP) connections and the file size is between 500,000 bytes and 520,000 bytes (depending on the operating system attributes).</p> <p>A file download or upload is regarded as prolonged if it is successful but its measured Data Transfer Rate, obtained by dividing the size of the file by the time taken by the download or upload, is less than the corresponding advertised Data Transfer Rate.</p> <p>The successful file downloads or uploads contributing to the Measurement Result for a given remote end point are those that are successful according to Field Tests in the Reporting Area during the Reporting Period. The Measurement Result is the number of prolonged file downloads or uploads divided by the number of successful file downloads or uploads in the Field Tests. It, and the number of successful file downloads or uploads, are reported separately for the Downlink and Uplink for each remote end point for each Measurement Domain in each Reporting Area.</p>

Indicator	Target	Measurement Result	Measurement Method
Unsuccessful file access ratio		The percentage of attempted file access data transfers not completed successfully, for the Downlink and Uplink for each remote end point	<p>This is applicable to Fixed Access and Mobile Access separately. For each of them and for each pair of Downlink and Uplink Data Transfer Rates separated out by the advertising of the Service Provider there is one Measurement Domain, comprising the Broadband Internet Services advertised with that pair of Data Transfer Rates.</p> <p>Separate Measurement Results are provided for the Downlink and Uplink for two remote end points approved by the Minister. Each of these end points should be such that the traffic between Seychelles and places easily accessed from the end point is a significant proportion of the traffic carried by the Service Provider.</p> <p>A file download or upload is unsuccessful if it is not completed without error in a certain time period. The Minister may change the time period, the protocol for the file download or upload and the file size. Unless the Minister does this, the time period is 120 seconds, the protocol is HyperText Transfer Protocol (HTTP) over single Transmission Control Protocol (TCP) connections and the file size is between 500,000 bytes and 520,000 bytes (depending on the operating system attributes).</p> <p>The unsuccessful file downloads or uploads contributing to the Measurement Result for a given remote end point are those that are attempted according to Field Tests in the Reporting Area during the Reporting Period. The Measurement Result is the number of such unsuccessful file downloads or uploads divided by the number of attempted file downloads or uploads in the Field Tests. It, and the number of attempted file downloads or uploads, are reported separately for the Downlink and Uplink for each remote end point for each Measurement Domain in each Reporting Area.</p>

SCHEDULE 5**Section 1.02 Indicators for all Services with Fixed Access or Mobile Access**

Indicator	Target	Measurement Result	Measurement Method
Service complaint ratio	<3% per quarter	The percentage of relevant service complaints submitted per customer, for each topic of service complaints	<p>This is applicable to Fixed Access and Mobile Access separately. For each of them, there are the following Measurement Domains:</p> <ul style="list-style-type: none"> • Telephony. • Broadband Internet. • Subscription Television. <p>For each of these the following topics of service complaints are distinguished from each other:</p> <ul style="list-style-type: none"> • Billing, charging, payments and credit management. • Network operation, coverage, availability and performance. • Customer service, complaint handling and request fulfilment. • Other. <p>A service complaint may be submitted in writing, by phone or at a customer service centre. It is relevant if it is not solely:</p> <ul style="list-style-type: none"> • A relevant service order. • A relevant fault report. • A request for information. • A request to add, change or end services. • A comment about services of other Service Providers. <p>The service complaints contributing to the Measurement Result for a given topic are the relevant ones that according to System Readings are submitted in the Reporting Area during the Reporting Period. The Measurement Result is the number of such service complaints divided by the number of customers for services in the Measurement Domain in the Reporting Area at the end of the Reporting Period. It, and the number of customers, are reported separately for each topic for each Measurement Domain in each Reporting Area.</p> <p>Service complaints about multiple topics are counted as multiple service complaints.</p>

Indicator	Target	Measurement Result	Measurement Method
Service complaint resolution time	<48 hours	The mean time in hours taken to resolve relevant service complaints, for each topic of service complaints	<p>This is applicable to Fixed Access and Mobile Access separately. For each of them, there are the following Measurement Domains:</p> <ul style="list-style-type: none"> • Telephony. • Broadband Internet. • Subscription Television. <p>For each of these the following topics of service complaints are distinguished from each other:</p> <ul style="list-style-type: none"> • Billing, charging, payments and credit management. • Network operation, coverage, availability and performance. • Customer Service, complaint handling and request fulfilment. • Other. <p>A service complaint may be submitted in writing, by phone or at a customer service centre. It is relevant if it is not solely:</p> <ul style="list-style-type: none"> • A relevant service order. • A relevant fault report. • A request for information. • A request to add, change or end services. • A comment about services of other Service Providers. <p>The time taken to resolve a relevant service complaint is measured from when the Service Provider receives the service complaint to when the customer is satisfied with the outcome.</p> <p>The service complaints contributing to the Measurement Result for a given topic are the relevant ones that according to System Readings are resolved in the Reporting Area during the Reporting Period. The Measurement Result is the sum of the times taken to resolve such service complaints divided by the number of relevant service complaints. It, and the number of such service complaints, are reported separately for each topic for each Measurement Domain in each Reporting Area.</p> <p>Service complaints about multiple topics are counted as multiple service complaints.</p>

Indicator	Target	Measurement Result	Measurement Method
Customer call answer time	<30 seconds	The mean time in seconds taken to answer customer calls	<p>This is applicable to Fixed Access and Mobile Access, which together form its one Measurement Domain.</p> <p>The time taken to answer a customer call is measured from when the calling user receives the called user busy tone, ringing tone or answer signal to when a human answers.</p> <p>A customer call is relevant if it is made to a telephone number that can provide a human answer, possibly after voice or keypad interactions and that is advertised as being for service orders, fault reports, service complaints, operator assistance or directory enquiries.</p> <p>The customer calls contributing to the Measurement Result are the relevant ones that according to System Readings are made from the Reporting Area during the Reporting Period. The Measurement Result is the sum of the times taken to answer such customer calls divided by the number of such customer calls. It, the number of such customer calls, and the number of relevant customer calls, are reported separately for each Reporting Area.</p>

MADE this 3rd day of November, 2022.

**AHMED AFIF
VICE-PRESIDENT**

PUBLIC ENTERPRISES BILL, 2022*(Bill No. 32 of 2022)***OBJECTS AND REASONS**

The object of this Bill is to provide for the continuation of the Public Enterprise Monitoring Commission (hereinafter referred to as “the Commission”); to establish its governing body and to provide for its composition, functions, powers, management and governance.

The Bill makes provision for the efficient governance of public enterprises and the monitoring of their performances and provides a harmonised and coherent framework for their establishment, governance, and operation.

In addition, the Bill seeks to clarify the accountability and the relationships between board members and those charged with governance and management of the public enterprises, responsible Ministers, the Minister responsible for finance and the Commission.

Finally, the Bill seeks to repeal and replace the Public Enterprise Monitoring Commission Act (Act No 3 of 2013), and to provide for other connected matters.

Dated this 21st day of November, 2022.

**NAADIR HASSAN
MINISTER OF FINANCE,
NATIONAL PLANNING AND TRADE**

PUBLIC ENTERPRISES BILL, 2022

(Bill No. 32 of 2022)

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PUBLIC ENTERPRISES BILL, 2022

(Bill No. 32 of 2022)



A BILL FOR

AN ACT TO PROVIDE FOR THE CONTINUATION OF THE PUBLIC ENTERPRISE MONITORING COMMISSION, TO PROVIDE FOR ITS COMPOSITION, FUNCTIONS, POWERS, MANAGEMENT AND GOVERNANCE; TO MAKE PROVISION FOR THE EFFICIENT GOVERNANCE OF PUBLIC ENTERPRISES AND THE MONITORING OF THEIR PERFORMANCES; TO PROVIDE A HARMONISED AND COHERENT FRAMEWORK FOR THEIR ESTABLISHMENT, GOVERNANCE, AND OPERATIONS, TO CLARIFY ACCOUNTABILITY RELATIONSHIP BETWEEN PUBLIC ENTERPRISES, BOARD MEMBERS, RESPONSIBLE MINISTERS, AND THE COMMISSION; TO REPEAL THE PUBLIC ENTERPRISE MONITORING COMMISSION ACT; AND TO PROVIDE FOR OTHER INCIDENTAL OR CONNECTED MATTERS.

ENACTED by the President and the National Assembly.

PART I - PRELIMINARY

Short title and commencement

1. This Act may be cited as the Public Enterprises Act, 2022 and shall come into operation on such date as the Minister may, by notice published in the Gazette appoint.

Interpretation

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

“accounting officer” means a Chief Executive Officer, or any other officer whose duties involve being responsible for the management of moneys, stores, and the assets of a public enterprise;

“asset” means any item of economic value owned by a public enterprise;

“associate” means the company which holds, by itself or its nominees, shares in another company, which entitles the holder of such shares to exercise at least one-fifth of the unrestricted voting rights exercisable at any general meeting of that other company;

“Board” means the Board of directors or other governing body of the public enterprise, by whatever name called, holding positions comparable with those of the Board of directors of a company;

“Chief Executive Officer” means —

- (a) in relation to the Commission, the person who is responsible under the direct authority of the Commissioners to administer this Act;
- (b) in relation to a public enterprise, the person who is responsible under the direct authority of the Board for the conduct of the business of the public enterprise;

“Commission” means the Public enterprise Monitoring Commission continued under section 5;

“Commissioner” means a member of the Commission appointed under section 9;

“controlling power” means the power effectively used by the Government to direct the activities and guide the operation of a public enterprise;

“Court” means the Supreme Court;

“Director” means a person appointed as Director, trustee or a member of the Board of a public enterprise;

“exceptional circumstances” means a situation which is not ordinary and that could not be reasonably foreseen;

“governing law” means the Act or Decree which establishes and provides for the objectives, purposes, and governance of a public enterprise;

“independent” means to be self-governing, neutral and not subject to the direction or control of any person or authority;

“internal audit” means a process to measure, evaluate and report to the Board on the adequacy and effectiveness of the system of internal control, risk management strategies and governance of the organisation used to ensure the validity of financial and other information;

“major decision” means a course of action purposely chosen from a set of alternatives to achieve organisational or managerial objectives or goals;

“minority shares” means a partial ownership stake in a company that is less than 50 percent of the total shares in terms of voting rights;

“Minister” means the Minister responsible for finance;

“organisation” includes a company, a body corporate, a statutory corporation, a statutory body, a trust, a partnership, or a joint venture;

“parent” means a parent company that owns more than 50 percent of the outstanding voting shares in another company.

“public corporation” means any corporation, board or any other body which was or is established by or under any written law other than the Companies Act, with capital wholly or partly provided by the Government by way of grant, loan or other form;

“public enterprise” means any public Corporation, board or other body, which was or is established under any written law, including the Companies Act, where the Government has the controlling interest; and is specified in Schedule 1;

“principal officer” means a member of a Board, Chief Executive Officer, senior manager, chief financial officer, financial controller, internal auditor, auditor, Board Secretary; and includes a person however designated holding similar position and responsibilities;

“responsible Minister” means the Minister for the time being responsible for the relevant public enterprise, specified in column 2 of Schedule 1;

“Secretary” means a person appointed by the Board of a public enterprise to discharge the duties of a Board Secretary;

“share” means a share in the capital of a company and includes stock;

“shareholder” means a person who agrees to become a member of a company, and whose name is entered in its register of members, or a person who is a subscriber to the memorandum to whom shares have been issued;

“significantly affecting events” means the occurrence of events that may negatively impact the achievement of the objectives of the public enterprise and its subsidiaries;

“subsidiary” means a company in which 50 percent or more of the outstanding voting shares are owned by another company;

“special reviews or investigations” means any matter that the Commission reviews that is not included in the annual audit or investigation plan of the Commission;

“Standard Scale” means the standard scale of fines specified under the Criminal Offences (Standard Scale of Fines) Act, 2021.

Purpose of the Act

3. The purpose of this Act is to provide a framework for governance, operations, performance monitoring and financial oversight of public enterprises and to clarify accountability relationship between public enterprises, their governing bodies, their responsible Ministers, the Commission and to —

- (a) specify the role of the Government as the owner and a shareholder of public enterprises;
- (b) specify the role and powers of the responsible Minister;
- (c) specify the role and powers of the Minister responsible for finance;
- (d) specify the functions, powers, duties of the Commission;
- (e) specify the rights, powers, duties, and responsibilities of the members of the Board in respect to the governance and operation of public enterprises, including their duty to ensure the financial stability of public enterprises;
- (f) specify the rights, powers, duties, and responsibilities of the management of public enterprises, including their duty to ensure the sound management of public enterprises;
- (g) set reporting and accountability requirements;

- (h) facilitate the reasonable and efficient use of public enterprise resources and reserves; and
- (i) specify provisions for the investigation of the affairs of public enterprises.

Application of Act

4.(1) This Act applies to all public enterprises in which the government has majority ownership of investment.

PART II - PUBLIC ENTERPRISE MONITORING COMMISSION

Establishment of the Commission

5.(1) The Commission established under section 5 of the Public Enterprises Monitoring Commission Act, 2013 shall continue to exist as if established under this Act and is a body corporate.

(2) Notwithstanding any other laws, the Commission shall have full administrative autonomy in discharging its functions under this Act.

(3) Each organ of State shall assist the Commission to perform its functions effectively.

Object of the Commission

6. The principal object of the Commission is to —

- (a) act as the principal agent for the Government to monitor all aspects of the affairs of the public enterprises to ensure that the shareholder's wealth is being protected and maximised through the conduct of business by public enterprises;
- (b) agree on performance targets and, to monitor and evaluate the overall performance of the public enterprises;
- (c) promote the efficient operation of public enterprises,

taking into consideration the fiscal and benefit monitoring aspects;

- (d) promote ethics of good governance in all business affairs of the public enterprises, including financial matters such as, investment and budget;
- (e) give recommendations to improve performance and affairs of the public enterprises and thus increase shareholder's wealth; and
- (f) report on the risk management strategies and governance of the public enterprises.

Funds of the Commission

7.(1) The Commission shall have its own Fund.

(2) There shall be paid into the Fund all sums of money or assets as may be —

- (a) voted upon by the National Assembly in an appropriation Act for the use of the Commission;
- (b) received by the Commission in the exercise, performance and discharge of its powers, duties, and functions; and
- (c) received by the Commission as grants or donations through procedures laid-down in the Public Finance Management Act, 2013.

(3) There shall be paid out of the Fund all such sums of money as may be required to defray any expenditure incurred by the Commission in the exercise, performance and discharge of its powers, duties, and functions.

Relations with other regulatory authorities

8.(1) The Commission may —

- (a) liaise with any regulatory authority on matters of common interest, and without limiting the generality of this power, may require the necessary information from, exchange information with, and receive information from any authority relating to
 - (i) matters of common interest;
 - (ii) a specific complaint or investigation; or
 - (iii) the discharge of its objects and functions specified under this Act;
- (b) negotiate and enter into agreements with any regulatory authority, so as to —
 - (i) co-ordinate and harmonise the exercise of jurisdiction over such matters within that industry or sector;
 - (ii) ensure the consistent application of this Act;
 - (iii) participate in the proceedings of any regulatory authority; and
 - (iv) advise, or receive advice from any regulatory authority.

(2) The Commission may submit or request any report or information from a regulatory authority related to the activities of that regulatory authority, in order to discharge the mandate of the Commission under this Act.

(3) The Commission may liaise with the Auditor General and exchange such information as may be deemed necessary for effective delivery of the mandate of the Commission.

PART III - COMMISSIONERS OF THE COMMISSION

Appointment of Commissioners

9.(1) The Commission shall consist of —

- (a) a Chairperson and Vice-Chairperson;
- (b) a minimum of five and a maximum seven other Commissioners; and
- (c) the Secretary to the Commission.

(2) The President shall, upon the recommendation of the Minister appoint the Chairperson, Vice-Chairperson and Commissioners from amongst persons with proven integrity, relevant cognitive experience and demonstrated capacity in matters relating to industry, trade, finance, law, corporate governance and administration.

(3) The Chief Executive Officer shall be an ex officio member of the Commission.

Disqualifications to be a Commissioner

10. A person is disqualified from appointment as a Commissioner where that person —

- (a) is the Chief Executive Officer, or a member of Staff of the Commission;
- (b) is serving as a chief executive officer or member of a board of any public enterprise, its subsidiaries, joint venture or associate;
- (c) is having a conflict of interest under section 12;
- (d) has been convicted of any offence under this Act;
- (e) has been convicted of any offence involving dishonest or fraudulent acts within or outside the Republic;

- (f) has been adjudged insolvent under the Insolvency Act;
- (g) has been adjudged to be of unsound mind;
- (h) was terminated from public office due to poor performance, misconduct, or disciplinary proceedings;
- (i) has been disqualified by the Court to serve as a public officer;
- (j) is under eighteen years of age; or
- (k) is a person who is or would be prohibited from being a Director of or being concerned or taking part in the promotion, formation or management of any commercial activity.

Remuneration and other benefits

11. The salaries, allowances, benefits and other terms and conditions of service of the members of the Commission shall be determined by the Minister.

Disclosure of interest by Commissioners

12.(1) A Commissioner who has a direct or indirect, personal or financial interest in any matter relating to the public enterprises or with the affairs of the Commission which explicitly or implicitly could impair the objectivity of the Commissioner shall be considered to have a conflict of interest for the purpose of this Act.

(2) Any form and nature of conflict of interest linked to a subject matter being discussed at a meeting of the Commission shall be disclosed by the Commissioner concerned and that Commissioner shall not further attend that meeting nor participate in any deliberations or decisions of the Commission in relation to the matter.

(3) A disclosure of interest in accordance with subsections (1) and (2) shall be noted in the minutes of the concerned meeting of the Commission.

Tenure of office

13. A person appointed under section 9 shall hold office for a period of five years and shall be eligible for re-appointment.

Termination, resignation, removal and vacancy of Commissioners

14.(1) The office of a Commissioner shall become vacant —

- (a) upon resignation by the Commissioner, resigns by giving not less than twenty-eight days' notice in writing to the President;
- (b) upon removal from the office by the President;
- (c) upon disqualification from being a Commissioner under the section 10;
- (d) upon recommendation for removal from office by the responsible Minister;
- (e) where the holder is found guilty of an offence committed under this Act;
- (f) when the holder dies;
- (g) upon continuous absence by the holder from office for 3 consecutive meetings without the consent of the Chairperson; or
- (h) the tenure of office expires.

(2) Where a vacancy occurs on the Commission, the President shall, with the recommendation of the responsible Minister appoint a person to replace the member for the remainder of the term of the member who resigned or was removed.

Proceedings of the Commission

15.(1) There shall be a charter of the Commission which shall govern the proceedings of the Commission.

(2) The Commission may, in its discretion, invite members of the Board, management and other representatives of a public enterprise and any other persons or entities who or which, in the opinion of the Commission, may have an interest in the matter to be considered by the Commission to —

- (a) make representations to the Commission in relation to the matter in the manner and form as the Commission may determine, and
- (b) to attend a meeting or part of a meeting of the Commission as observers and to take part in the deliberations at the meeting of the Commission, but a person so attending has no vote at the meeting.

Committees of the Commission

16.(1) The Commission may establish committees —

- (a) to advise the Commission in relation to any matter which the Commission refers to it; or
- (b) to exercise any of the powers or perform any of the duties of the Commission which the Commission delegates or assigns to it.

(2) The Commission may, at any time dissolve or reconstitute a committee.

Directives by the President, Minister or responsible Minister

17.(1) The President may give to the Commission such directives as appear to him to be just and proper for the effective discharge of the functions of the Commission under this Act and it shall be the duty of the Commission to comply with those directives.

(2) The Minister, or the responsible Ministers with the consent of Minister, may request the Commission to prioritise or undertake functions within the mandate of the Commission when and where need arises.

Protection for action taken under this Act

18.(1) No Commissioner shall assume any management responsibility or be involved in the day-to-day administration of the Commission or any public enterprise, and any Commissioner who fails to comply with this provision shall be personally liable for any loss or damage caused.

(2) No suit shall be instituted against a member of the Commission, an employee or servant of the Commission for any act done or purported to be done in good faith by such member, officer or servant under this Act or upon the direction of the Commission.

(3) Any expenses incurred by the Commission in any suit or prosecution brought by or against it before any court, shall be paid out of the Fund of the Commission, and any costs paid to, or recovered by the Commission in any such suit or prosecution shall be credited to the Fund of the Commission.

(4) Any expenses incurred by any person referred to under subsection (2) in any suit or prosecution brought against him or her before any court shall be paid out of the Fund of the Commission.

Secretary of the Commission

19.(1) The Chairperson in consultation with the members of the Commission shall appoint a person to be the Secretary to the Commission.

(2) The Secretary shall, subject to the general control of the Commission be responsible for —

- (a) keeping proper records of the proceedings and decisions of the Commission;
- (b) communicating decisions of the Commission;
- (c) submitting documents on behalf of the Commission; and
- (d) subject to the approval of the Chairperson of the Commission, represent the Commission in his or her capacity as the Secretary.

PART IV - CHIEF EXECUTIVE OFFICER OF THE COMMISSION

Appointment of the Chief Executive Officer

20.(1) The President shall, upon the recommendation of the Commission and in consultation with the Minister appoint the Chief Executive Officer.

(2) A person appointed under subsection (1) shall be qualified by reason of having had experience of, and having shown capacity in matters relating to industry, trade, finance, law, management and administration.

(3) The President shall, upon recommendation of the Commission determine the terms and conditions of service of the Chief Executive Officer.

(4) The President shall, upon the recommendation of the Commission and in consultation with the Minister appoint a Deputy Chief Executive Officer to the Commission and all the provisions relating to the Chief Executive Officer shall with the necessary modifications be applicable to the Deputy Chief Executive Officer.

Disqualifications to be the Chief Executive Officer

21. A person shall be disqualified from being appointed a Chief Executive Officer where that person —

- (a) serves as a Chief Executive Officer or member of a Board of any public enterprise, its subsidiaries, joint ventures or associates;
- (b) has a conflict of interest under section 22;
- (c) has been convicted of any offence under this Act;
- (d) has been convicted of an offence involving dishonest or fraudulent acts within or outside the Republic;
- (e) is adjudged insolvent under the Insolvency Act;
- (f) is adjudged to be of unsound mind;

- (g) has been terminated from public office due to poor performance, misconduct, or disciplinary proceedings;
- (h) has been disqualified by the Court to serve as a public officer;
- (i) is under eighteen years of age; or
- (j) is a person who is or would be prohibited from being a Director of or being concerned or taking part in the promotion, formation or management of any commercial activity.

Disclosure of conflict of interest by Chief Executive Officer

22.(1) When the Chief Executive Officer has a direct or indirect, personal or financial interest in any matter relating to the public enterprises or with the affairs of the Commission which explicitly or implicitly could impair his or her objectivity, that situation shall be considered a conflict of interest for the purpose of this Act.

(2) Any form of such conflict of interest linked to subject matter being handled by the Commission shall be disclosed to the Commission and appropriate action shall be taken by the Commission to prevent any form of impairment of the objectivity and independence of the Commission.

(3) A conflict of interest under this section shall be disclosed to the Commission and shall be documented by the Commission.

Tenure of office

23. The Chief Executive Officer shall be appointed for a term of three-years and shall be eligible for re-appointment.

Termination, resignation, removal and vacancy of the Chief Executive Officer

24.(1) The Office of a Chief Executive Officer shall become vacant when he or she —

- (a) resigns from office by giving not less than two months' notice in writing to the President through the Commission and the Minister;
- (b) is removed from the office by the President upon recommendation of the responsible Minister or the Commission;
- (c) becomes disqualified from being a Chief Executive Officer under section XX;
- (d) is found guilty for an offence committed under this Act;
- (e) dies; or
- (f) completes his or her contract period.

(2) Where a vacancy occurs in the post of Chief Executive Officer, the President shall, with the recommendation of the responsible Minister appoint a person as the new Chief Executive Officer, and until such time, the Deputy Chief Executive Officer shall assume the duties of the Chief Executive Officer.

Functions and powers of the Chief Executive Officer

25. The Chief Executive Officer is responsible for the general administration of this Act and the Commission; and for carrying out any functions assigned to him or her in this Act, and shall —

- (a) manage and direct the day-to-day activities of the Commission for the effective administration of this Act;
- (b) be in charge of the administration, management and control of the employees and staff of the Commission;
- (c) be the accounting officer of the funds of the Commission;
- (d) implement decisions of the Commission;

- (e) sign documents and correspondences on behalf of the Commission;
- (f) delegate any function of the Chief Executive Officer to any employee of the Commission or an expert appointed by the Commission; and
- (g) handle such other matters as he or she may consider necessary or expedient for the proper administration of this Act.

PART V - POWERS, FUNCTIONS AND REPORTING OBLIGATIONS OF THE COMMISSION

Functions of the Commission

26. The functions of the Commission are to —

- (a) implement the provisions of this Act;
- (b) monitor compliance with the governing laws by the public enterprises;
- (c) promote generally accepted common principles for good corporate governance and leading practices on governing the public enterprises;
- (d) monitor compliance with the code of corporate governance by the public enterprises;
- (e) undertake due diligence analysis on major decisions of the public enterprises upon request by the Board or the responsible Minister prior to implementation;
- (f) contribute to the due diligence of nominated persons for office of directors to the Boards and Chief Executive Officers of the public enterprises and advise the appointing authority on such persons;

- (g) advise the responsible Minister on the performance of members of the Boards and the Chief Executive Officers of the public enterprises;
- (h) monitor and recommend to the responsible Minister the removal of any Board member of a public enterprise from office or for non-compliance with this Act;
- (i) evaluate and assess criteria for the performance measurement of the public enterprises; and monitor and evaluate the performance of the public enterprises against such agreed targets;
- (j) undertake investigation or inspection into the affairs of a public enterprise;
- (k) provide guidance in relation to performance agreements to be entered into between a responsible Minister and the individual members of a Board of a public enterprise, and between such Board and its Chief Executive Officer, and between its Chief Executive Officer and senior management staff of the public enterprise;
- (l) analyse the proposed annual budget of a public enterprise and advise the Minister, the responsible Minister, and the appropriate Board as to its adequacy or suitability in compliance with the governing law;
- (m) monitor the implementation of actions laid out in the annual plans of the public enterprises and identify and report on factors inhibiting the realisation of the set targets;
- (n) assess the investment proposals of the public enterprises to ensure long-term viability;
- (o) monitor and report on risks management strategies of the public enterprises;

- (p) identify issues relating to the operational and fiscal risks of the public enterprises that may have material impact on the public enterprises and the economy as a whole;
- (q) assist the appropriate authorities in the evaluation of policies and strategies so as to ensure sound and efficient management of the public enterprises; and
- (r) facilitate the provision of programmes for the training and development of members of the Boards and management staff of the public enterprises on corporate governance and leading management practices.

Powers of the Commission

27. For the performance of its functions under this Act, the Commission shall have power to —

- (a) compel any member of a Board, a Chief Executive Officer or any other officer of a public enterprise to appear before the Commission to clarify any issues regarding the finance, operations, governance or any other matter under this Act;
- (b) request any information on the affairs and operation of the public enterprise on matters provided for under this Act;
- (c) compel the production of books, records, papers, minutes of meetings, documents and records as the Commission may consider necessary or proper for any proceedings or investigation;
- (d) make copies of books, records, papers, minutes of meetings and documents as it may consider necessary or proper for any proceedings or investigation;
- (e) carry out on-site and off-site inspections or investigation as deemed necessary for the purpose of carrying out its functions;

- (f) monitor any matter to the extent that it affects the functions of the Commission;
- (g) participate in strategic discussions as an observer to the extent that it affects the functions of the Commission;
- (h) formulate a framework for a sustainable and stable public enterprise performance strategy;
- (i) make recommendations to the Government or make suggestions to the public enterprises on any matter to secure and enhance the shareholder's interest and wealth;
- (j) make rules and decisions in respect of the effective management of the affairs of the Commission and deliver its mandate;
- (k) enter into such contracts as are deemed necessary for the discharge and performance of its functions and duties;
- (l) issue circulars or mandatory guidelines to the public enterprises;
- (m) enter into agreements for co-operation with educational and other institutions, whether in Seychelles or abroad, for the exchange of information, personnel, advisory services and the training of personnel;
- (n) undertake all such activities as in the opinion of the Commission are necessary to facilitate the discharge and performance of its functions and duties under this Act.

Reporting obligations of the Commission

28.(1) With respect to the fiscal risks analysis report for public enterprises, the Commission shall, after the end of each calendar year, or within such longer period as the Minister may approve, submit to the Minister a report containing and quantifying the fiscal risks emanating from such enterprises throughout the preceding calendar year.

(2) Regarding the financial analysis report for public enterprises, the Commission shall submit to the Minister at such time during a financial year as the Minister may determine, a summary of the public enterprise's financial positions that applies to the current financial year and for two preceding financial years.

(3) With respect to the report on statements of corporate intent of public enterprises, the Commission shall submit to the Minister at such time during a financial year as the Minister may determine, a summary analysis of updates to the statements of corporate intent of all public enterprises.

(4) Regarding the performance report of the public enterprises, the Commission shall submit to the Minister its annual report showing targets and status of performance of the public enterprises up to the reporting date.

(5) The Commission shall submit to the Minister its annual report showing the status of risk management and governance of the public enterprises.

(6) A copy of the reports submitted under this section shall be laid before the National Assembly as provided for in regulation 25(e) of the Public Finance Management Regulations, 2014.

(7) The Commission shall not later than two months after the end of each quarter, submit to the Minister, a report on the financial and operational performance of the public enterprises and any emerging issues pertaining to the public enterprises.

(8) The Commission shall, not later than three months after the end of each year, submit to the President a report on the activities and the administration of the Commission during the immediately preceding year.

(9) The Minister may, at any time request from the Commission or direct the Commission to submit a special report on any subject matter within the mandate of the Commission.

PART VI - AUDIT, ACCOUNTS AND RECORDS OF THE COMMISSION

Annual estimates, accounts and records

29. The Commission shall —

- (a) cause to be prepared in each year an estimate of the expenditure and income of the Commission during the next succeeding year and when prepared, they shall be submitted in accordance with the provisions made in the Public Finance Management Act and regulations;
- (b) keep and maintain proper accounts of the Commission and accounting records for a minimum 7 years, and write-off or disposal of any accounting documents shall be done in accordance with the Public Finance Management Act, and regulations made under that Act.

Audit of accounts

30. The accounts of the Commission shall be audited by the Auditor General in accordance with Article 158 of the Constitution.

Confidentiality of information

31.(1) A member of the Commission, an employee, consultant, expert or any other person required or permitted to be present at a meeting of the Commission shall not publish or communicate or in any other way disclose any information relating to the affairs of —

- (a) any public enterprise;
- (b) a director of the Board of a public enterprise; or
- (c) a person being considered or recommended as a candidate for appointment as a director of a Board of a public enterprise, that has come to such person's knowledge —

- (i) in the exercise of any power or performance of any duty or function in connection with the functions of the Commission; or
- (ii) as a result of such person's attendance at a meeting of the Commission.

(2) Subsection (1) does not apply to information disclosed —

- (a) for the purpose of the proper administration or enforcement of this Act or the performance of a function of the Commission; and
- (b) by way of an order of the Court;

(3) A person who contravenes subsection (1) shall be disqualified to be a member of the Commission, a member of a Board of a government agency, or of a public enterprise.

(4) A person who contravenes subsection (1) shall be personally responsible for the non-compliance.

PART VII - STAFF OF THE COMMISSION

Appointment of staff

32.(1) The Commission shall have power to appoint such officers and employees as it may deem necessary for the administration and management of the affairs of the Commission.

(2) The officers and staff of the Commission appointed under subsection (1) shall report to and be under the control of the Chef Executive Officer.

(3) The Commission shall, in consultation with the Minister determine the remuneration payable to, and the conditions of service of officers and employees of the Commission.

(4) All the staff and officers of the Commission and other persons employed in the Commission shall in respect of their service in the Commission be treated as public servants.

Appointment of consultants and experts

33.(1) The Commission may engage under contract of service, persons with appropriate qualifications, skills, or experience to render professional, technical, or other assistance as the Commission may consider necessary.

(2) The Commission shall engage a consultant or expert under subsection (1) only after a selection competitive tender process as provided by law.

(3) A person appointed or engaged under subsection (1) shall receive such remuneration and allowances as the Commission may determine.

Conflict of interest and duties

34.(1) The personal interest of any staff, employee, consultant or expert hired by the Commission shall not conflict with any of his or her duties under this Act.

(2) Any staff, employee, consultant or expert hired by the Commission shall not —

(a) in the course of performing his or her duties with a public enterprise; or

(b) in the utilisation of the property of the public enterprise or the Commission,

make any secret profit or obtain other improper benefits.

(3) Any indirect or direct conflicts shall be disclosed by any staff, employee, consultant or expert hired by the Commission to the Chief Executive Officer.

PART VIII - SPECIAL INVESTIGATIONS BY THE COMMISSION

Power to direct special investigations

35.(1) The Minister may direct the Commission to investigate any matter relating to the affairs of a public enterprise.

(2) The Commission shall, notwithstanding subsection (1) have the powers to initiate special investigations relating to the affairs of a public enterprise.

Powers of investigators

36. An investigator shall have the power to —

- (a) recruit, hire or acquire any resources required to perform the investigation;
- (b) bring to the attention of the Commission any matters deemed necessary to be brought to the attention of the Commission;
- (c) recover the fees or charges which may have agreed upon with the Commission and to reimburse expenditures incurred in addition to the fees agreed exclusively for the purpose of the investigation on grounds agreeable by the Commission;
- (d) delegate its powers to a third party, subject to having prior written approval from the Commission;
- (e) enjoy the rights and benefits specified in the engagement agreement signed under the section 37(1);
- (f) issue notice in writing to the public enterprises, Directors or an officer of the public enterprise —
 - (i) to produce to the investigator such documents relating to a matter to which the investigation relates

as are in the custody or under the control of the officer;

- (ii) to give to the investigator all possible and reasonable assistance in connection with the investigation;
 - (iii) to appear before the investigator for examination and to answer questions;
- (g) make copies or extracts of any documents relating to the investigation and, with the approval of the Commission to preserve any original documents where deemed necessary for the nature of its works.

Reports of investigation

37.(1) Subject to the terms agreed in the written agreement, the special investigator shall make written or oral reports to the Commission in the course of an investigation.

(2) The final report to the Commission may include recommendations as the special investigator thinks fit.

(3) A special investigator shall not, in the absence of malice, be liable to an action in respect of any statement made, whether orally or in writing, in the course of carrying out the functions of the special investigator.

(4) A special investigator may with the written consent of the Commission and the responsible Minister, refer any matter arising in an investigation to the relevant enforcement agencies.

(5) Any criminal offences reported by the investigator to the Commission shall immediately be reported to the responsible Minister and the relevant law enforcement agencies.

(6) The Commission shall communicate the report of an investigation to the responsible Minister or the Board of the public enterprise for implementation of the recommendations in the report.

(7) Any person aggrieved by the contents of the report of an investigator shall have the right to provide an opinion or defence against the findings made by the investigator.

Exemptions for special investigations

38. The following matters shall be exempted from special investigation —

- (a) matters before the court;
- (b) matters of which the subject matter became non-existent or no longer applicable;
- (c) matters the Court has ruled on; and
- (d) any matter which is already a case before any other enforcement agency.

Offences in relation to special investigations

39.(1) A person shall not —

- (a) fail to comply with a lawful direction of a special investigator;
- (b) refuse or fail to produce documents or answer questions sought or asked by a special investigator;
- (c) hinder or obstruct a special investigator;
- (d) destroy documents or any other thing relevant to an investigation.

(2) Any person who contravenes subsection commits an offence shall be liable upon conviction to a fine not exceeding Level six of the Standard Scale or 2 years imprisonment or both.

40. Upon the receipt of reasonable grounds from the investigator, the Commission has the power to suggest to the Board of the respective public enterprise or responsible Minister to suspend any official from office not more than one month until the investigation is concluded.

Appeal procedures

41. Any officer or person not in agreement with the report of the investigator shall have the right to make an appeal against the disputed subjects to the responsible Minister.

Withdrawal or termination of special investigation

42. The Minister shall have the powers to withdraw, terminate, suspend or cancel a special investigation lodged at the Commission and reasons for such action shall be documented by the Commission.

PART IX - ESTABLISHMENT OF PUBLIC ENTERPRISES

Application of Part

43.(1) This Part applies to all the public enterprises, despite the absence of any provision to the contrary, in their enabling laws or establishing documents.

(2) Any provision contained in an enabling law or establishing document of a public enterprise or in any other written law which is contrary to a provision of this Part shall be deemed to have been amended correspondingly with the provisions of this Part.

Declaration of public enterprise

44.(1) The Minister may, by order published in the Gazette declare a statutory corporation to be a public enterprise.

(2) A declaration under this section may be made for the purpose of a budget dependent entity becoming a public enterprise.

Determination of initial capital and shares

45. The market value of net assets of a public enterprise shall be

determined by an independent valuer and treated as the initial capital of the public enterprise under section 44.

Shareholding and capital structure

46. The Companies' Act shall apply to the shareholding and capital structure of the public enterprise under section 44.

Continuous guarantees

47. Despite a budget dependent entity being declared to be a public enterprise, a guarantee or indemnity given by the Minister by or under an Act or otherwise before the date of the declaration in respect of the performance, satisfaction or discharge of obligations or liabilities of the budget dependent entity under an instrument issued or entered into by the budget dependent entity before the date of that declaration, continues as a like guarantee or indemnity.

Transfer of assets and liabilities

48. The Government and the public enterprise referred to in section 44 may enter into an agreement for the transfer of assets and liabilities of the Government to the company for an agreed consideration, whether by assumption of liabilities or otherwise.

PART X - GOVERNANCE OF PUBLIC ENTERPRISES

Ownership of public enterprises

49. Ownership and governance of all the public enterprises shall be within the ownership policy framework for the public enterprises.

Code of Corporate Governance for Public Enterprises

50. The public enterprises shall apply the Code of Corporate Governance for Public Enterprises.

Policies and strategic priorities

51.(1) The government shall provide policy directives for the governance of the public enterprises.

(2) The government may intervene with setting of strategic priorities in exceptional circumstances for the national interest or during a national emergency.

(3) Every public enterprise shall define its priorities in its strategic plans and statement of corporate intent in line with the mandate of such public enterprise.

Strategic plan

52.(1) The Board of each public enterprise shall prepare a 5 year strategic plan and shall obtain the approval of the responsible Minister before implementing the strategic plan.

(2) A copy of the approved strategic plan shall be submitted to the Commission.

Statement of corporate intent

53.(1) The Board of each public enterprise shall prepare and submit to the responsible Minister, the Minister and the Commission, a statement of corporate intent for its public enterprise and its subsidiaries if any, not later than two months before the commencement of its first financial year, and thereafter not later than one month after the commencement of each consecutive third financial year, an updated statement of corporate intent in respect of the financial year in which it is delivered and in respect of each of the immediately following two financial years.

(2) The statement of corporate intent shall be approved by the Board.

(3) The statement of corporate intent shall be publicly available and shall contain —

- (a) a description of the main business of the public enterprise;
- (b) a statement of business goals of the public enterprise, demonstrating how those goals are consistent with its primary objective;

- (c) a description of the nature and scope of the activities that the public enterprise intends to undertake;
- (d) a statement of the strategies of the public enterprise for achieving its business goals and primary objectives;
- (e) a statement or summary of the targets or benchmarks that the public enterprise will use to measure its performance against its business;
- (f) goals and primary objective;
- (g) a statement of the current or anticipated borrowing status of the public enterprise;
- (h) where a public enterprise has a share capital, the ratio of the shareholders' funds to the value of the total assets of the public enterprise;
- (i) a statement of the accounting policies that the public enterprise will apply for financial records and reporting;
- (j) a summary indicative balance sheet and profit and loss statement for the public enterprise, or if it has any subsidiaries, a statement for the group consisting of the public enterprise and its subsidiaries;
- (k) a statement of the proposed dividend and distribution policy of the public enterprise;
- (l) a description of any public service obligations, if any, and their impact on the forecasted financial outcomes of the public enterprise; and
- (m) any other matter that the responsible Minister, the Minister and the Commission directs to be included in the statement.

(4) The following are standard performance targets and other measures by which the performance of the public enterprise may be judged in relation to its objectives —

- (a) percentage increase in turnover;
- (b) percentage increase in return on assets;
- (c) percentage increase in return on capital employed;
- (d) percentage increase in profit after tax; and
- (e) the underlying assumptions on which the objectives are based.

(5) An estimate of the amount intended to be distributed as dividends for each year shall be covered by the statement of corporate intent together with an estimate of the amount or proportion of annual tax paid earnings from both capital and revenue sources that is intended to be distributed to Government.

(6) An estimate of the Net Present Value of the investments in the public enterprise and the manner in which, and the time at which, this value is to be reassessed using a percentage cost of capital applicable to the enterprise shall be indicated by the statement of corporate intent.

(7) The Board shall receive prior approval and consent from the responsible Minister, in relation to the draft statement of corporate intent prior to its approval.

(8) The Board shall approve the statement of corporate intent.

(9) The approved statement of corporate intent shall be submitted to the responsible Minister, and the Commission within ten working days of approving or adopting it.

(10) The Board may, subject to changes in its core operational strategy amend its statement of corporate intent at any time, provided the Board —

- (a) submits to the responsible Minister, the Minister and the Commission a final draft of the amendment not less than two months before the Board adopts it;
- (b) shall not approve or adopt the amendment without first taking into account any comment by the responsible Minister, the Minister and the Commission;
- (c) submits the amendment to the responsible Minister, and the Commission within 10 working days of approving or adopting it.

(11) A public enterprise shall not deviate from its corporate plan as outlined in the statement of corporate intent unless written approval to that effect is obtained from the responsible Minister.

Annual business plan

54.(1) Each public enterprise shall prepare its annual business plan and submit it to the Commission at least two months prior to the commencement of each financial year.

(2) The business plan shall contain —

- (a) information regarding the operations, strategic directions of the public enterprise for the financial year and the following two financial years; and
- (b) estimates of the profit and loss, capital expenditure including procurement plans and cash flow and balance sheet projections of the public enterprise in respect of the next financial year of the public enterprise.

(3) The information required under subsection (2) (a) and (b) shall be sufficient for the Commission to advise the Board, the responsible Minister, and the Minister.

(4) The Board shall —

- (a) not approve or adopt the business plan without first taking into account any comments by the Commission and the responsible Minister in relation to the draft business plan; and
- (b) submit to the Commission and the responsible Minister, a copy of the business plan within ten working days of approving it.

(5) The Commission shall submit a copy of the approved business plan to the responsible Minister and the Minister within seven days after receiving it from the public enterprise

Performance indicators and performance reporting

55.(1) The Commission shall, in consultation with the Board, the responsible Minister, and the Minister establish and define performance indicators and a performance monitoring strategy for the public enterprises which shall be included in the annual business plan.

(2) The performance targets are measures by which the performance of the public enterprise and of its subsidiaries shall be measured in relation to the mandate of the respective public enterprise.

Duty to act within the scope

56.(1) The Board shall be responsible for the operations of business enterprises within its mandate and the principal objectives defined in the respective establishment statutes, and in the event of resolutions passed by the shareholders of the public enterprise during its annual general meeting for any deviations, a full report of the such resolutions shall be submitted to the responsible Minister for approval.

(2) Any deviations approved under subsection (1) shall be incorporated into the statute through a statutory instrument or by making a revision to the governing law to the extent determined by the responsible Minister.

(3) The members of the Board shall be personally liable for the promotion, approval, ratification or consultations for any operations outside the mandate and principal objectives defined in the respective governing law.

PART XI - BOARD OF DIRECTORS

Appointment of members of Boards

57.(1) The President shall, in consultation with the National committee responsible for the nomination of senior corporate executive and non executive officials and the responsible Minister appoint —

- (a) the members of the Board of a public enterprise; and
- (b) the Chairperson and Vice-Chairperson of the Board of a public enterprise.

Composition of the Board

58.(1) The Board of Directors of every Public enterprises shall consist of —

- (a) a Chair person;
- (b) a Vice-Chairperson;
- (c) one representative or nominee from the Ministry of Finance;
- (d) one representative or nominee from the parent Ministry; and
- (f) not less than five and not more than seven persons, who shall be non executive directors.

(2) A member of the Board shall be a person with proven integrity, relevant cognitive experience and demonstrated capacity in matters relating to economics industry, trade, finance, law, corporate governance and administration.

(3) The Chief Executive Officer of that public enterprise shall be an ex-officio member of the Board;

(4) The Chief Executive Officer of that public enterprise shall not be the Chairperson of the Board;

Disqualifications to be a member of a Board

59. A Person is prohibited from being a Board member where that person —

- (a) holds office of Commissioner or any office of the Commission;
- (b) serves as the Chief Executive Officer or an official or staff of the particular public enterprise;
- (c) has a conflict of interest under section 63;
- (d) has been convicted of any offence under this Act;
- (e) has been convicted of an offence involving dishonest or fraudulent acts within or outside the Republic;
- (f) is adjudged insolvent under the Insolvency Act;
- (g) is adjudged to be of unsound mind;
- (h) has been terminated from public office due to poor performance, misconduct, or disciplinary proceedings;
- (i) has been disqualified by the Court from serving as a public officer;
- (j) is under eighteen years of age;
- (k) is a person who is or would be prohibited from being a director of or being concerned or taking part in the promotion, formation or management of any commercial activity;

- (1) is a person who already serves as a Board member of other two Boards of public enterprises, unless the President, after consultation with the responsible Minister and the Commission specifically authorises the appointment.

Board Charter

60.(1) The Board of every public enterprise shall have its Board charter which constitute the governance of that public enterprise and defines the respective roles, responsibilities and authorities of the Board, both individually and collectively, and also provides matters relating to code of conducts of the operations of the public enterprise.

(2) The Board charter shall be approved by the responsible Minister.

Duties and powers of members of the Board

61.(1) Without limiting the duties of directors in managing the affairs of a public enterprise as specified in the Board charter, members of the Board shall —

- (a) have regard to the interests of its stakeholders, including its consumers of goods and services;
- (b) ensure adequate internal controls and adoption of strategies, policies, processes, and procedures in accordance with principles of sound corporate governance and risk management;
- (c) monitor compliance with this Act, other relevant laws and regulations, and directions of the Commission and with the controls, strategies, policies, processes, and procedures referred to in paragraph (b);
- (d) set up such committees as they deem necessary to discharge their responsibilities effectively;

- (e) approve measures for the maintenance of the public enterprise in a sound financial condition;
- (f) establish and maintain procedures for —
 - (i) identifying and resolving situations of, or potential situations of conflict of interest;
 - (ii) restricting the use of confidential information;
 - (iii) the disclosure of relevant information to the Commission for the administration of this Act;
 - (iv) dealing with complaints from employees or members of the public in general; and
 - (v) ensuring the sound and sustainable conduct of business.

(2) The Board shall determine the clear responsibilities and reporting duties of the Chief Executive Officer and the senior managers.

(3) Every member of a Board shall, in performing the responsibility entrusted into him or her abide by the code of ethics issued by the responsible Minister.

(4) A non-executive member of the Board shall not involve himself or herself in any way in the day-to-day administration of a public enterprise.

(5) Non-executive members of the Board shall be paid such allowances and fees as may be prescribed by the Minister.

(6) The Board shall have the powers to overrule any decision made by the Chief Executive Officer or senior management of the public enterprise where it is deemed necessary and for the best interest and for the protection of shareholder's wealth.

(7) The Board shall make recommendations to the responsible Minister for the appointment and removal of the Chief Executive Officer of

a public enterprise and set terms and conditions in that regard as specified under Schedule 4.

Directors' duty for care and skills

62.(1) A person exercising powers or performing duties as a Director of a public enterprise shall —

- (a) act honestly and in the best interests of the public enterprise;
- (b) not act in a manner which is reckless or grossly negligent; and
- (c) exercise the degree of skill and care that may reasonably be expected of a person of his or her knowledge and experience.

(2) The duties and liabilities of Directors are specified under Schedule 4.

Conflict of interest and duties

63.(1) A Board member who has a direct or indirect personal or financial interest in any matter relating to the public enterprise or with the affairs of the public enterprise which explicitly or implicitly could impair the objectivity of the member shall be considered a conflict of interest for the purpose of this act.

(2) Any form of such conflict of interest linked to a subject matter being discussed at a Board meeting shall be disclosed with the nature of that interest and the concerned member of the Board shall not further attend that meeting nor participate in any deliberations or decision of the Board in relation to the matter.

(3) A disclosure of interest in accordance with subsection (1) shall be noted in the minutes of the meeting concerned and shall be documented by the Board.

Tenure of office

64. A person appointed under section 57 shall —

- (a) hold office for a period of three years and is eligible for re-appointment.
- (b) not assume automatic reappointment at the end of term of office.

Termination, resignation, removal and vacancy of office

65.(1) The office of a member of the Board shall become vacant when a member —

- (a) resigns from office by giving not less than twenty-eight days' notice in writing to the responsible Minister;
- (b) is removed from the office by the President upon recommendation of the responsible Minister;
- (c) becomes disqualified from being a Director under section 59;
- (d) has been found guilty for an offence committed or non-compliance under this Act;
- (e) dies;
- (f) is continuously absent from office for 3 consecutive meetings without the written consent of the Chairperson;
or
- (g) completes his or her tenure in office.

(2) Where a vacancy occurs on the Board, the President shall, upon the recommendation of the Responsible Minister, appoint a person to replace the member for the remainder of the term of the member who resigned or was removed.

Procedures of the Board

66. The Board Charter shall define the procedures in respect of the meetings, quorum, and proceedings of the Board of a public enterprise as specified in Schedule 2

Performance agreements with the Board

67.(1) The responsible Minister shall, within ninety days from the date on which a Board is constituted, enter into written performance agreements with the members of the Board in relation to —

- (a) the shareholders' expectations in respect of the public enterprise's scope of business efficiency, financial performance and achievement of its objectives;
- (b) the responsible Minister's obligations in relation to any function conferred or imposed by the establishing law or document of the public enterprise;
- (c) the principles to be followed by the public enterprise for business planning;
- (d) the measures which are necessary to protect the financial soundness of the public enterprise; and
- (e) key performance indicators in terms of which the public enterprise's performance will be evaluated.

(2) The responsible Minister and the Board may in writing amend the performance agreement.

(3) A copy of the performance agreement entered into under this section shall be accessible to the public.

(4) Failure by the Board to sign the performance agreement within a time determined by the responsible Minister is a ground for the removal of the Board.

(5) A copy of the signed performance agreement shall be submitted by the responsible Minister to the Commission.

The Board Secretary

68.(1) The Chairperson shall, in consultation with the Board appoint a person to be the Secretary to the Board.

(2) The Secretary shall be responsible for —

- (a) convening meetings of the Board;
- (b) guiding the Board on the principles of the code of corporate governance for public enterprises;
- (c) guiding the Board on compliance with the laws and regulations;
- (d) keeping records of meetings and decisions of the Board;
- (e) communicating the decisions of the Board;
- (f) submitting minutes of the meetings of the Board to the Commission; and
- (g) submitting documents on behalf of the Board.

Protection for actions in good faith

69. A member of the Board, a Secretary or an officer of a public enterprise shall not be criminally or civilly liable in respect of an act done or omission made by the public enterprise, the Board, the Secretary or officer in good faith in the execution or purported performance of a function under this Act or any other law.

Validity of decisions

70. No act or decision of the Board is invalid by reason only —

- (a) of a defect or irregularity in connection with the appointment of a Director;
- (b) of an irregularity in the convening of a meeting of the Board;
- (c) that a person, who is disqualified from being appointed as a Director under this Act or any other law had been appointed Director; or
- (d) that a Director who was disqualified from voting at or participating in a meeting of the Board had voted at or participated in the meeting at which the decision or the decision in relation to the act was made.

Confidentiality of information

71.(1) A member of the Board, a staff member and any other person required or permitted to be present at a meeting of the Board, shall not publish or communicate or in any other way disclose any information relating to the affairs of the public enterprise that has come to such person's knowledge —

- (a) in the exercise of any power or performance of any duty or function in connection with the functions of the Board; or
 - (b) as a result of such person's attendance at a meeting of the Board.
- (2) Subsection (1) does not apply to information disclosed —
- (a) for the purpose of compliance with this Act or the performance of a function of the Board; or
 - (b) for the proper administration of justice.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding the loss occurred due to

such disclosure or a fine not exceeding level 6 of the Standard Scale, or to imprisonment not exceeding 2 years or both.

Other committees of the Board

72.(1) The Board may appoint one or more committees to effectively carry out its duties or any of its functions on behalf of the Board under this Act.

(2) A committee appointed by the Board under this section shall consist of such number of persons as the Board may determine.

Restriction for receiving, gifts, benefits etc.

73. A member of the Board shall not accept —

- (a) a gift, commission or any other benefit in cash or kind; or
- (b) a share in the bribe, gift, commission or any other benefit in cash or in kind, from any person or a share in the profit of that person in respect of any transaction involving the public enterprise.

Restriction for grant of loans for Directors

74.(1) The powers of a public enterprise do not include a power, whether directly or indirectly to —

- (a) make a loan to a Director of the public enterprise, a spouse, relative of the Director or of the spouse of such Director; or
- (b) to give a guarantee or provide security in connection with a loan made or to be made by another person to a Director, spouse or relative referred to in paragraph (a).

(2) Nothing in subsection (1) prohibits a public enterprise from entering into an agreement or arrangement with a person referred to in

subsection (1) if similar agreements or arrangements are entered into by the public enterprise with its ordinary customers or members of the public on the same terms and conditions.

(3) Any transaction made in contravention of subsection (1) shall be void.

PART XII - CHIEF EXECUTIVE OFFICER

Appointment of the Chief Executive Officer

75.(1) The Board of Directors shall, in consultation with the President through the responsible Minister appoint the Chief Executive Officer or the Deputy Chief Executive Officer for the public enterprise.

(2) A Chief Executive Officer, or deputy Chief Executive Officer shall hold office on a full-time basis and on such other terms and conditions may be determined by the Board and specified in the instrument of appointment.

(3) A Director is not eligible to be appointed as, or to act as Chief Executive Officer or Deputy Chief Executive Officer of the public enterprise, except with the approval of the President.

(4) The Chief Executive Officer shall be appointed through a competitive recruitment process.

Powers of the Chief Executive Officer

76.(1) The Chief Executive Officer shall, subject to the direction of the Board —

- (a) exercise supervision over the day-to-day affairs of the public enterprise and for the control and administration of the employees and staff of the public enterprise;
- (b) sign documents and correspondences on behalf of the public enterprise and

- (c) be the accounting officer of the funds of the public enterprise.

(2) The Chief Executive Officer may, subject to the direction of the Board delegate any of the powers assigned to him or her to the Deputy Chief Executive Officer or to any employee of the public enterprise.

Performance agreements

77.(1) Board shall require the Chief Executive Officer and the Deputy Chief Executive Officer to enter into a performance agreements with the Board.

(2) The Chief Executive Officer shall require all senior management staff of the public enterprise to enter into performance agreements with the Chief Executive Officer.

(3) If a Chief Executive Officer, Deputy Chief Executive Officer or senior management staff member fails to comply with any provision of a performance agreement which he or she concluded under this section, such failure shall constitute a ground for his or her dismissal from the service of the public enterprise, subject to compliance with the rules of natural justice.

(4) Where it is established that a failure under subsection (3) has been caused by unforeseen circumstances outside the control of the Chief Executive Officer or staff member, such non compliance shall not constitute such a ground.

(5) The Chief Executive Officer shall —

- (a) act honestly, with integrity and in the best interests of the public enterprise;
- (b) not act in a manner which is reckless or grossly negligent; and
- (c) exercise the degree of skill and care that may reasonably be expected of a person of his or her knowledge and experience.

Conflict of interest and duties

78.(1) A Chief Executive Officer or any officer in the public enterprise who has a direct or indirect personal or financial interest in any matter relating to the public enterprise or with the affairs of the public enterprise which explicitly or implicitly could impair his or her objectivity, shall be considered a conflict of interest for the purpose of this Act.

(2) Any form of conflict of interest linked to any subject matter shall be disclosed and his or her term may end in the event that the Board concludes that the emerged conflict of interest cannot be tolerated or safeguards cannot re-state the independency and objectivity of such officer.

(3) A disclosure of interest in accordance with subsection (1) shall be noted and recorded in the minutes of the Board.

(4) The Minister may make regulations to give effect to this section.

Termination, resignation, removal and vacancy of the Chief Executive Officer

79.(1) The Office of a Chief Executive Officer becomes vacant when he or she —

- (a) resigns from office by giving not less than two months notice in writing to the Chairperson of the Board or to the responsible Minister;
- (b) is removed from the office by the Board of Directors with the approval of the responsible Minister;
- (c) becomes disqualified from being a Chief Executive Officer under this Act;
- (d) is found guilty of an offence committed or a non-compliance under this Act;
- (e) fails to perform his or her duties under this Act or regulations made under this Act;

- (f) dies;
- (g) is continuously absent from office for 4 consecutive weeks without the written approval from the Board; or
- (h) completes the tenure in office and is not re-appointed.

(2) Where a vacancy occurs in the office of the Chief Executive Officer, the Board shall, upon the recommendation of the responsible Minister appoint a person to replace the Chief Executive Officer, and until such time, the Deputy Chief Executive Officer shall hold the Office.

PART XIII - BUDGET, ACCOUNTS AND RECORDS

Annual budget

80.(1) Every public enterprise shall prepare its budget forecast as a part of its business plan.

(2) The draft financial estimates shall be submitted to the Commission and the responsible Minister 4 months prior to the commencement of the preceding financial year, and any comments received from the Commission and the responsible Minister shall be incorporated in its financial estimates prior to submission for the approval of the Board.

(3) The Chairperson of the Board shall, with the approval of the Board submit a copy of the approved budget to the Commission 3 months prior to the commencement of the preceding financial year.

Financial statements and annual reports

81.(1) Every public enterprise shall prepare its financial statements for its own, its subsidiary if any, and group in accordance with the International Financial Reporting Framework where applicable.

(2) Any deviation from subsection (1) shall be approved by the shareholders in the annual general meeting.

(3) The Board shall, within 5 months from the end of every financial year through the Commission, furnish the Minister and the

responsible Minister with an annual report covering the operations of the financial affairs of the public enterprise as specified in Schedule 3

(4) The responsibilities of the Board under this section include submission to the Minister and the responsible Minister, through the Commission, the audited financial statements for each financial year prepared within 5 months from the end of the financial year.

(5) The Minister shall submit the report and statements referred to in subsections (3) and (4) and lay them before the National Assembly within six months after the end of the financial year.

(6) The Chairperson of the Board and the Chief Executive Officer or any other person who is duly authorised by the Board shall attend the Finance and Public Accounts Committee of the National Assembly to present the annual and financial report of their respective public enterprise.

Maintenance of accounting and financial records

82.(1) Notwithstanding anything to the contrary contained in any law or enactment, every public enterprise shall cause accounting records to be kept in accordance with this Part.

(2) The accounting records shall be sufficient to show and explain the transactions of the public enterprise and shall be such as to —

- (a) disclose with reasonable accuracy, the financial performance, financial position and cash flow statements of the public enterprise; and
- (b) enable the Directors of the public enterprise to ensure that any financial statement prepared under this Part complies with the requirements of this Act, as to the form and content of the financial statement of the public enterprise.

(3) The accounting records of a public enterprise shall be kept at its head office or such other place approved by the Board, and shall at all times be open to inspection by such officers of the Commission as may be authorised.

(4) Subject to any direction relating to the disposal of records which may be given by the Auditor General, accounting records which a public enterprise is required to keep under this Act shall be preserved by it for a period of not less than 7 years from the date on which they were made.

PART XIV - AUDIT

Internal audit function

83.(1) Every public enterprise shall establish —

- (a) an audit committee at the Board level to oversee the internal control and management of the public enterprise; and
- (b) an internal audit unit functionally reporting to the Board and administratively reporting to the management to perform internal audit functions of the public enterprise.

(2) Where a Public enterprise has not established an audit committee keeping in view of its annual turnover, the Board shall request the approval of the Commission for assistance.

(3) The public enterprise referred to in subsection (2) may, with the approval of the Board engage any private auditor, not being its external auditor or a partner of its external auditor, to perform the functions of the internal audit unit in accordance with the provisions of the Public Finance Management Act.

(4) The audit committee referred to in subsection (1) shall —

- (a) establish an audit charter for the system of internal audit implementation in the public enterprise;
- (b) approve the annual risk-based audit operation plan;
- (c) examine the audit report and annual report;
- (d) monitor the settlement of external and internal audit observations; and

- (e) ensure the operation of an adequate and effective system of internal control and risk management.

(5) The internal auditor of each public enterprise shall be appointed by the Board and be subject to the direction of the audit committee.

(6) The internal audit unit of the public enterprise shall —

- (a) carry out the audit of the public enterprise in accordance with the international standards; and
- (b) produce at least once every year, a report on the internal control and any matter requiring attention of management based on the audit.

(7) An internal auditor shall in the performance of a duty under this Act and any other law —

- (a) at all times have unrestricted access to accounts, records, books, vouchers, financial and non-financial management systems, and documents relating to the accounts of the public enterprise;
- (b) require from the accounting officer of the public enterprise any information and explanation that may be necessary; and
- (c) investigate whether there are adequate measures and procedures for the proper application of sound economic, efficient, and effective management of the funds of the public enterprise.

(8) The internal audit unit of the public enterprise shall prepare an audit plan and on being approved by the audit committee, submit it to the Commission for information.

(9) The internal audit report of the public enterprise shall contain —

- (a) the internal audit strategy;
- (b) the available internal audit resources;
- (c) a comparative statement on the audit carried out during the year and the audit plan for the year;
- (d) a statement on the result of the audit;
- (e) recommendations based on the audit findings made during the year;
- (f) a statement on the implementations made in the previous years; and
- (g) the audit plan for the following year.

(10) The audit committee shall examine the annual audit report under subsection (9) and furnish its findings to the Commission.

(11) An internal auditor shall submit the reports to the audit committee and such reports shall be copied to the Commission for information.

Audit of accounts

84.(1) Pursuant to the Article 158 of the Constitution, The Auditor-General shall audit the accounts of the public enterprises established as statutory corporations.

(2) Accounts of the public enterprises not falling under subsection (1) shall be audited by auditors appointed by the Boards with the approval of the shareholders.

(3) Services of approved external auditors may be sought by the Board to cause its accounts audited, with the written approval of the Auditor general.

(4) The external auditor's report shall nevertheless be reviewed, endorsed and acknowledged by the Auditor General.

External auditor

85.(1) A public enterprise shall appoint and have at all times an external auditor.

(2) An appointment made under subsection (1) shall not be effective unless it is approved by the Auditor General.

(3) All terms and conditions relating to the appointment of external auditors shall be documented and submitted to the Auditor General and the Commission for information.

(4) An external auditor appointed under subsection (1) shall not exceed a period of 5 consecutive years working with the same public enterprise.

False information or statements to auditors

86.(1) An officer commits an offence and is personally liable if he or she knowingly or recklessly makes to the auditor, a statement which is misleading, false or deceptive in a material particular, and conveys or purports to convey any information or explanation which the auditor requires or is entitled to require as the auditor of the public enterprise.

(2) A person who commits an offence under this section is liable on conviction to a fine not exceeding level 6 of the Standard Scale or to imprisonment not exceeding 2 years or both.

PART XV - PUBLIC ENTERPRISES REPORTING AND ACCOUNTABILITY

Annual general meeting

87.(1) The Board shall ensure that shareholders meetings are held at least once in every financial year.

(2) The Board shall ensure that the Commission is notified of the date of the annual general meeting.

(3) The Commission may be represented at the annual general meeting.

(4) The annual general meeting shall be held in public.

(5) At the shareholders meeting referred to in subsection (1) —

(a) the external auditors shall present to the shareholders an audit opinion on the financial statements for the preceding financial year; and

(b) the Board shall submit to the shareholders proposed dividends, if any, for approval.

Protection of assets of public enterprises

88.(1) The Board shall take such steps as are necessary to protect the assets of the public enterprise against theft, misuse, loss, or any other risk.

(2) A public enterprise shall not pledge any of its assets as collateral without the written authority of the Board and the Minister.

(3) The Board shall ensure that adequate measures and controls are taken and implemented to safeguard the assets and optimum utilisation of resources is done in the best interest for the public enterprise.

Disposal of assets and liabilities by public enterprises

89.(1) Every public enterprise shall establish a disposal committee as and when need arises for the purpose of disposal of unserviceable, obsolete, obsolescent, or surplus stores, equipment, or assets.

(2) The disposal committee is responsible for verification and processing of disposal recommendations.

(3) The disposal committee shall consist of the following persons appointed by the Board —

- (a) the head of human resource and administration;
- (b) the head of accounts; and
- (c) two members from within or outside the public enterprise with skills, knowledge, and experience relevant to the asset, valuation and disposal.

(4) Any proposed list of assets to be disposed whose purchase value exceeds one million Rupees shall be submitted to the Minister for prior approval.

(5) Upon the approval of the Minister under subsection (4), the Board may proceed with the disposal.

(6) The public enterprise shall submit to the Commission a disposal of assets report within thirty days after conclusion of the disposal process.

Distributions of dividends

90.(1) A dividend is a distribution out of the profits of the public enterprise, other than an acquisition by the public enterprise of its own shares or a redemption of shares by the public enterprise.

(2) The Board shall —

- (a) annually, at such time as the Minister may determine or as resolved in its annual general meeting, submit to the Minister a proposal on the distribution of its profits for the past financial year and the declaration of dividends; and
- (b) declare and pay such dividends —
 - (i) as is agreed between the Board, the Minister and the responsible Minister, provided that the Minister concurs with the agreement in question; or
 - (ii) as is directed in writing by the responsible Minister with the concurrence of the Minister, if an agreement

referred to in subparagraph (i) has not been concluded;

- (c) communicate details of such decisions for distribution of profits in writing to the Commission by the Chairperson of the Board of the public enterprise within 14 days of such decision.

(3) The Board shall not authorise payment of dividends in respect of some shares in a class and not others of that class or of a greater amount in respect of some shares in a class than other shares in that class, except where —

- (a) the amount of the dividend is reduced in proportion to any liability attached to the shares under the Memorandum or Articles of Association of the public enterprise; or
- (b) a shareholder has agreed in writing to receive no dividend or a lesser dividend than would otherwise be payable.

Quarterly reporting

91.(1) The Chief Executive Officer of each public enterprise shall, within 20 days after the end of every quarter of the financial year, submit to the Commission in such form as the Commission may determine, a statement of the financial position, showing changes in cash position and operational performance of the public enterprise during that Quarter, including details of debt performance.

(2) A Chief Executive Officer of a public enterprise who fails to comply with subsection (1) without written consent from the Commission for an extension or exception, may be subjected to an administrative penalty not exceeding SCR50,000 payable to the Commission for such non-compliance.

Submission of other information

92. A public enterprise shall provide the Commission with —

- (a) the minutes of the meetings of its Board and minutes of the committees of the Board; and
- (b) any other information, not specified in this Act, but necessary for the implementation of this Act as may be requested in writing by the Commission.

PART XVII - OFFENCES AND NON-COMPLIANCE

Offences and penalties

93. Any person who —

- (a) fails to furnish any returns or information in compliance with any requirement, imposed on him or her by this Act;
- (b) knowingly makes any false statement in any return or information furnished by him or her in compliance with any requirements imposed on him or her by this Act;
- (c) wilfully omits any matter in any return or information furnished by him or her in compliance with any requirement imposed on him or her by this Act;
- (d) contravenes the provisions of this Act;
- (e) fails to comply with a lawful direction of a special investigator or refuses or fails to produce documents or answer questions sought or asked by a special investigator or hinder or obstruct a special investigator or destroys documents or any other thing relevant to an investigation;
- (f) wilfully obstructs any member of the Commission or an officer or servant of the Commission in the performance of his or her duties under this Act,

commits an offence and is liable on conviction to a fine not exceeding Level 6 on the Standard Scale or imprisonment not exceeding 2 years or both.

Effect of non-compliance

94. In the event of non-compliance by a public enterprise or any officials or Board members of the public enterprise with any of the obligations under this Act, the Commission may issue a notice specifying a timeframe for compliance with the obligations and any further directives as the Commission considers necessary or appropriate.

PART XIX - ENFORCEMENT

Enforcement powers of the Commission

95. The Commission, in the performance of its functions under this Act —

- (a) shall at all reasonable times have access to, but not limited to, accounts, records, books, vouchers, financial and non-financial management systems, and documents relating to the accounts of any public enterprise;
- (b) may require from an accounting officer of a public enterprise any information and explanation that the Commission may consider necessary; and
- (c) may investigate whether there are adequate measures and procedures for the proper application of sound economic, efficient and effective management of the funds of the public enterprise;
- (d) shall have the powers to impose administrative penalties for non-compliance with the provisions of this Act;
- (e) make recommendations to the Minister on any decision which the Commission has reasonable grounds to conclude that decisions are not for the best interest of the public enterprise or the shareholder's wealth;
- (f) shall have the right to monitor the implementation of recommendations made by regulatory authorities, the Auditor General or external auditors, investigators or any other authorised authority or person.

This Act to prevail over certain laws

96.(1) Subject to subsection (2) and notwithstanding the provisions of any law to the contrary, this Act shall apply to every public enterprise.

(2) This Act shall prevail if a conflict relating to any matter provided for in this Act arises between this Act and the provisions of the law or document establishing a public enterprise.

Returns and information

97.(1) For the purpose of enabling the Commission to exercise, perform and discharge any of its powers, duties and functions under this Act, the Commission or any person authorised in that behalf by the Commission may, by notice in writing, require any person to furnish to the Commission or to the person authorised, within such period as shall be specified in the notice, all such returns or information, including auditors management letters pertaining to any business affairs or transactions of any public enterprise as are known to or in the possession of any person as shall be specified in such notice.

(2) It shall be the duty of any person who is required to furnish any return or information by a notice under subsection (1) to comply with such requirement within the time specified in such notice, except where such person is precluded from making such return or divulging such information under the provisions of any law.

(3) The Commission or any member of the Commission or any officer or servant of the Commission shall not disclose to any person or use any returns or information furnished under subsection (1), except when required to do so by a court of law or for the purposes of achieving the objects of the Commission.

Inefficient operations of public enterprises

98.(1) The Commission shall, where the Commission considers that the operations of a public enterprise are not being carried out in an efficient manner, review the operations and recommend to the Board for appropriate action.

(2) The Commission shall refer the matter to the Minister and the responsible Minister, who may refer the matter to the President, recommending for suspension, dissolution, or dismissal of the Board, if despite bringing the matter to the notice of the Board, there is, within twelve months, no improvement in the operations of the public enterprise.

(3) Where a responsible Minister fails to act as prescribed in subsection (2), the President may —

- (a) dissolve the Board;
- (b) issue an order for a total review of the public enterprise to improve its performance and operations.

Powers of Ministers

99.(1) The Minister and the responsible Minister shall have the powers to over-rule, dictate, ratify or approve the decisions made by the Board of the public enterprises on reasonable grounds.

(2) The Minister or the responsible Minister shall have the powers to call for meetings, give policy directives and discuss with the Board at reasonable notice in relation to the affairs of the public enterprise.

PART XVIII - MISCELLANEOUS

Publication of information

100. The Commission shall not permit any person to access information submitted to the Commission by a public enterprise, unless the Commission deems such access necessary for the purposes of this Act.

Settlement of disputes

101.(1) Any dispute arising among public enterprises may be settled amicably by agreement among those public enterprises.

(2) A dispute among public enterprises which cannot be settled by agreement shall be referred to the responsible Minister or responsible Ministers whose decision shall be final.

Liability for decisions made

102. No person engaged in carrying out any provision of this Act is liable in respect of anything done or omitted in good faith and not attributable to intent or negligence in the exercise of a power or performance of a duty or function under or by virtue of this Act or in respect of anything that may result from the performance of that duty or function.

Regulations

103. The Minister may make regulations —

- (a) for the purpose of giving effect to the objects and purposes of this Act, including prescribing any matter which is to be or may be prescribed under this Act;
- (b) for prescribing sanctions, penalties and fines to public enterprises and individuals for contravening this Act or regulations made under this Act and prescribing the manner of enforcing such penalties against the individual or entity;
- (c) for prescribing circumstances under which a contravention of this Act or regulations made under this Act or failure to comply with this Act or regulations made under this Act will be a ground for the removal of a member of the Board or other officer of the public enterprise;
- (d) for prescribing matters relating to human resources, assets and finance;
- (e) for prescribing any matter relating to the performance measurement and evaluation of public enterprises;
- (f) for prescribing any duty or obligation that is necessary to promote or enforce good corporate governance;
- (g) for prescribing governance agreements between the State and the Boards of public enterprises;

- (h) for prescribing performance agreements between the Board and individual members of the Board, between the Board and its Chief Executive Officer, and between its Chief Executive Officer and senior management staff of the public enterprise concerned;
- (i) in relation to or with respect to any matter required or permitted by this Act to be prescribed or necessary or expedient to be prescribed to give effect to this Act; and
- (j) to amend any Schedule.

Repeal and savings

104.(1) The Public enterprise Monitoring Commission Act, 2013 is repealed.

(2) Any statutory instrument made under the repealed Act shall continue in force as if made under this Act until it is amended or repealed under this Act.

(3) Anything made, established or done under the repealed Act, which could have been made, established or done under this Act shall continue in force and be deemed to be made under this Act until it is amended or revoked under this Act or cease to have effect by effluxion of time.

SCHEDULE 1*(Section 2)***LIST OF PUBLIC ENTERPRISES**

Column 1	Column 2
Seychelles Public Transport Corporation	Minister responsible for Land Transport
Property Management Corporation	Minister responsible for Housing
Air Seychelles Limited	Minister responsible for Civil Aviation
Seychelles Civil Aviation Authority	Minister responsible for Civil Aviation
Seychelles Ports Authority	Minister responsible for Ports
Island Development Company Limited	Minister responsible for Islands
Green Island Construction Company Limited	Minister responsible for Islands
Green Tree Investment Company Limited	Minister responsible for Islands
Seychelles Petroleum Company Limited	Minister responsible for Finance
Seychelles Progress Limited	Minister responsible for Finance
Seychelles Patriot Limited	Minister responsible for Finance
Seychelles Pioneer Limited	Minister responsible for Finance
Seychelles Prelude Limited	Minister responsible for Finance
Petro Seychelles Limited	Minister responsible for Blue Economy
LUnion Estate Company Limited	Minister responsible for Industry
Public Utilities Corporation	Minister responsible for Environment, Energy and Climate Change
Seychelles Parks and Gardens Authority	Minister responsible for Environment
Seychelles Postal Services Limited	Minister responsible for Trade
Seychelles Trading Company Limited	Minister responsible for Trade
Societe Seychelloise dInvestissement Limited	Minister responsible for Finance
Bois De Rose Investment Limited	Minister responsible for Trade
Paradis Des Enfant Limited	Minister responsible for Culture
Seychelles Pension Fund	Minister responsible for Finance
Financial Services Authority	Minister responsible for Finance
2020 Development Company Limited	Minister responsible for Investment
National Information Services Agency	Minister responsible for Information
Seychelles Fishing Authority	Minister responsible for Fisheries

SCHEDULE 2*(Section 66)***RULES RELATING TO BOARD MEETINGS****1. Every Board—**

- (a) shall hold an Annual Meeting not more than 3 months after the close of the financial year of the public enterprise —
 - (i) to consider and approve the report of the Board, the audited financial statements and the auditor's report for the financial year;
 - (ii) to make recommendations on the payment of dividends by the public enterprise; and
 - (iii) to deal with any financial or other matters of the public enterprise.
- (b) shall hold a special meeting not less than 3 months prior to the close of each financial year of the public enterprise in order to consider and approve the budget and the calendar of ordinary meetings, of which there shall be at least one every 2 months, of the next following financial year; and
- (c) shall in addition to the meetings referred to in paragraphs (a) and (b), hold ordinary meetings –
 - (i) in accordance with the calendar of meetings approved under paragraph (b) but the Board may at any of its meetings amend the calendar provided that it holds at least one meeting every 2 months;
 - (ii) when directed in writing (stating the reason for the calling of the meeting) by the Responsible Minister; or
 - (iii) at the request in writing (stating the reason for the calling of the meeting) of any Directors.
- (a) Where a meeting is convened in accordance with paragraph (c), the notice of the meeting shall state the purpose of the meeting.

2. The quorum for a meeting of the Board of the Public enterprise shall be as follows—

Total Number of Members	Quorum
Five	Three
Six	Four
Seven to Eight	Five
Nine	Six

1. The Chairperson or in the absence of the Chairperson, the Vice-Chairperson or, in the absence of both the Chairperson and the vice-Chairperson, a Director elected by the other Directors for this purpose at the meeting, shall preside at a meeting of the Board.

2. At a meeting of the Board each Director has one vote in respect of any matter which is before the Board for its decision but in the event of an equality of votes, the person presiding at the meeting shall, in addition, have a casting vote.

3. Decisions of the Board shall be by a majority of votes of the Directors present and voting at a meeting.

4. A Director who has a direct or indirect interest in any matter to be decided by the Board of a public enterprise shall disclose the nature of the interest at a meeting of the Board and shall not vote on the matter nor take part in any discussion in respect of that matter.

5. All orders, directions or decisions of a Board of a public enterprise shall be given or notified under the hand of the Chairperson, or such other Director as the Board may appoint for this purpose.

6. Subject to this Schedule, the Board may regulate its own proceedings.

SCHEDULE 3*[Section 81 (3)]***MINIMUM REQUIREMENTS FOR ANNUAL REPORT
OF PUBLIC ENTERPRISES**

1. The annual report of each public enterprise shall contain the following particulars in addition to the requirements set out in the governing law —

- (a) the audited financial statements, including a statement of —
 - (i) financial position;
 - (ii) profit and loss;
 - (iii) changes in financial position;
 - (iv) the dividend payable;
 - (v) cash flow and such other statements as may be necessary to show the financial results of the public enterprise during that financial year; and
- (b) the auditor's report on those financial statements which —
 - (i) identifies those to whom it is addressed and the financial statements to which it relates;
 - (ii) states whether the accounts have been audited in accordance with the International Standards on Auditing (ISA);
 - (iii) states whether it is prepared in accordance with the International Financial Reporting Standards (IFRS) as set by the International Accounting Standards Board (IASB);
 - (iv) details any transactions which the auditor has made for or on behalf of the public enterprise;
 - (v) states whether in the opinion of the auditor the accounts have or have not been prepared in accordance with the provisions of applicable laws;

- (vi) states whether in the opinion of the auditor the accounts do or do not give a true and fair view of the state of affairs of the public enterprise and, in the case that they do not, state the reasons for such opinion;
 - (vii) states whether in the opinion of the auditor the accounts do or do not give a true and fair view of the state of affairs of the public enterprise and, in the case that they do not, state the reasons for such opinion;
 - (viii) states whether the auditor has received all the information necessary for the purposes of audit and whether the auditor is or is not satisfied with the information received;
 - (ix) states whether in the auditors' opinion the information given by the Directors in the annual report in relation to the financial year under reference is or is not consistent with the accounts;
 - (x) states any other matter which in the opinion of the auditor needs to be stated;
- (c) a statement of the performance of the public enterprise in relation to the performance targets detailed in the statement of corporate intent;
 - (d) a statement that presents an objective, balanced and understandable commentary on the public enterprise's financial performance and position, its non-financial performance, and on its future ability to meet its liabilities and commitments;
 - (e) details of any changes in the composition of the Board during the year, including the appointment of new members, reappointments and any removals;
 - (f) the number of meetings of the Board and of committee meetings held and the committee's composition;
 - (g) brief statement of any significant complaints which have been made against the public enterprise;

- (h) judicial proceedings filed or likely to be filed against the public enterprise;
- (i) where non-financial information was subject to external validation, details in this regard;
- (j) brief details of the background of any member of the Board who served at any time during the year;
- (k) a statement of issues raised and recommendations proposed on the public enterprise by the Commission during the period and consecutive action taken by management, which shall include reasons for not doing so if no follow up action is taken;
- (l) a description of any social service obligations performed during the year;
- (m) a statement explaining (as a minimum) its responsibility for —
 - (i) approving the budget to provide authorisation for the acquisition and use of financial resources;
 - (ii) preparing and providing financial statements that fairly present the state of affairs of the public enterprise as at the end of the financial year and the results of its operations for that year;
 - (iii) maintaining an effective framework of internal control, risk management and appropriate governance procedures;
 - (iv) maintaining adequate accounting records and ensuring the consistent use of appropriate accounting policies, supported by reasonable and prudent judgements and estimates and ensuring adherence to applicable accounting standards unless fully disclosed, explained and quantified.
- (n) the public enterprise's financial statements providing —
 - (i) the amounts paid to the external audit for auditor and separately for non-audit services, including a description of the nature and amounts paid for each of the services undertaken;

- (ii) an outline of the structure of the public enterprise;
- (iii) a review of the financial performance;
- (iv) internal and external factors influencing the public enterprise's performance;
- (v) significant events which may affect the public enterprise's future performance;
- (vi) significant post-balance sheet events;
- (vii) discussion of relations with stakeholders, referring to significant change;
- (viii) financial and other effects of directions from the Commission.

2. (a) An Annual Meeting shall be held not later than one month after signing of the audited financial statements at which the annual report will be presented. Members of the Board, the Chief Executive Officer, the Chief Finance Officer and the external auditor shall attend the meeting and be available to answer questions.

(b) The approved annual report of a Public enterprise shall be published and made available to all stakeholders.

SCHEDULE 4

[Section 61 (2)]

DUTIES AND LIABILITIES OF DIRECTORS

1. It shall be the duty of the Directors of a public enterprise —
 - (a) to exercise their powers in accordance with this Act and within the limits and subject to the conditions and restrictions established by the public enterprise's Memorandum, Articles or the governing law;
 - (b) to obtain the authorisation of the Board before doing any act or entering into any transaction for which the authorisation or

consent of a general meeting is required by this Act or by the public enterprise's Memorandum or Articles, or the governing law;

- (c) to exercise their powers in good faith in what they reasonably consider to be the interests of the shareholders of the public enterprise as a whole and for the respective purposes for which such powers are explicitly or impliedly conferred;
- (d) to declare to the public enterprise for any monetary gain, or the value of any other gain or advantage, obtained by them in connection with the exercise of their powers, or by reason of their position as Directors, except remunerations, pensions, provisions and compensation for loss of office in respect of their directorship of any public enterprise which are lawfully authorised or approved by a Board resolution and, where necessary, by the Cabinet;
- (e) not to make use of any information received by them respectively as Directors otherwise than for the benefit of the shareholders of the public enterprise as, a whole, either during their respective terms of office or thereafter;
- (f) not to compete with the public enterprise or become a Director or officer of a competing company that operates in the same line or activity;
- (g) if Directors have any interest, whether direct or indirect, immediate or prospective, in any contract or transaction or proposed contract or transaction with the public enterprise, to disclose each of their respective interests to the Board of the public enterprise at which the contract or transaction is first taken into consideration, and in such written disclosure to state the nature and extent of their respective interests and the effect or probable effect on them of the contract or transaction; and
- (h) not to use any assets of the public enterprise for any illegal or improper purpose, and not to do, or knowingly allow to be done, anything by which the public enterprise assets may be damaged or lost (otherwise than in the ordinary course of carrying on its business;

- (i) to transfer forthwith to the public enterprise all cash or 'assets acquired on its behalf (whether before or after its incorporation) or as the result of employing its cash or assets, and until such transfer is effected to hold such cash or assets on behalf of the public enterprise and to use it only for the purposes of the public enterprise;
- (j) to attend Board meetings with reasonable regularity, unless prevented from so doing by illness or other reasonable excuse.

2. The duties imposed by this section shall be owed to the public enterprise, and not to the Board members, shareholders; officers or creditors of the public enterprise, but —

- (a) an application may be made to the court by any shareholder for a declaration that any act or transaction, or proposed act or transaction, by the involves a breach of any of their said duties, and if the court makes such a declaration it may issue an injunction to restrain the Directors or any Director or former Director from doing any such proposed act or entering into any such proposed transaction; and
- (b) an action for damages for breach of the said duties may be brought in the name of the public enterprise by the Board.

3. For the purpose of this section, a general notice given to the Board by a responsible Minister or Director to the effect that he or she is a member, shareholder, or officer of a specified public enterprise and is to be regarded as interested in any contract which may, after the date of the notice, be made with that public enterprise, shall be deemed to be a sufficient declaration of interest in relation to any contract so made, except that no such notice shall be of effect unless it is given at a Board meeting.

4. Any person who commits a breach of a duty imposed on him by paragraphs (d), (e), (f), (h) or (j) of subsection (1) shall, without prejudice to the generality of the expression, be deemed to have committed a serious breach of duty.

5. A person who —

- (a) knowingly commits a breach of any duty imposed on him by subsection (1) of this section; or

- (b) commits a breach of a duty imposed on him by paragraphs (d), (e), (g), (h) or (i) of subsection (1); shall be guilty of an offence punishable and hence be held liable as per the legal proceedings of the Penal Code.

6. If a public enterprise has a subsidiary, Directors of the public enterprise and subsidiary shall owe the same duties under subsection (1) to the public enterprise in respect of the affairs of the subsidiary and their conduct in relation to the subsidiary as though the public enterprise and subsidiary were one, and the public enterprise owned the subsidiary's assets and undertaking, and the whole of this section shall then be applied accordingly, provided that nothing in the subsection shall affect the duties of the Directors of the subsidiary toward the subsidiary and the remedies conferred by this section for the breach of any such duties.

EXCISE TAX BILL, 2022*(Bill No. 31 of 2022)***OBJECTS AND REASONS**

The object of this Bill is to repeal the Excise Tax Act, Cap. 264 and substitute it with a new law, which is more relevant to the current business environment in Seychelles.

The Bill seeks to provide for a modernised tax regime and to adopt best practices which will rectify deficiencies and shortcomings of the current law, and to provide for matters connected therewith and incidental thereto.

The proposed Bill, *inter alia*, provides for —

- (a) the registration of manufacturers and production centres;
- (b) the registration and regulation of duty-free shops;
- (c) the parameters for excise bonded warehouses and duty-free shops;
- (d) rebate, refund, remission, collection and recovery of excise tax;
- (e) procedures for seizure and forfeiture of goods;
- (f) dispute resolutions and provisions detailing the circumstances in which cases can be taken to the Revenue Tribunal;
- (g) evidence gathering, bookkeeping, warehousing irregularities, certain prohibitions and bribery and collusion;
- (h) power of the Commissioner General and officers to carry out necessary enforcement;
- (i) power of the Commissioner of Customs to make rules which would govern the operations of manufacturers and importers of excisable goods;
- (j) offences and accompanying penalties.

Dated this 21st day of November, 2022.

**NAADIR HASSAN
MINISTER OF FINANCE,
NATIONAL PLANNING AND TRADE**

EXCISE TAX BILL, 2022

(Bill No. 31 of 2022)

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EXCISE TAX BILL, 2022

(Bill No. 31 of 2022)



A BILL

FOR

AN ACT TO PROVIDE FOR THE IMPOSITION AND COLLECTION OF EXCISE TAX, TO REPEAL THE EXCISE TAX ACT, CAP 264, AND TO PROVIDE FOR OTHER RELATED MATTERS.

ENACTED by the President and the National Assembly.

Short title and application

1.(1) This Act may be cited as the Excise Tax Act, 2022.

(2) This Act applies to excisable goods imported into, or manufactured in Seychelles.

Interpretation

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

“alcohol” means any product of an alcoholic strength of more than 0.5% by volume;

“associate” has the same meaning as in section 3 of the Business Tax Act, 2009;

“bonded warehouse” means a customs controlled warehouse for the retention of imported goods until the applicable duty and taxes are paid.

“brewer” means a brewer of beer, and includes the proprietor, lessee or possessor of a brewery;

“C.I.F. value” has the meaning given under the Customs legislation;

“clearance for home use” means the customs procedure which provides that goods enter into free circulation upon payment of taxes, duties and levies chargeable and the accomplishment of all the necessary customs formalities;

“Commissioner” means the Commissioner of Customs appointed in terms of section 3 of the Customs Management Act, 2011;

“Commissioner General” means the Commissioner General of the Seychelles Revenue Commission, appointed in terms of section 4 (1) of the Seychelles Revenue Commission Act, 2009.

“Customs legislation” means the Customs Management Act, 2011 and its statutory instruments;

“Customs control” means —

- (a) the control of imported goods under the Customs legislation; and
- (b) the control of manufactured goods under this Act;

“Customs lock” or “Customs Seal” means any lock or seal affixed by an officer to any premises, other storage places or goods, for the protection of the revenue;

“distiller” means any person who conducts, works or carries on any distillery either by himself or through his agent or servant;

“distillery” means any place or premises where —

- (a) any process of fermentation for the production of wash is carried on;
- (b) any wash is kept or produced for the purpose of distillation;
- (c) any mash-tub, fermenting-tun, worm or still for the distillation of spirits is set up or used;
- (d) any process of distillation of spirits;
- (e) any process of rectification of spirits, either by re-distillation or filtration, or other process is carried on;
- (f) any spirits are manufactured or produced from any substance;
- (g) any still, rectifier or other apparatus, suitable for the manufacture of spirits, is in whole or in part manufactured, made or kept, and every office, workshop, warehouse, granary, fermenting-room, mash-house, still-room, rectifying-house, vault, cellar, shed, yard or other place owned or occupied by or on behalf of, or for the use of any distiller, or in which any part of his or her business as such is transacted, where any grain, matter, material or apparatus suitable for or adapted to the production of

spirits, or that is or is to be used in the production or rectification of spirits, is kept or stored, where any of the goods of the distillery are kept or stored or where any process of manufacture is carried on, shall be held to be included in and to form part of the distillery to which it is attached or appurtenant;

“dutiable goods” means goods of a class or description subject to any duties, taxes or levies of Customs or excise, whether or not the goods are chargeable with any duties, taxes or levies;

“duty-free shop” means a shop for the warehousing and sale of goods without payment of duty, tax and levy under this Act or any other law relating to customs and excise;

“entered” has the meaning given under the Customs legislation;

“entry” in relation to clearance of goods for importation, warehousing, removal from a warehouse or exportation, means the presentation in accordance with this Act of a correctly completed and signed declaration, and includes the recording of the required information on the Customs computer system, using procedures approved by the Commissioner, or using a computerized procedure approved by the Commissioner, together with other documents required by any provision of this Act;

“excisable goods” means goods, other than exempt goods prescribed and taxable under this Act;

“excisable value”, in relation to excisable goods, has the meaning determined under section 34;

“excise bonded warehouse” means a customs controlled warehouse for the retention of locally produced goods with intention for export, and to supply to aircrafts, vessels and class and classes of persons.

“excise tax” means the excise tax imposed under this Act, and includes any amount required to be brought to account under this Act as excise tax or otherwise deemed under this Act to be excise tax;

“excise tariff” means excise taxes imposed in terms of section 31;

“excise warehouse” means any place used for the deposit, keeping and securing of excisable goods of a registered manufacturer registered by the Commissioner under section 6(2) (e);

“excise warehouse keeper” means the person registered to operate an excise bonded warehouse

“exempt goods” means prescribed goods that is not taxable under this Act;

“export” means to take goods or cause goods to be taken out of Seychelles;

“exporter” means any person in Seychelles who takes goods or causes goods to be taken out of Seychelles, and includes any employee or agent of such person and the owner of such goods as are exported;

“factory cost” means the sum of all the costs, direct and indirect, incurred by the manufacturer in the manufacture, finishing and packing of goods —

- (a) before their removal from the registered production centre of the manufacturer; or
- (b) for use in the manufacture of other goods on the registered production centre of the manufacturer; and includes, where the goods are manufactured on behalf of another person from materials supplied by or on behalf of that person, the

cost of the materials supplied by or on behalf of that person and any other costs incurred in delivering those materials to the registered production centre of the manufacturer;

“Form” means document specified in the First Schedule to the Excise Tax (General) Regulations or any such form approved by the Commissioner;

“goods” means excisable goods as prescribed under this Act;

“import” has the meaning given under the Customs legislation;

“import duty” means a duty levied under the Customs legislation;

“importer” has the meaning given under the Customs legislation;

“large business” has the same meaning as under the First Schedule of the Revenue Administration Act, 2009;

“liability” means, when tax becomes payable by law, although the date of payment may be later;

“manufacture”, in relation to goods liable to excise tax includes the mixing, brewing, distilling or production of goods liable to excise tax;

“medium business” has the same meaning as under the First Schedule of the Revenue Administration Act, 2009;

“Minister” means the Minister responsible for finance and trade;

“officer” means every officer of excise who is employed or appointed to the survey of manufactures, operations or premises subject to excise, and every person employed for the purpose of the administration or enforcement of this Act;

“open stock” means any goods which have been released within Seychelles after the requirements of this Act have been satisfied;

“person” has the same meaning as defined under Revenue Administration Act, 2009;

“proper officer” means in respect of any unit, division or matter the officer designated by rule or regulation or by the Commissioner to be the proper officer at that unit, division or in that matter;

“receptacle” means all hollow containers used to hold and store goods;

“records” means all papers, books, registers, computer files, tapes, discs, films, videos, soundtracks, or any other device in which information is recorded or stored;

“registered manufacturer” means a person to whom a Certificate of Registration has been issued under section 6(6);

“registered production centre” means the premises on which a person is registered to produce excisable goods, and includes —

- (a) any excise warehouse deemed to be a part of the premises under section 6(2)(d); and
- (b) all adjoining premises connected with that production or with the business of the producer;

“regulations” means the regulations made under this Act;

“reviewable decision” means reviewable decision as defined under section 2 of the Revenue Administration Act, 2009;

“small business” has the same meaning as under the First Schedule of the Revenue Administration Act, 2009;

“still” means any apparatus used for carrying out the distillation of alcoholic goods and includes any part of a still;

“stores for consumption” means, goods intended for consumption by the passengers and the crew on board vessels or aircraft, whether or not sold;

“tobacco goods” means any product classified under Chapter 24 of the Harmonised Commodity Description and Coding System and goods defined under the Tobacco Control Act, 2009;

“vessel” means any ship, boat, watercrafts and the like.

(2) The classifications and descriptions of goods prescribed under this Act shall be interpreted in accordance with the rules for interpretation set out in the General Rules for the Interpretation of the Customs Tariff based on the Harmonised Commodity Description and Coding System as domesticated under Section 40 of the Customs Management Act, 2011.

Fair market value

3.(1) The fair market value of excisable goods at the time of removal from Customs control shall be the consideration, excluding excise tax, that a manufacturer of the goods could reasonably expect to obtain for the goods in an open market sale, at wholesale, freely transacted between persons who are not associates.

(2) If the fair market value of excisable goods cannot be determined under subsection (1), the fair market value may be determined by the Commissioner.

(3) In determining the fair market value under subsection (2), the Commissioner shall have regard to information supplied to him or her by the manufacturer or any other information available to him or her and shall, as far as practicable in the light of such information, determine the fair market value as, the factory cost plus 25% of such cost or such percentage as may be prescribed in relation to any class of goods.

(4) A manufacturer of goods shall, within 30 days after the receipt of a request from the Commissioner or within such further period as the Commissioner may allow, submit to the Commissioner a declaration in such form as the Commissioner may require, giving an analysis of —

- (a) the factory cost; and
- (b) the amount by which the factory cost is exceeded by —
 - (i) the selling price, if any; and
 - (ii) the price, including the excise tax, if any, at which the manufacturer sells the goods in the ordinary course of trade to merchants in Seychelles.

(5) A declaration for the purposes of subsection (4) shall be prepared at the expense of the manufacturer by an accountant or auditor approved by the Commissioner and shall be signed by the manufacturer and the accountant or auditor who prepared it.

Instruments and tables for calculating quantities of goods liable to excise tax

4.(1) For the purpose of calculating the full quantity of goods liable to excise tax which have been produced on registered production centres, tables may be prescribed showing the quantity of such goods which shall be deemed to have been produced from a given quantity of material.

(2) Except as elsewhere provided in this Act, the Commissioner may by rule prescribe the instruments, meters, gauges, and other appliances and tables, formulae and other methods of calculation to be used in ascertaining the mass, quantity, strength, relative density, temperature, pressure or any other characteristics of any goods for the purpose of this Act.

PART II - REGISTRATION OF MANUFACTURERS AND APPROVAL OF REGISTERED PRODUCTION CENTRES

Prohibition of unauthorised manufacture of excisable goods

5. A person shall not manufacture excisable goods in Seychelles unless —

- (a) the person is registered under this Act for the purpose of manufacturing those goods; and
- (b) the excisable goods are manufactured within a registered production centre.

Registration of excise manufacturers

6.(1) A person intending to manufacture excisable goods shall apply to the Commissioner, in the prescribed form and manner, for registration as a manufacturer of excisable goods.

(2) The applicant under subsection (1) shall furnish such information as to —

- (a) the nature of the product liable to excise tax which the applicant proposes to manufacture;
- (b) the process of manufacture which the applicant proposes to adopt;
- (c) the production capacity of the registered production centre;
- (d) the premises at which the machinery and equipment with which the goods liable to excise tax are to be manufactured; and
- (e) the excise warehouse where all manufactured goods shall be stored before removal, which shall be part of the registered production centre.

(3) The Commissioner may refuse to issue a certificate of registration to any applicant unless the applicant has submitted to the Commissioner a list in the appropriate form describing in such detail as the Commissioner may require —

- (a) the machinery, equipment and receptacles capable of use in connection with the manufacture of goods liable to excise tax to be kept or installed in each room, building or other

place at the applicant's premises and the purpose for which the piece of machinery, equipment and receptacles is to be used additionally or alternatively; and

- (b) the rooms, buildings and other places at the applicant's premises to be used in connection with the manufacture of goods liable to excise tax.

(4) The Commissioner shall register a person who has applied for registration under subsection (1) if —

- (a) the Commissioner is satisfied that the person will carry on the business of manufacturing excisable goods and will comply with the obligations imposed under this Act on registered manufacturers;
- (b) the applicant has satisfied the conditions under section 8 and entered into an excise manufacturer's bond, which shall remain in force while the manufacturer remains a registered manufacturer, with security in an amount determined by the Commissioner; and
- (c) the applicant has paid the prescribed administration fee.

(5) The Commissioner may impose such terms, conditions, or restrictions as the Commissioner considers appropriate in relation to the registration of a person as a registered manufacturer for the purposes of this Act.

(6) The Commissioner shall issue each registered manufacturer with a Certificate of Registration in the approved form.

(7) Registration shall take effect from the date set out in the manufacturer's Certificate of Registration.

(8) A registered manufacturer shall notify the Commissioner in writing, of any intention to change the name and constitution of the manufacturer.

(9) A notification under subsection (8) shall be given to the Commissioner no later than 21 days before the event requiring notification occurs.

(10) The Commissioner may, on request of a manufacturer of goods liable to excise tax, amend the list submitted by the manufacturer in terms of subsection (3).

(11) A registration certificate issued in terms of this section shall, whenever issued, expire on 31st December of each year.

Authorisation to manufacture for experimental purposes

7.(1) Notwithstanding section 5, the Commissioner may authorise a person to manufacture goods for experimental purposes, provided that the goods shall not be put on sale or disposed for profit.

(2) No registration certificate shall be required in respect of the premises on which goods referred to in subsection (1) are manufactured and such goods shall not be liable to excise tax if they are disposed of in accordance with rules made by the Commissioner.

(3) The Commissioner may cancel the authorisation granted under subsection (1), if a person who is authorised by the Commissioner to manufacture goods in accordance with subsection (1) fails to comply with the rules made by the Commissioner under subsection (2).

Conditions of the excise manufacturer's bond

8.(1) In order to enter and remain into an excise manufacturer's bond, an applicant under section 6 shall —

- (a) not engage in any attempt by himself or herself or in collusion with others to defraud the country of any tax on any goods manufactured by him or her;
- (b) maintain correct and truthful records;

- (c) render true and complete returns, statements and inventories prescribed or required under this Act;
- (d) comply with all requirements of this Act with respect to the manufacturing of goods liable to excise tax;
- (e) comply with such other conditions as the Commissioner may require.

(2) No manufacturer shall carry on any business on premises registered in terms of section 6, other than the business for which the certificate was issued, unless he or she has obtained written permission to do so from the Commissioner.

(3) An officer may cause any excise warehouse to be locked with a customs lock or customs seal for so long as deemed fit, and no person shall during such period remove or break such lock or seal or enter such warehouse or remove any goods from there without the permission of the officer.

Cancellation of registration

9.(1) The Commissioner may cancel the registration of a manufacturer if the holder of the registration certificate contravenes or fails to comply with any of the conditions of the certificate.

- (2) A certificate of registration may be cancelled if —
- (a) the manufacturer is found in possession of uncustomed goods;
 - (b) the manufacturer engages in activities contrary to the provisions of this Act or other revenue laws;
 - (c) holder of the registration certificate is convicted of an offence under this Act or other revenue law;
 - (d) the activity for which he or she is registered becomes prohibited by this Act or any other enactment;

- (e) the registered production centre or any part thereof, the rooms, machinery or any receptacles have been altered without the approval of the Commissioner.

(3) A registered manufacturer who intends to cease manufacturing excisable goods shall, notify the Commissioner in writing, at least 7 days before such cessation of operations, stating —

- (a) the date on which the manufacturer intends to cease to manufacture excisable goods;
- (b) the date on which the manufacturer expects that no excisable goods will remain in the excise manufacturer's warehouse.

(4) If the Commissioner receives a notification under subsection (3), the Commissioner shall, by notice in writing, either suspend or cancel the registration of the manufacturer with effect from the first day on which there are no longer excisable goods in the registered production centre.

(5) A suspension or cancellation takes effect on the date specified by the Commissioner in the notice issued under subsection (4).

(6) Any obligation or liability under this Act of a registered manufacturer in respect of anything done or omitted to be done by that manufacturer while the manufacturer is a registered manufacturer, including the obligation to pay excise tax and to file excise tax returns, shall not be affected by the suspension or cancellation of the manufacturer's registration.

(7) A registered manufacturer who intends to sell and transfer a business of manufacturing excisable goods as a going concern shall notify the Commissioner, in writing of that fact, at least 30 days before the dates on which the assets are transferred.

Refusal of registration

10. The Commissioner may refuse an application for registration as an excise manufacturer and the applicant shall have the right of appeal against such refusal in terms of section 32 of the Customs Management Act.

Alterations, additions or rebuilding of registered production centre

11. A registered manufacturer shall obtain written approval of the Commissioner before undertaking any alterations, additions or rebuilding of the registered manufacturer's registered production centre.

Supervision by officers

12. A registered manufacturer of excisable goods is subject to supervision by officers for the protection of public revenues.

The power to issue directions

13.(1) The Commissioner may issue written directions to a registered manufacturer which shall set out in which designated area of the registered production center —

- (a) any process in the production is to be carried on;
- (b) the materials and other items used in the production are to be kept; and
- (c) excisable goods manufactured on the premises are to be kept.

(2) A registered manufacturer shall comply with the directions made under this section.

PART III - DUTY-FREE SHOPS**Application and registration of duty-free shops**

14.(1) Subject to any regulations governing the maintenance and control of duty-free shops, the Minister may, by notice in the *Gazette* designate premises, buildings or structures to be used as duty-free shops.

(2) The Commissioner may determine the kind of goods to be placed in a duty-free shop.

(3) A person intending to register as a proprietor of a duty-free shop, shall apply to the Commissioner, in the prescribed form and manner.

(4) The applicant shall furnish information pertaining to —

- (a) the nature of the goods which the applicant proposes to sell;
- (b) the premises at which the duty-free shop is located;
- (c) the plan of such premises, building and structures; and
- (d) such other information as the Commissioner may require.

(5) The Commissioner shall register a person who has applied for registration under this Act if —

- (a) the Commissioner is satisfied that the person will comply with the obligations imposed under this Act on duty-free shops; and
- (b) the applicant has entered into a bond, with sufficient surety to the satisfaction of the Commissioner, for compliance with this Act;
- (c) the applicant has paid the prescribed administration fee.

(6) The Commissioner may at any time require that the form or amount of the security specified under subsection 5(b) shall be altered in such manner as he or she may determine.

(7) A registration certificate issued under this section shall be issued by the Commissioner and shall, whenever issued, expire on the 31st December of each year.

(8) (a) The proprietor shall —

- (i) keep a record of all goods delivered into and out of

the duty-free shop, and shall keep such record at all times available for examination by a proper officer;

- (ii) stack and arrange the goods in the duty-free shop, so as to permit reasonable access to and examination of every package at all times;
- (iii) maintain records and accounts relating to goods in such form and manner, as a proper officer shall require; and keep such records and accounts at all times available for examination by a proper officer.

(b) If the proprietor fails to comply with the conditions of his or her bond or fails to comply with the provisions of this Act, any rule or instructions made, or given by the Commissioner connected with the administration of this Act, the Commissioner may cancel his or her registration certificate or refuse its renewal.

(9) A registration certificate may be transferred from a duty-free shop to another duly approved duty-free shop, in the possession of the person to whom the registration certificate has been issued, but shall not be transferable from one person to another.

Selling of goods in duty-free shop

15.(1) A registered proprietor of a duty-free shop may import, warehouse and sell goods without payment of duty under such conditions as may be approved by the Commissioner.

(2) A registered proprietor of a duty-free shop may receive, warehouse and sell excisable goods manufactured in Seychelles from any excise warehouse without the payment of excise tax under such conditions as may be approved by the Commissioner.

(3) A registered proprietor of a duty-free shop may sell goods free of duty to such class or classes of persons and under such conditions as may be prescribed.

(4) An officer shall not allow the removal of any goods from a duty-free shop, except for sale in terms of subsection (3) or in such other circumstances as may be prescribed.

Removal of goods from duty-free shop

16. Goods received in a duty-free shop, shall not be taken or delivered from a duty-free shop, except in accordance with the regulations prescribed under this Act.

Bonded goods as stores for consumption for aircrafts or vessels

17.(1) An officer may release goods free of tax from any bonded warehouse or excise bonded warehouse in Seychelles in original packages as imported or locally manufactured, or as repackaged in a bonded warehouse or excise bonded warehouse, for shipment in accordance with the prescribed regulations, as stores for consumption for use on any aircraft or vessel which is bound for a voyage or journey outside Seychelles.

(2) An officer may refuse the removal of any warehoused goods declared to be for export as ships or aircrafts' stores for consumption or otherwise, if the removal is for any purpose other than that which has been declared.

Bonded goods sold from a duty-free shop

18.(1) The proprietor of a duty-free shop, may sell goods free of tax to such class or classes of persons and under such conditions as may be prescribed by regulations.

(2) An officer shall not allow the removal of any goods from a duty-free shop except for sale in terms of subsection (1) or in such other circumstances as may be prescribed by regulations.

Duty-free shop, may be locked by officer

19. An officer may cause any duty-free shop, to be locked with a customs lock and seal for so long as he or she deems fit, and no person shall

during such period remove or break such lock, seal or enter such duty-free shop, or remove any goods from there without the permission of the officer.

Taking stock and tax on deficiencies

20. An officer may at any time take stock of the goods in any duty-free shop.

Liability of tax on discrepancies in stock at date of entry for consumption

21.(1) A proprietor of a duty-free shop, who cannot account to the satisfaction of the Commissioner for any quantity of goods in a duty-free shop, shall be deemed to have removed those goods from customs control in the month in which the discrepancy arose.

(2) Tax paid on any discrepancies found in the stock of goods deposited in a duty-free shop in accordance with this Act shall be subject to the applicable rate of tax on the date the Bill of Entry is submitted.

Remittal of tax on certain duty-free goods, which are destroyed, etc.

22.(1) The Commissioner shall remit the tax payable on destroyed or lost goods, if the Commissioner is satisfied that —

- (a) the goods were destroyed or lost by accident without going into consumption whilst in a duty-free shop or whilst in transit to a duty-free shop; and
- (b) every reasonable effort was made and precaution taken to prevent their destruction or loss.

(2) The Commissioner shall remit the tax due on duty-free goods, which are —

(a) destroyed by the owner or other person having control of the goods under the supervision of a proper officer; or

(b) given up to the control of a proper officer in whole packages to avoid the payment of the tax.

PART IV - EXCISE BONDED WAREHOUSE

Application and registration of excise bonded warehouse

23.(1) A person who is established in Seychelles may apply to operate an excise bonded warehouse.

(2) Subject to any regulations governing the maintenance and control of an excise bonded warehouse, the Commissioner may designate premises, buildings or structures to be used as an excise bonded warehouse.

(3) The Commissioner may set rules when granting authorisation to operate an excise bonded warehouse.

(4) The Commissioner may determine the kind of goods to be placed in an excise bonded warehouse.

(5) A person intending to register as a proprietor of an excise bonded warehouse shall apply to the Commissioner in the prescribed form and manner.

(6) The applicant shall furnish information pertaining to —

- (a) the nature of the goods which the applicant proposes to sell;
- (b) the premises at which the excise bonded warehouse is located;
- (c) the plan of such premises, building and structures; and
- (d) such other information as the Commissioner may require.

(7) The Commissioner shall register a person who has applied for registration under this Act if —

- (a) the Commissioner is satisfied that the person will comply with the obligations imposed under this Act on an excise bonded warehouse; and

- (b) the applicant has entered into a bond, with sufficient surety to the satisfaction of the Commissioner, for compliance with this Act;
- (c) the applicant has paid the prescribed administration fee.

(8) The Commissioner may at any time require that the form or amount of the security specified under section 14 (5) (b) shall be altered in such manner as he or she may determine.

(9) A registration certificate issued under this section shall be issued by the Commissioner and shall, whenever issued, expire on the 31st December of each year.

(10) The excise warehouse keeper shall —

- (a) ensure that while the goods are in an excise bonded warehouse are not removed from Customs supervision or control;
- (b) comply with the particular rules specified in the authorisation;
- (c) fulfil the obligation that arise from the storage of goods covered by the warehousing procedure;
- (d) keep a record of all goods delivered into and out of the excise bonded warehouse, and shall keep such record at all times available for examination by a proper officer;
- (e) stack and arrange the goods in the excise bonded warehouse, so as to permit reasonable access to and examination of every package at all times;
- (f) maintain records and accounts relating to goods in such form and manner, as a proper officer shall require; and keep such records and accounts at all times available for examination by a proper officer;

- (g) Produce the goods whenever required and facilitate their examination by the proper officer.

(11) If the excise warehouse keeper fails to comply with the conditions of his or her bond or fails to comply with the provisions of this Act, any rule or instructions made, or given by the Commissioner connected with the administration of this Act, the Commissioner may cancel his or her registration certificate or refuse its renewal.

(12) A registration certificate may be transferred from an excise bonded warehouse to another duly approved excise bonded warehouse.

Alterations, additions or rebuilding of excise bonded warehouse

24. A registered excise warehouse keeper shall obtain written approval of the Commissioner before undertaking any alterations, additions or rebuilding of the excise bonded warehouse.

Removal of goods from excise bonded warehouse

25. Goods received in an excise bonded warehouse, shall not be taken or delivered from an excise bonded warehouse, except in accordance with the regulations prescribed under this Act.

Bonded goods sold from an excise bonded warehouse

26.(1) The excise warehouse keeper of an excise bonded warehouse, may sell goods to such class or classes of persons and under such conditions as may be prescribed by regulations.

(2) An officer shall not allow the removal of any goods from an excise bonded warehouse except for sale in terms of subsection (1) or in such other circumstances as may be prescribed by regulations.

Excise bonded warehouse, may be locked by officer

27. An officer may cause any excise bonded warehouse, to be locked with a customs lock and seal for so long as he or she deems fit, and no person shall during such period remove or break such lock, seal or enter

such excise bonded warehouse, or remove any goods from there without the permission of the officer.

Taking stock and tax on deficiencies

28. An officer may at any time take stock of the goods in any excise bonded warehouse.

Liability of tax on discrepancies in stock at date of entry for consumption

29.(1) An excise warehouse keeper of an excise bonded warehouse, who cannot account to the satisfaction of the Commissioner for any quantity of goods in an excise bonded warehouse, shall be deemed to have removed those goods from customs control in the month in which the discrepancy arose.

(2) Tax paid on any discrepancies found in the stock of goods deposited in an excise bonded warehouse in accordance with this Act shall be subject to the applicable rate of tax on the date the Bill of Entry is submitted.

Remittal of tax on certain excise bonded warehouse goods, which are destroyed, etc.

30.(1) The Commissioner shall remit the tax payable on destroyed or lost goods, if the Commissioner is satisfied that —

- (a) the goods were destroyed or lost by accident without going into consumption whilst in an excise bonded warehouse or whilst in transit to an excise bonded warehouse or for export; and
- (b) every reasonable effort was made and precaution taken to prevent their destruction or loss.

(2) The Commissioner shall remit the tax due on excise bonded warehouse goods, which are —

- (a) destroyed by the owner or other person having control of the goods under the supervision of a proper officer; or
- (b) given up to the control of a proper officer in whole packages to avoid the payment of the tax.

PART V - IMPOSITION OF EXCISE TAX

Imposition of excise tax

31.(1) Subject to the provisions of this Act, excise tax shall be imposed, at the rates prescribed under this Act, on —

- (a) excisable goods produced or manufactured in Seychelles;
- (b) excisable goods imported into Seychelles.

(2) Where an excise tax has been imposed on goods manufactured or produced in Seychelles, the manufacturer of such goods shall be liable for the payment of excise tax and such liability shall continue until the goods have been accounted for in terms of this Act.

(3) Where any goods referred to in subsection (2) have been manufactured or produced otherwise than in accordance with this Act, any person having the ownership or possession of, or a beneficial interest in the goods, at any time before the requirements of this Act have been fulfilled shall be liable for the payment of the excise tax.

(4) Liability of excise tax on imported goods lies with the importer of such excisable goods or any person having the ownership or possession of, or a beneficial interest in the goods, at any time before the requirements of this Act have been fulfilled and shall therefore be liable for the payment of the excise tax.

(5) An export of excisable goods shall not be subject to excise tax provided the goods have been entered for export under the Customs legislation.

(6) The excise tax payable under subsection (1) (a) shall be payable by the registered manufacturer to the Seychelles Revenue Commission at the time and in the manner specified in section 36 as read with section 38.

(7) The excise tax payable under subsection (1) (b) shall be payable by the importer at the time and in the manner specified in section 43.

Excisable goods deemed to have been imported

32. All goods declared or shown in the bill of lading, manifest, consignment note, waybill or other document as having been consigned to Seychelles shall be deemed to have been imported in accordance with the Customs legislation, unless it is proved to the satisfaction of the Commissioner that they were not imported.

Importer of excisable goods to comply with Customs legislation

33.(1) For the avoidance of doubt, the importer of excisable goods shall comply with the requirements of the Customs legislation.

(2) Subject to this Act, the importer of excisable goods shall pay the excise tax payable on those goods in the same manner in which import duty is payable and the excise tax shall be collected in the same manner in which import duty is collected.

Excisable value and quantity

34.(1) Where a prescribed rate of excise tax is payable by reference to an *ad valorem* rate of excisable goods, the excisable value shall be —

(a) if the goods are imported, the sum of the transaction value of the goods, which is, the price actually paid or payable for the goods when sold for export to Seychelles, adjusted in terms of subsections (3) and (4), if —

(i) there are no restrictions as to the disposal or use of the goods by the buyer, other than restrictions which —

(A) are imposed or required by law;

- (B) limit the geographical area in which the goods may be resold; or
 - (C) do not substantially affect the value of the goods.
- (ii) the sale or price of the goods is not subject to any condition or consideration for which a value cannot be determined;
 - (iii) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in terms of subsection (3) and (4); and
 - (iv) subject to subsection (2), the buyer and the seller are not related.
- (b) if the goods are manufactured in Seychelles, the fair market value of the goods at the time of removal of the goods from customs control.
- (2) The fact that a buyer and a seller are related shall not in itself be a ground for not accepting the transaction value, where —
- (a) in the opinion of the Commissioner, such relationship did not influence the price actually paid or payable for the goods concerned; or
 - (b) the importer proves to the satisfaction of the Commissioner that the transaction value closely approximates to one of the following values —
 - (i) the transaction value of identical or similar goods sold at or about the same time as the goods to be valued at comparable commercial and quantity levels to buyers in Seychelles who are not related; or

- (ii) the value, of identical or similar goods imported into Seychelles at or about the same time as the goods to be valued.

(3) In determining the value for tax purposes of any imported goods in terms of subsection (1), the following shall be added to the price actually paid or payable for the goods to the extent that they are incurred by the buyer but are not included in the price actually paid or payable —

- (a) commission and brokerage except buying commission incurred in the actual purchase of the goods;
- (b) the cost of containers which are treated as being one for customs purposes with the goods in question; and
- (c) the cost of packing, whether for labour or materials.

(4) In determining the value for tax purposes of any imported goods in terms of this section, there shall be added to the price actually paid or payable for the goods —

- (a) the cost of transport and insurance from the place of manufacture to the place of export and all other charges and expenses incidental to placing the goods on board the means of transport by which the goods are removed from the country of exportation, if such cost is not included in the price actually paid or payable for the goods to be valued;
- (b) if the goods in question have to be exported to Seychelles through another country, freight, insurance and other charges from the country of supply to the country where the goods are placed on board the means of transport for direct transportation to Seychelles, if such cost is not included in the price actually paid or payable for the goods to be valued; and
- (c) the cost of freight and insurance from the place where the goods were placed on board the means of transport by

which they were removed to Seychelles to the place of importation in Seychelles, if such cost is not included in the price actually paid or payable for the goods to be valued.

(5) If —

- (a) a specific rate of excise tax is prescribed under this Act;
- (b) the goods are imported or removed from customs control in a container intended for sale with, or of a kind usually sold with, the goods in a sale by retail; and
- (c) the container is marked, labelled, or commonly sold as containing, or commonly reputed to contain, a specific quantity of such goods,

the container is deemed to contain not less than that specific quantity for the purpose of determining the excise tax payable in respect of the goods.

Restricted Goods

35.(1) Except with the written permission of the Commissioner and under such conditions as the Commissioner may consider it necessary to impose, the manufacture, importation or distribution into Seychelles of stills and all apparatus or parts of apparatus capable of being used for the production or refining of alcohol is restricted.

(2) No person shall keep or use a still unless he or she —

- (a) is registered to distill alcoholic beverages; or
- (b) being a holder of a certificate issued under subsection (3) (b), keeps and uses the still in accordance with the conditions imposed by the Commissioner under subsection (3) (a).

(3) The Commissioner —

- (a) may, in accordance with conditions that he or she may impose on a case to case basis, authorise the keeping or use of a still, for the purpose of —
 - (i) the manufacture of goods other than alcoholic beverages; or
 - (ii) the performance of laboratory work, analysis and experiments, including experiments in the manufacture of spirits, and the purification of alcohol for those purposes; and
- (b) shall issue a certificate of registration in respect of any still which he or she has authorised the keeping and use of under paragraph (a);
- (c) may cancel the certificate of registration issued in respect of any still, which is kept or used contrary to any conditions that may have been imposed by him or her under paragraph (a);
- (d) may remit the excise tax on alcoholic beverages produced by the holder of a certificate of registration when using a still for the purposes specified in subsection (2)(b).

PART VI - EXCISE TAX MANAGEMENT

Excise tax returns

36.(1) All manufactured goods shall be duly entered for warehousing within such time and subject to such conditions as the Commissioner may impose.

(2) A registered manufacturer or excise warehouse keeper shall file an excise tax return, in the prescribed form and manner, for each calendar month within 21 days after the end of the month, whether or not any excise tax is due for that month.

(3) A registered manufacturer or excise warehouse keeper shall when file the return, remit to the proper officer, the amount of tax payable in

respect of goods specified in the return as having been removed from the registered production centre or excise warehouse.

(4) Any person paying excise tax shall present to the proper officer a bill of entry in the prescribed form when making such payment.

(5) A registered manufacturer or excise warehouse keeper shall keep such records as may be prescribed in English, French or Creole.

(6) Any records, books, documents or data shall be preserved for a period of 7 years.

(7) A registered manufacturer shall issue tax invoices in accordance with section 98 (2) of the Revenue Administration Act, 2009.

(8) A registered manufacturer or excise warehouse keeper who fails to furnish a return as required under this Act is liable to an amount of additional tax as prescribed by section 42 of Revenue Administration Act.

Self-assessment of excise tax

37.(1) A registered manufacturer or excise warehouse keeper that files an excise tax return for a calendar month is treated as having made a self-assessment of the excise tax payable by the person for the month as specified in the return.

(2) The excise tax return filed by a registered manufacturer or excise warehouse keeper is treated as a notice of the self-assessment served by the Commissioner on the person on the date that the return was filed.

Payment of excise tax by registered manufacturers

38.(1) The excise tax payable by a registered manufacturer or an excise warehouse keeper under section 31(1) (a) for a calendar month shall be payable by the due date for furnishing the manufacturer's excise tax return for that month.

(2) Excisable goods which have been manufactured in Seychelles shall be liable to the rates of excise tax which are applicable to those goods

at the time when they are delivered from the place of manufacture for home use or are used or otherwise disposed of by the manufacturer.

(3) A registered manufacturer or excise warehouse keeper may not remove excisable goods from customs control, if by doing so would result in the amount of excise tax payable exceeding the amount of guarantee specified in section 6 (4) (b), unless —

- (a) the Commissioner, on application in writing by the manufacturer or excise warehouse keeper, gives permission for the removal;
- (b) the manufacturer or excise warehouse keeper, with the agreement of the Commissioner, increases the amount of the security given with the excise manufacturer's bond prior to removal; or
- (c) in any other case, the manufacturer or excise warehouse keeper pays the excise tax payable on the goods before the excisable goods are removed from customs control.

(4) If a registered manufacturer or an excise warehouse keeper pays excise tax to the Commissioner under subsection (3) (c), the manufacturer or excise warehouse keeper shall include the excise tax in the manufacturer's excise tax return for the month following the making of the payment, but is entitled to a credit for the amount paid.

(5) The payment of excise tax shall be covered by a summary declaration, in such form and manner approved by the Commissioner.

Entry for warehousing, home use or export

39.(1) An entry of excisable goods authorises the removal of those goods for —

- (a) home use, or
- (b) removal between excise manufacturers and excise bonded warehouse;

- (c) exportation from Seychelles;
- (d) removal to a duty-free shop;
- (e) removal of goods under a suspension of tax in terms of the Excise Tax (Exemptions) Regulations;
- (f) any other place approved by the Commissioner to receive and hold such goods.

(2) An entry of excisable goods shall —

- (a) be made in accordance with an approved form or in a manner approved by the Commissioner; and
- (b) contain such information as is required by the Commissioner.

(3) Where the intention is to export excisable goods, the exportation of those goods shall be dealt with under the Customs legislation.

Removal of excisable goods

40. Excisable goods shall be removed from a registered production centre or excise bonded warehouse only in packages or containers of such sizes, marked or labelled in such manner as the Commissioner approves in writing.

Deemed removal of excisable goods

41.(1) A registered manufacturer who is unable to account to the satisfaction of the Commissioner for any quantity of excisable goods manufactured or warehoused by the manufacturer shall be deemed to have removed those goods from customs control in the month in which the discrepancy arose.

(2) A registered manufacturer shall be required to notify the Commissioner of any discrepancies between the manufacturer's actual and

recorded inventory as soon as the manufacturer becomes aware of the discrepancy.

Permission to remove excisable goods without entry

42.(1) The Commissioner may give permission in writing to an excise manufacturer to remove excisable goods from an excise warehouse to another specified place, without an entry pursuant to section 39.

(2) The permission given under subsection (1) shall remain in force until it is revoked by the Commissioner.

(3) A person to whom permission has been given under subsection (1) shall, within 21 days after the end of each month, file with the Commissioner in relation to the goods specified in the permission —

- (a) an entry under section 39 for those goods; and
- (b) a return in the approved form —
 - (i) setting out the amount of excise tax payable by that person for that month in relation to those goods; and
 - (ii) containing such other information as the Commissioner requires.

(4) Permission under subsection (1) may be given subject to the condition that the person to whom the permission is given complies with such requirements as specified in the permission, being requirements that, in the opinion of the Commissioner are necessary for the protection of the revenue or for the purpose of ensuring compliance with this Act.

Payment of excise tax by importers

43.(1) Subject to this section —

- (a) excisable goods imported into Seychelles shall be liable to the rates of excise tax which are applicable to those goods at the time when they are entered for home use;

- (b) excise tax payable upon the importation of excisable goods into Seychelles shall be paid by the importer to the Seychelles Revenue Commission.
- (2) For the purposes of subsection (1) —
 - (a) a passenger who imports baggage for which no entry is required shall be treated as having entered the baggage for use within Seychelles at the time the baggage is delivered to the passenger in Seychelles; and
 - (b) the addressee of goods imported by post or courier for which no entry is required shall be treated as having entered the goods for use within Seychelles at the time the goods are delivered to the addressee.

Temporary closure of business premises

44.(1) If the registered manufacturer fails to carry out any duty imposed upon him or her by this Act with respect to his or her premises or any buildings, appliances, stock-books, returns, payments, or the mode of conducting his or her business, the Commissioner, after having given 7 days' notice in writing requiring the omission to be rectified or the irregularities to be corrected, may, upon failure by the manufacturer to comply with the notice, close down part or the whole of the manufacturer's business and declare in writing that the registration certificate is suspended.

(2) Where a registration certificate is suspended under this Act, the manufacturer shall —

- (a) immediately cease to manufacture or remove goods; and
- (b) comply with such conditions as the Commissioner may impose.

(3) A suspension under subsection (1) shall continue until it is withdrawn by the Commissioner upon full compliance with this Act.

(4) If the requirements of this Act are not complied with within a

period to be specified by the Commissioner, the registration certificate may be cancelled by him or her.

(5) The Commissioner may, at any time, enter any premises described in a notice issued under subsections (1) or (4) for the purposes of executing the order and may require a police officer to be present while the order is being executed.

Customs lock and seal on registered production centre

45.(1) The Commissioner may seal or lock an item of manufacturing plant, if the Commissioner has reasonable cause to believe that a registered manufacturer is not complying with this Act.

(2) The manufacturing plant may only be operated upon removal of the seal or lock by the Commissioner.

PART VII - REBATE, REFUND AND REMISSION OF EXCISE TAX

Claims for relief

46. When any claim is made for an exemption, drawback, rebate, refund or remission of any tax, fee or charge in accordance with this Act, the burden of proof shall lie upon the claimant to show that he or she is entitled to such exemption, drawback, rebate, refund or remission.

Relief for raw materials

47.(1) If the Commissioner is satisfied, on the basis of a certificate issued by a registered manufacturer in the prescribed form, that excisable goods, imported into Seychelles, are intended to be used by the registered manufacturer as raw materials for the manufacture of other excisable goods, the Commissioner may, in respect of such goods, grant a suspension of tax subject to the condition that —

- (a) tax on the final product is more than the tax payable at the time of importation;
- (b) the manufacturer has entered into a suspension of duty

bond or such other security as the Commissioner may in his discretion approve.

(2) If the tax on the final excisable product is less than the tax payable at the time of importation, the Commissioner shall not grant a suspension of tax.

Relief for goods destroyed or lost by accident

48.(1) The owner of excisable goods may wish to remit tax under this section if the goods belonging to him or her have been destroyed or lost by accident without going into consumption whilst —

- (a) in an excise warehouse or on a registered production centre, registered under section 6 (3)(b);
- (b) in transit to a bonded warehouse;
- (c) in transit for export in bond; or
- (d) being removed from an excise warehouse as aircraft or ship's stores.

(2) If the owner of excisable goods pursuant to subsection (1) wishes the tax to be remitted he or she shall submit a voucher together with a written explanation of the circumstances in which the damage or loss came about to the proper officer for transmission to the Commissioner.

(3) After consideration of the voucher and explanation, submitted under subsection (2) and the report of any officer appointed to investigate the matter, the Commissioner shall remit the tax thereon by signing the voucher as authority for the goods to be written off, if he or she is satisfied that —

- (a) the goods have been destroyed or have been lost without going into consumption; and
- (b) every reasonable effort was made and precaution taken to prevent their destruction or loss.

Refund or remission of excise tax on defective goods

49.(1) Subject to this part, the Commissioner may grant a refund or remission of any excise tax paid or payable on goods manufactured in Seychelles which are found to be defective as a result of faulty manufacturing or production, provided that any application for such refund or remission shall be made in writing by the manufacturer and goods are returned unused within 6 months of the date of removal from registered production centre stating —

- (a) the purpose for which they are to be returned;
- (b) full details as to the nature, quantity, weight or volume of the goods;
- (c) the date on which they were produced or manufactured and the date on which they were removed from the registered production centre; and
- (d) the nature and cause of defect in the goods.

(2) There shall be no refund unless the goods are destroyed under the supervision of an officer according to terms and conditions set by the Commissioner.

Drawback of excise tax on exported excise paid stocks

50.(1) If a person who has imported excisable goods subsequently exports those goods or puts them on board a ship or aircraft for use as stores and the goods are in compliance with the conditions for payment of a drawback of duties under the Customs legislation, that person is entitled to a drawback as per the Customs legislation.

(2) An application for a drawback of the excise tax in circumstances to which subsection (1) applies shall be filed with the Commissioner in the prescribed form and manner.

(3) If the Commissioner is satisfied that a person who has made an

application under subsection (1) is entitled to a refund, the Commissioner shall pay the refund in accordance with the Revenue Administration Act, 2009.

PART VIII - COLLECTION AND RECOVERY OF EXCISE TAX

Refunds of excise tax overpaid

51.(1) Subject to this section, if a person has paid to the Commissioner any amount in excess of the amount of the excise tax prescribed under this Act, the Commissioner shall refund the amount paid in excess.

(2) Before a refund can be made, a person shall apply to the Commissioner in writing, detailing the grounds for refund.

(3) An application for a refund shall be made not more than 7 years after the date on which the excess was paid.

(4) This section shall be subject to section 20 (2) of the Revenue Administration Act, 2009.

Recovery of excise tax

52. Excise tax payable under this Act by any person is recoverable as a debt due to the Government in any court of competent jurisdiction by the Commissioner General or by the Attorney General suing on behalf of the Government.

Set off

53. If a person has failed to pay in whole or in part any amount of excise tax payable under this Act, the Commissioner may set off that unpaid tax against any other amount refundable or payable by the Government to that person by or under any other Act.

Post clearance amendment of declaration

54. Where excisable goods have been released on incorrect or incomplete information which is revealed in the revision of post clearance

examination, Customs shall take appropriate measures to recover any unpaid taxes and impose a fine if deemed necessary.

Appeal and Dispute settlement

55.(1) If any dispute arises as to the amount or rate of excise tax or as to the liability of goods to excise tax, the person responsible for the goods shall deposit with the Commissioner the amount of excise tax demanded by the Commissioner.

(2) If a deposit is made —

- (a) the person responsible for the goods is entitled to possession of the goods; and
- (b) the amount of the deposit is deemed to be the proper amount of the excise tax unless the contrary is determined in proceedings under subsection (3).

(3) A manufacturer or person who is dissatisfied with the decision of the Commissioner shall, appeal to the Commissioner General in accordance with section 32 of the Customs Management Act, 2009.

(4) Subject to subsection (3), the Commissioner General may upon review either uphold or vary the decision of the Commissioner.

(5) Any excess of the deposit over the proper excise tax as determined in the proceedings is to be refunded by the Commissioner to the manufacturer or person responsible for the goods.

Application for review of reviewable decision

56. A person dissatisfied with a reviewable decision of the Commissioner General may make an application to the Revenue Tribunal in accordance with section 72 of the Revenue Administration Act, 2009 for review of the decision.

Evidence in certain circumstances

57.(1) In any prosecution on account of the non-payment of tax on goods liable to excise tax, and in any proceedings for the recovery of tax on

such goods, instituted against a person, any statement in any record kept by or on behalf of such person to the effect that such goods of a particular quantity or strength have been manufactured or held in stock by the person at any time, shall be admissible as evidence of the fact that he or she had at that time manufactured or held in stock goods liable to excise tax of that quantity or strength.

(2) If in any such prosecution or proceedings such person claims that he or she has disposed of or used any goods liable to excise tax in such manner as not to be subject to excise tax, the burden of proving that such goods have been so disposed of or used shall be upon that person.

Sellers of excisable goods to produce proof

58.(1) Any person being in possession or control of imported excisable goods or goods which are liable to excise tax under this Act, and any person who offers for sale, exports or attempts to export such goods or has such goods entered in his or her books or mentioned in his or her document or record shall, when requested by an officer to do so, produce proof as to the place where entry of the excisable goods was made and any tax due thereon was paid and the date of entry and the marks and numbers of the packages concerned, which marks and numbers shall correspond with the documents produced in proof of entry or the payment of tax.

(2) If the person under subsection (1) did not pay the tax or make entry of the goods, such person shall produce evidence that will enable the officer to locate and question the person who made such payment and entry in respect of the goods.

(3) Any person failing to produce the proof or evidence required under this section shall be liable for the unpaid excise tax, and shall pay the tax to the Commissioner within the time specified by the Commissioner.

PART IX - SEIZURE AND FORFEITURE

Seizure and consequent procedures

59.(1) An officer may seize —

- (a) excisable goods that are, or that an officer has reasonable cause to believe are, produced, or partly produced, by a person who is not a registered manufacturer;
- (b) all goods that are, or that an officer has reasonable cause to believe are, used, or capable of being used, in the production of excisable goods and that are found on premises not being a registered production centre;
- (c) all excisable goods subject to the control of Customs that are taken possession of, moved, altered or interfered with, except as authorised by or in accordance with this Act;
- (d) all packages in which seized goods are contained.

(2) Whenever articles are seized in terms of this section, the officer so seizing shall give the person from whom the articles have been seized a notice of seizure.

(3) All seized goods shall be moved to such place as the Commissioner directs.

Substitution of other goods for goods actually liable to seizure

60. Where any excisable goods subject to excise tax, become liable to seizure in terms of this Act, whether or not excise tax has been paid thereon, an officer may, instead of seizing those goods, seize from the stock of the person from whom those goods would have been seized —

- (a) in the case of, spirits, the equivalent quantity as absolute alcohol, of other spirits which are subject to excise tax;
- (b) in the case of goods other than spirits, the equivalent quantity of other like goods liable to excise tax.

Persons to make representations to the Commissioner

61.(1) Any person who has been served with a notice of seizure may appeal against the decision within 7 days from the date the notice is served on him or her.

(2) Any person appealing under subsection (1) shall lodge an application of appeal to the Commissioner.

(3) The Commissioner may within 30 days of receiving the appeal —

(a) conditionally or unconditionally order any or all of the goods to be restored from seizure; or

(b) declare any or all items to be forfeited to the Government.

(4) Notwithstanding subsection (1), if any of the goods seized are perishable, the Commissioner may sell them immediately after seizure.

(5) The proceeds of sale shall be paid to the Seychelles Revenue Commission subject to the deduction of any expenses incurred in the sale.

Power of the Commissioner to sell or dispose of goods

62. The Commissioner may sell or dispose of any goods declared forfeited under section 61 (3)(b) unless the person from whom the goods were seized or the owner, gives written notice to the Commissioner of his or her intention to take proceedings against the Commissioner for the recovery of the goods.

Power of the Commissioner General to compound offences

63.(1) The Commissioner General may, where he or she is satisfied that any person has committed an offence under this Act in respect of which a fine is provided or in respect of which anything is liable to forfeiture, compound the offence and may order such manufacturer to pay a sum of money, not exceeding the amount of the fine to which the manufacturer would have been liable if he or she had been prosecuted and convicted for the offence, as the Commissioner General may deem fit, and the Commissioner General may order anything liable to forfeiture in connection with the offence to be declared forfeited to the Government.

(2) The Commissioner General shall not exercise his or her powers under subsection (1) unless the manufacturer admits in a prescribed form

that he or she has committed the offence and requests the Commissioner General to deal with such offence under this section.

(3) Where the Commissioner General makes any order under this section —

- (a) the order shall be put into writing and shall have attached to it the request of the manufacturer to the Commissioner General to deal with the matter under this section;
- (b) the order shall specify the offence which the manufacturer committed and the penalty imposed by the Commissioner General;
- (c) a copy of the order shall be given to the manufacturer if he or she so requests;
- (d) the manufacturer shall not be liable to any further prosecution in respect of the offence;
- (e) where the terms of the compounded settlement are breached by the offender, the Commissioner General may institute legal proceedings against the offender in terms of the Act.

Access to registered production centres

64. Where there are reasonable grounds to believe that it is necessary to do so for the protection of the revenue and the proper administration of this Act, a proper officer appointed for the purposes of this section or an officer authorised by such a proper officer may —

- (a) without prior notice, at any time enter any registered production centre, distillery, brewery or bonded warehouse, for the purpose of search, examination and enquiry as he or she considers necessary, and may seal, mark or otherwise secure any package there found, and

may take possession of any document, record or other relevant thing for as long as may be necessary for the purpose of any examination, investigation, trial or inquiry; and

- (b) while the officer is on such premises or at any other time, require from any person the production then and there, or at a time and place to be fixed by the officer, of any book, document, record, thing or printout or information stored in any information retrieval system which is required under this Act to be kept or exhibited, or which is or has been on such premises or in the possession, custody or control of any such person or his or her employee; and
- (c) at any time and at any place require from any person who has the possession, custody or control of any such book, record, printout, document or thing under paragraph (b), the production thereof then and there, or at a time and place to be fixed by the officer; and
- (d) examine and make extracts from and copies of such books, records, printout or document under paragraph (b) and may require from any person an explanation of any entry therein and may seize such books, records, printout, documents or things as in his or her opinion may contain evidence of an offence under this Act;

Power to enter and search with warrant

65.(1) An officer may make a declaration on oath before a magistrate, if he or she has reasonable grounds to believe that there is on any premises, vehicle, vessels or aircraft —

- (a) any excisable goods on which excise tax has not been paid; or
- (b) any records relating to such goods.

(2) The magistrate may issue a warrant authorising the officer to —

- (a) enter and search the premises, vehicle, vessels or aircraft at any time and using reasonable force as may be necessary; and
- (b) seize and remove any excisable goods or records found on the premises, vehicle, vessels or aircraft.

(3) An officer in possession of a warrant under subsection (2) shall require a police officer to assist him or her in the execution of the warrant.

Taking of samples

66.(1) An officer may at any time and without payment take samples of any goods for examination or for ascertaining the excise tax payable thereon or for such other purpose as the Commissioner may consider necessary.

(2) The samples shall be dealt with and accounted for in such manner as the Commissioner may direct, provided that any sample so taken shall whenever possible be returned to the owner of the goods.

Examining goods and plant

67.(1) Any officer may —

- (a) open packages and examine, weigh, mark and seal any excisable goods subject to the control of customs; and
- (b) lock up, seal, mark or fasten any plant at a registered production centre.

(2) The expenses of the examination of the goods including the cost of their removal to the place of examination is to be borne by the owner.

PART X - OFFENCES AND PENALTIES

Failure to enable the Commissioner to determine fair market value

68. Any person who fails to provide a declaration to the Commissioner in accordance with section 3(4) commits an offence and shall

be liable on conviction to a fine of level 4 on the standard scale or imprisonment for a term not exceeding 3 months, or both.

Unauthorised manufacture of excisable goods

69. Any person who contravenes section 5 by —

- (a) manufacturing excisable goods in Seychelles without being registered; or
- (b) manufacturing excisable goods in premises that are not a registered production centre,

commits an offence and on conviction shall be liable to a fine not less than level 4 up to level 7 of the Standard Scale or to imprisonment for a term not exceeding 1 year, or both.

Unauthorised storage or installation of machinery, equipment or receptacles

70.(1) A registered manufacturer commits an offence if without the permission of a proper officer —

- (a) machinery, equipment or receptacles capable of use in connection with the manufacture of goods liable to excise tax which are not described in a list submitted in accordance with section 6(3) (a) or a list amended in accordance with section 6(10) are brought into, kept or installed in the registered premises in respect of which the list was submitted; or
- (b) machinery, equipment or receptacles described in a list such as is referred to in paragraph (a) are —
 - (i) kept or installed in a room, building or other place on the registered production centre in respect of which the list was submitted which, according to the list, is not a room, building or other place where they are to be kept or installed; or

(ii) used for any purpose other than the purpose described in the list; or

(c) goods liable to excise tax are manufactured in a room, building or other place at the registered production centre in respect of which a list such as is referred to in paragraph (a) was submitted which, according to the list, is not a room, building or other place to be used for that purpose.

(2) A registered manufacturer who commits an offence under subsection (1) shall be liable on conviction to a fine of level 5 on the standard scale or to imprisonment for a term not exceeding 1 year, or both.

Unauthorised sale or disposal of goods manufactured for experimental purpose

71. Any person authorised by the Commissioner to manufacture goods for experimental purposes in accordance with section 7, who sells or disposes of such goods otherwise than in accordance with the rules made by the Commissioner commits an offence and shall be liable on conviction to a fine not less than level 4 but not exceeding level 7 of the Standard Scale or imprisonment for a term not exceeding 1 year, or both.

Interference with a registered production centre or excise bonded warehouse

72. Any person who without the permission of the Commissioner interferes with: a registered production centre or excise bonded warehouse in contravention with section 11 and section 24, commits an offence and shall be liable on conviction to —

(a) in the case of an individual, a fine of level 3 on the standard scale or imprisonment for a term not exceeding 1 year, or to both; and

(b) in the case of a body corporate, a fine of level 4 on the standard scale.

Failure to enable officers to discharge their duties

73. A registered manufacturer or excise warehouse keeper who fails to provide appropriate facilities and assistance in accordance with Section 85 under this Act, to enable officers to exercise their powers under this Act, commits an offence and shall be liable on conviction to —

- (a) in the case of an individual, a fine of level 5 on the standard scale or imprisonment for a term not exceeding 1 year, or to both; or
- (b) in the case of a body corporate, a fine of level 6 on the standard scale.

Unauthorised removal of goods from duty-free shops and an excise warehouse

74. Any person who —

- (a) takes or delivers goods from a duty-free shop in contravention of section 16; and
- (b) takes or delivers goods from an excise warehouse in contravention of section 25,

commits an offence and shall be liable on conviction to a fine of level 5 on the standard scale or imprisonment for a term not exceeding 6 months or both.

Unauthorised importation, distribution or use of restricted goods

75. Any person who contravenes section 35 (1) or fails to comply with any condition set by the Commissioner in accordance with section 35 (3)(a) commits an offence and shall be liable on conviction to a fine of level 5 on the standard scale or imprisonment for a term not exceeding 1 year or both.

Unauthorised removal of excisable goods from production centres

76.(1) A person commits an offence, if that person —

- (a) removes, causes or permits excisable goods to be removed from a registered production centre in contravention of section 39;
- (b) removes excisable goods from a registered production centre in contravention of section 40.

(2) A person who commits an offence under subsection (1) shall be liable on conviction to a fine of level 5 on the standard scale or imprisonment for a term not exceeding 1 year, or both.

Non-compliance to permission to remove excisable goods without entry

77.(1) A person to whom permission has been granted under section 42(1), commits an offence, if that person —

- (a) fails to comply with a requirement specified in the permission; or
- (b) contravenes section 42(3).

(2) A person who commits an offence under subsection (1) shall be liable on conviction to a fine of level 5 on the standard scale or imprisonment for a term not exceeding 1 year, or both.

Unauthorised use of imported goods

78. A manufacturer commits an offence if the goods imported in accordance with section 47 are used in contravention of the manufacturer's certificate issued at importation, and shall be liable on conviction to a fine of level 5 on the standard scale or to imprisonment for a term not exceeding 6 months and all irregularly manufactured goods shall be liable to forfeiture.

Bribery and collusion

79.(1) An officer commits an offence, if that officer —

- (a) directly or indirectly asks for or takes, in connection with any of his or her duties under this Act, any payment or other reward, not being a payment or reward that he or she is lawfully entitled to claim or receive; or
 - (b) enters into or acquiescence in any agreement to do, abstain from doing, permit, conceal or connive at any act or thing whereby the Government is or may be defrauded or which is otherwise unlawful, being an act or thing relating to the administration of this Act.
- (2) A person commits an offence if that person —
 - (a) directly or indirectly offers or gives to any officer any payment or other reward whatsoever, whether pecuniary or otherwise; or
 - (b) proposes or enters into any agreement with any officer; in order to induce him or her to do, abstain from doing, permit, conceal or connive at any act, omission or thing, whereby the Government is or may be defrauded or which is otherwise unlawful, being an act, omission or thing relating to the administration of this Act, or otherwise to take any course contrary to his or her duty.
- (3) Any officer or person who commits an offence under subsections (1) or (2) shall be liable on conviction to —
 - (a) a fine of level 5 on the standard scale or three times the value of the payment or reward concerned, whichever is the greater; or
 - (b) imprisonment for a term not exceeding 2 years or to both.
- (4) Where an officer or a person is convicted of an offence under subsection (1) or (2), the court may order the forfeiture of any payment or reward that forms part of the offence to the Government.

Interference with seals and fastenings

80.(1) A person commits an offence if that person, without the authority of an officer, opens, alters, breaks or erases a fastening, lock, mark, or seal, placed by an officer upon any goods or upon any plant in a registered production centre.

(2) A person who commits an offence under subsection (1) shall be liable on conviction to a fine of level 5 on the standard scale or imprisonment for a term not exceeding 1 year or both.

Warehousing irregularities

81.(1) The owner of excisable goods, or the proprietor or occupier of the warehouse, or the person responsible for the handling of the excisable goods, commits an offence, if any excisable goods entered for warehousing —

- (a) are not carried into and deposited in the warehouse;
- (b) after deposit in the warehouse, are taken out of the warehouse without entry and clearance;
- (c) having been entered and cleared for exportation, are not duly exported.

(2) Notwithstanding subsection (1), any person specified therein, who proves that all reasonable precautions were taken to prevent the act that constituted the offence shall not be guilty of that offence.

(3) Any person who commits an offence under this section, shall be liable on conviction to a fine of level 5 on the standard scale or to imprisonment for a term not exceeding 2 years or both.

(4) Any goods that is the subject of an offence under subsection (1) shall be liable to forfeiture.

Failure to keep and produce books, records or other documents and data

82.(1) A manufacturer or excise warehouse keeper of goods liable to excise tax commits an offence if he or she contravenes section 36 (3) or —

- (a) fails to produce such record when required by an officer to do so;
- (b) fails to make in such record any entry required to be made therein or fraudulently makes any entry in such record;
- (c) erases or obliterates any entry in such record;
- (d) mutilates or tears therefrom any leaf or page;
- (e) by his or her own accord or through the agency or with the assistance of any other person, destroys, conceals or makes away with such record;
- (f) refuses to allow an officer at any time to inspect such record or obstructs or hinders him or her in such inspection;
- (g) neglects or refuses to furnish any return specified in section 20 within the time specified for the furnishing of such return;
- (h) submits a false return; or
- (i) neglects or refuses to give such further information as to his or her operations in the manufacture of goods liable to excise tax, or the disposal thereof, as an officer may require.

(2) A manufacturer or excise warehouse keeper who commits an offence under subsection (1) shall be liable on conviction to a fine of —

- (a) level 1 on the standard scale for small businesses;
- (b) level 3 on the standard scale for medium business; and
- (c) level 4 on the standard scale for large business.

Penalty for certain acts

83.(1) A person commits an offence if he or she —

- (a) fails to notify the Commissioner as required by section 6(9), 9(3) or 9(7);
- (b) enters premises that is subject to an order under section 44(2) without the permission of the Commissioner;
- (c) operates an item of manufacturing plant without the permission of the Commissioner in contravention of section 45;
- (d) supplies the means or materials for or assists in establishing or repairing, maintaining or working any still, the keeping and using of which has not been authorised in terms of this Act, knowing at the time when he or she so supplies or assists that it was such a still;
- (e) has upon his or her premises or in his or her custody or control, or purchases, sells or otherwise disposes of any goods liable to excise tax which have been manufactured in breach of this Act, unless such person proves that he was unaware that such goods were so manufactured;
- (f) is found without lawful excuse in any place where the illegal manufacture of goods liable to excise tax is being carried out;
- (g) without lawful authority, imports any goods liable to excise tax after they have been exported from Seychelles;
- (h) not being a person registered to manufacture goods liable to excise tax, has, without lawful authority, in his or her possession, custody or control any manufactured or partly manufactured goods liable to excise tax upon which such excise tax has not been paid;

- (i) falsely holds himself or herself out to be an excise officer;
- (j) fraudulently claims a refund, rebate, remission or drawback to which he or she is not entitled;
- (k) makes improper use of any registration document issued under this Act or any other law relating to customs or excise; or
- (l) damages, destroys or disposes of any goods in order to prevent the seizure thereof by an officer or any other person authorised to seize them.

(2) A person who commits an offence under subsection (1) shall be liable on conviction to a fine of level 5 on the standard scale or to imprisonment for a term not exceeding 2 years, or both.

PART XI - FINAL PROVISIONS

Regulations

84.(1) The Minister may make regulations —

- (a) prescribing any matter required to be prescribed for the purposes of this Act; and
- (b) for the proper and efficient administration of this Act.

(2) Without limiting the general effect of subsection (1), regulations made under that subsection may provide for —

- (a) imposition of excise tax rates, excise levy and sugar tax rates;
- (b) the registration of excise manufacturers, including the prescribed fees applicable upon the issuance or renewal of a registration certificate in accordance with this Act;
- (c) the registration of production centres;

- (d) the movement of goods and goods into and out of the registered production centres;
 - (e) the operations to be performed in registered production centres;
 - (f) the keeping of records, books and other documents, the making of returns and the giving of information by manufacturers of goods liable to excise tax;
 - (g) the registration and operations of duty-free shops;
 - (h) the granting of rebates, refunds, remissions and suspensions of excise tax;
 - (i) the granting of reduction or concession on the rate of taxes payable on any of the goods prescribed under this Act;
 - (j) the granting of exemption from payment of taxes payable on any excisable goods;
 - (k) the minimum value of taxes payable, below which taxes will not be collected;
 - (l) a minimum value of taxes paid in excess, below which taxes will not be refunded.
- (3) Regulations made under subsections (1) and (2) may —
- (a) contain provisions of a saving or transitional nature consequent upon the making of this Act; or
 - (b) prescribe penalties for the contravention of the regulations.

Rules

85. The Commissioner may make rules not inconsistent with this Act or any other enactment in respect of any matter where this Act provides that such matter is to be dealt with in accordance with rules made by the Commissioner.

PART XI - REPEAL, SAVINGS AND TRANSITIONAL

Repeal

86. The Excise Tax Act, 2009 (Cap. 264) is hereby repealed.

Savings and Transitional

87.(1) The schedules and regulations made, excise rates, certificates and directions issued under the repealed Act shall continue in force until they are amended or repealed under this Act.

(2) An existing manufacturer may continue to produce excisable goods for one month or such longer period as the Commissioner allows for a particular producer as if the existing producer were a registered manufacturer and the goods were being produced at a registered production centre.

(3) An existing manufacturer shall apply for a registration certificate issued under section 6 of the Act.

(4) Upon the commencement of this Act, any appointments made under a provision of the repealed Act shall continue to apply as if made under this Act.

(5) The repeal of the Act shall not affect —

- (a) proceedings commenced in any Court before the commencement of this Act;
- (b) any information submitted by any officer in respect of an alleged offence committed before the commencement of this Act;
- (c) any right or proceedings related to a refund, remission, concession, rebate, exemption or drawback of tax under any statutory instruments made under the repealed Act before the commencement of this Act;

- (d) any right to recover money under any statutory instruments made under the repealed Act whether paid before or after the commencement of this Act;
- (e) the condemnation of any goods in accordance with the repealed Act.

(6) A person who, immediately before the commencement of this Act, was an officer appointed in accordance with the repealed Act shall be deemed to be an officer appointed by the Commissioner General.

BUSINESS TAX (AMENDMENT) BILL, 2022*(Bill No. 33 of 2022)***OBJECTS AND REASONS**

The fundamental objective of this Bill is to make certain changes to the Business Tax Act, 2009 by amending Section 2 thereby introducing new terms that give meaning to the replaced section 54.

The Bill in Section 54 seeks to prevent a person or permanent establishment from obtaining a tax advantage as a result of transfer pricing from actual conditions that are inconsistent with the arm's length principle, giving power to the Commissioner General to make consequential adjustments to those conditions.

The Bill also seeks to prevent a person or the permanent establishment from establishing commercial or financial relations that would result in that person or a permanent establishment obtaining a transfer pricing benefit.

Section 54 delineates when a transfer pricing benefit is deemed to have been obtained, taking in to account foreign residents and makes clear how exactly the Commissioner General is to determine the transfer pricing benefit when conducting a transfer pricing audit.

The amendment also makes inoperable those conditions which are not at arm's length and bestows upon the Commissioner General power to make a determination pursuant to subsection (28) in relation to those persons who become disadvantaged as a result of the Commissioner General making a transfer pricing adjustment.

Dated this 21st day of November, 2022.

**NAADIR HASSAN
MINISTER OF FINANCE,
NATIONAL PLANNING AND TRADE**

BUSINESS TAX (AMENDMENT) BILL, 2022

(Bill No. 33 of 2022)



A BILL

FOR

AN ACT TO AMEND THE BUSINESS TAX ACT, (CAP 20).

ENACTED by the President and the National Assembly.

Short title and commencement

1. This Act may be cited as the Business Tax (Amendment) Act, 2022 (hereinafter the “Act”), amending the Business Tax Act (Cap 20) (hereinafter the “principal Act”) and shall come into operation on such date as the Minister may, by notice published in the *Gazette*, so appoints.

Amendment of Section 2

2. Section 2 of the principal Act is amended as follows —

- (a) by inserting before the definition of “associate” the following definitions —

“Actual conditions” are the conditions that operate in the commercial or financial relations between persons and permanent establishments and other persons which include, but is not limited to, the conditions which can influence or have the potential to influence, the financial indicators used in applying the appropriate transfer pricing method;

“Actual price” means the price set during a transaction between persons and permanent establishments and other persons giving rise to a transfer pricing benefit;

“Actual profit” means profits that would have accrued to a person or a permanent establishment had a person or permanent establishment gained a transfer pricing benefit;

“Area covered under an international tax sharing treaty” means an area identified by or under an international tax sharing treaty in which the Seychelles and another country share taxing rights over activities undertaken within that area;

“Arm's length” means a distance discouraging personal contact and familiarity between persons and permanent establishments dealing with one another in terms of this Act, such that the dealings occur wholly independently;

“Arm's length conditions” means conditions expected to arise between independent persons and permanent establishments or another person dealing wholly independently of one another in comparable circumstances;

“arm's length principle” means the principle that commercial or financial relations established in a transaction between two related parties must be the same as the commercial or financial relations established in a comparable transaction between two unrelated parties;

“Arm's length profits” means the profits that would have accrued to a person or a permanent establishment had the owner of that person or permanent establishment who being related to it, allocated expenditure and income to that person or permanent establishment at arm's length;

- (b) by inserting after the definition of “business building” the following definition —

“business profits article” means —

- (i) Article 7 of the Organisation for Economic Co-operation and Development Model Tax Convention on Income and on Capital; or
 - (ii) a corresponding article of another international tax agreement that the Seychelles has entered into;
- (c) by inserting after the definition of “commencement date” the following definition —

“Commercial or financial relations” means connections or arrangements between persons and permanent establishments or relevant parts of those persons or permanent establishments that relate to or could otherwise affect the commercial or financial activities of one or all of the persons or permanent establishments or parts thereof which arrangements may include —

- (i) a single arrangement or a series of arrangements;
- (ii) an understanding, things to be done or not to be

done, and practices, whether expressed or implied and whether or not legally enforceable;

(iii) unilateral actions or mutual arrangements;

(iv) a strategy; or

(v) allocation of overall profit outcomes by two or more persons or permanent establishments.

(d) by inserting after the definition of “Depreciable asset” the following definition —

“Disadvantaged person” is a person that becomes disadvantaged as a result of the Commissioner General making a Transfer Pricing adjustment resulting in an increase in that person's taxable income and withholding tax, or a decrease in that person's loss and tax concessions for a tax year;

(e) by inserting after the definition of “Interest” the following definition —

“International tax agreement” means a tax agreement or treaty within the meaning of section 2(i) of Act 16 of 2011.

(f) by inserting after the definition of “Rent” the following definition —

“Residence article” means

(a) Article 4 of the Organisation for Economic Co-operation and Development Model Tax Convention on Income and on Capital; or

(b) a corresponding article of another international tax agreement that the Seychelles has entered into;

- (g) by inserting after the definition of “Trading stock” the following definition —

“Transfer price” means the difference between the actual price and arm's length price at which a person and its associates, who being related parties, transact with each other and transfer pricing shall be accordingly construed;

“Transfer pricing benefit” means a benefit accruing to a person or a permanent establishment as a result of transfer pricing.

Amendment of section 54

3. Section 54 of the principal Act is amended by repealing section 54 of the principal Act and substituting therefor the following —

“54.(1) This section applies to —

- (a) an arrangement between associates;
- (b) an arrangement between different businesses of a person, as though that arrangement was between associates;
- (c) an arrangement between a business of a person and another activity conducted by that person or another person, as though that arrangement was between associates; and
- (d) an arrangement between a person and a permanent establishment of that person, as though that arrangement was between associates.

(2) A person or a permanent establishment shall not obtain a tax advantage as a result of transfer pricing in Seychelles from actual conditions that are inconsistent with the arm's length principle.

(3) Nothing in the provisions of this Act other than this section limits the operation of this section.

(4) A person shall not establish commercial or financial relations that would result in that person, a permanent establishment or another person obtaining a transfer pricing benefit.

(5) A person is deemed to have obtained a transfer pricing benefit referred to in subsection (4) if —

- (a) the actual conditions differ from the arm's length conditions recognised by the Seychelles revenue Commission;
- (b) had the arm's length conditions operated instead of the actual conditions, one or more of the following ensued —
 - (i) the amount of the person's taxable income for a tax year is greater;
 - (ii) the amount of the person's loss for a tax year is less;
 - (iii) the amount of the person's tax concessions for a tax year is less;
 - (iv) an amount of withholding tax payable in respect of interest or royalties by the person is greater.

(6) The Commissioner General, shall when conducting a transfer pricing audit, determine the transfer pricing benefit by calculating the difference in the actual and arm's length amounts in, —

- (a) the taxable income of the person for a tax year;
or

(b) the tax loss of the person for a tax year.

(7) A foreign resident shall not establish commercial or financial relations that would result in itself, a permanent establishment in the Seychelles or another person in the Seychelles obtaining a transfer pricing benefit.

(8) A foreign resident obtains a transfer pricing benefit if —

(a) it has a permanent establishment in the Seychelles; and

(b) the amount of profits attributed to that permanent establishment is less than the amount of profits the permanent establishment might be expected to make if it were a distinct and separate person engaged and dealing in the manner mentioned in the business profits article; and

(c) had the arm's length profits instead of the actual profits been attributed to the permanent establishment, the following ensued —

(i) the amount of the taxable income of the permanent establishment for a tax year is greater than its actual amount;

(ii) the amount of a tax loss of the permanent establishment for a tax year is less than its actual amount; or

(iii) the amount of tax concessions of the permanent establishment for a tax year is less than its actual amount.

(9) The Commissioner General shall when conducting a transfer pricing audit, determine the transfer pricing benefit by

calculating the difference in the actual and arm's length amounts in subsection (8)(c)(i), (ii) and (iii).

(10) Where a person or permanent establishment obtains a transfer pricing benefit from conditions that operate between a person, a permanent establishment or another person in connection with their commercial or financial relations, those conditions shall be deemed inoperable and the arm's length principle shall apply.

(11) Where the person or permanent establishment gains a transfer pricing benefit, the Commissioner General may make consequential adjustments to those actual conditions that would result in that person or permanent establishment being treated for business tax and withholding tax purposes as if arm's length conditions had operated.

(12) The Commissioner General, in ensuring that the amount of profit being subjected to tax in the Seychelles between persons and permanent establishments or other persons is not less than it should be, shall work out the amount (if any) —

- (a) of the taxable income of the persons or permanent establishments for the tax year if it can be established that a transfer pricing benefit has arisen resulting in a lesser income;
- (b) of the loss of the persons or permanent establishments for the tax year if it can be established that a transfer pricing benefit has arisen resulting in a greater loss;
- (c) of the tax concessions of the persons or permanent establishments for the tax year if it can be established that a transfer pricing benefit has arisen resulting in a greater amount of tax concession; and
- (d) of the withholding tax of the persons or permanent establishments for the tax year if it

can be established that a transfer pricing benefit has arisen resulting in less withholding tax payable in respect of interest or royalties.

(13) There shall be deemed a difference between the actual conditions and the arm's length conditions if —

- (a) an actual condition exists that is not one of the arm's length conditions; or
- (b) a condition does not exist in the actual conditions but is one of the arm's length conditions.

(14) The Commissioner General may —

- (a) treat a person or a permanent establishment that has no taxable income for a tax year as having a taxable income for the year of a nil amount; and
- (b) treat a person or a permanent establishment that has no loss for a tax year as having a loss for the year of a nil amount; and
- (c) treat a person or a permanent establishment that has no tax concessions for a tax year as having tax concessions for the year of a nil amount.

(15) The Commissioner General, shall in conducting audits, ensure that the arm's length profits for a permanent establishment in Seychelles is taken, for the purposes this Act, to be attributable to sources in Seychelles.

(16) The Commissioner General in conducting audits shall ensure that the arm's length profits for a permanent establishment in an area covered by an international tax sharing agreement are taken, for the purposes of this Act, to be attributable to sources in that area.

(17) In identifying the arm's length conditions, the Commissioner General shall use the method, or the combination of methods that is the most appropriate and reliable, having regard to all relevant factors, including the following —

- (a) the respective strengths and weaknesses of the possible methods in their application to the actual conditions;
- (b) the circumstances, including the functions performed, assets used and risks borne by the persons or permanent establishments;
- (c) the availability of reliable information required to apply a particular method; and
- (d) the degree of comparability between the actual circumstances and the comparable circumstances, including the reliability of any adjustments to eliminate the effect of material differences between those circumstances.

(18) In identifying comparable circumstances referred to in subsection (17)(d), regard must be had to all relevant factors, including the following —

- (a) the functions performed, assets used and risks borne by the persons or permanent establishments;
- (b) the characteristics of any property or services transferred between persons and permanent establishments;
- (c) the terms of any relevant contracts between the persons or the permanent establishments;
- (d) the economic circumstances;

- (e) the business strategies of the persons or permanent establishments.

(19) The circumstances referred to in subsection (18) are comparable to actual circumstances if, to the extent, if any, that the circumstances differ from the actual circumstances —

- (a) the difference does not materially affect a condition that is relevant to the method; or
- (b) a reasonably accurate adjustment can be made to eliminate the effect of the difference on a condition that is relevant to the method.

(20) The Commissioner General shall —

- (a) ensure that the identification of the arm's length conditions are based on the commercial or financial relations in connection with which the actual conditions operate; and
- (b) have regard to both the form and substance of those relations.

(21) Notwithstanding subsection (20) (b), the Commissioner General may disregard the form of the actual commercial or financial relations to the extent, if any, that it is inconsistent with the substance of those relations.

(22) Notwithstanding subsection (20) (a) and (b), the identification of the arm's length conditions must be based on other commercial or financial relations if —

- (a) independent persons or permanent establishments dealing wholly independently with one another in comparable circumstances would not have entered into the actual commercial or financial relations;

- (b) independent persons or permanent establishments dealing wholly independently with one another in comparable circumstances would have entered into other commercial or financial relations; and
- (c) those other commercial or financial relations differ in substance from the actual commercial or financial relations;

(23) Notwithstanding subsection (20)(a) and (b), if independent persons or permanent establishments dealing wholly independently with one another in comparable circumstances would not have entered into commercial or financial relations, the identification of the arm's length conditions is to be based on that absence of commercial or financial relations.

(24) Where conditions pertaining to debt financing operating between persons and permanent establishments are inoperable for reasons cited in subsection (10), the Commissioner General may —

- (a) disregard those conditions to the extent to which that financial arrangement would not have occurred between unrelated persons and permanent establishments or other persons; or
- (b) recharacterise an arrangement pertaining to those conditions as equity if the substance of the arrangement is such.

(25) For the purpose of determining the effect that this section has in relation to a person, the Commissioner General and persons shall identify arm's length conditions so as best to achieve consistency with the following documents —

- (a) the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, as approved by the Council of the Organisation for Economic Co-operation and Development; and

- (b) a document, or a part thereof, prescribed by the regulations for the purposes of this paragraph.

(26) (a) For the purpose of determining the effect of that this section has in relation to a permanent establishment, the Commissioner General and permanent establishments shall work out the arm's length profits, and identify the arm's length conditions, so as best to achieve consistency with —

- (i) the documents covered under paragraph (b); and
- (ii) subject to paragraph (i), the documents covered by subsection 25 (a) and (b).

(b) The documents referred to under paragraph (a)(i) are as follows —

- (i) the Model Tax Convention on Income and on Capital, and its Commentaries, as adopted by the Council of the Organisation for Economic Co-operation and Development, to the extent that document extracts the text of Article 7 and its Commentary as they read before 21 November 2017;
- (ii) a document, or part thereof, prescribed by the regulations for the purposes of this paragraph.

(27) The Commissioner General may make a determination under subsection (28) in relation to a disadvantaged person if —

- (a) the arm's length conditions are taken by subsections (10) and (12) to operate; and

- (b) the Commissioner General considers that, if the arm's length conditions, instead of the actual conditions, had operated —
 - (i) the amount of the disadvantaged person's taxable income for a tax year might have been expected to be less than its actual amount;
 - (ii) the amount of the disadvantaged person's loss for a tax year might have been expected to be greater than its actual amount;
 - (iii) the amount of the disadvantaged person's tax concessions for a tax year might have been expected to be greater than its actual amount; or
 - (iv) the amount of withholding tax payable in respect of interest or royalties by the disadvantaged person might have been expected to be less than its actual amount;
- (c) the Commissioner General considers that it is fair and reasonable that the actual amounts mentioned in subsection (27) (b) (i), (ii), (iii) or (iv) (as the case requires) be adjusted accordingly.

(28) (a) For the purpose of adjusting an amount as mentioned in subsection (27)(c), the Commissioner General may make a determination stating the amount that is (and has been at all times) the amount of the disadvantaged person's —

- (i) taxable income for the tax year;
- (ii) loss for the tax year;

(iii) tax concessions, or tax concessions of a particular kind, for the tax year; or

(iv) withholding tax payable in respect of interest or royalties.

(b) The Commissioner General may take such action as the Commissioner General considers necessary to give effect to a determination under subsections (27) and (28).

(c) The Commissioner General must give a copy of a determination under subsections (27) and (28) to the disadvantaged person.

(d) A failure to comply with paragraph (c) above does not affect the validity of the determination.

(e) A person may give the Commissioner General a written request to make a determination under subsections (27) and (28) relating to the person.

(f) The Commissioner General shall decide whether or not to grant the request, and give the person notice of the Commissioner General's decision.

(g) If the disadvantaged person is dissatisfied with the Commissioner General's decision, the person may object, in the manner set out in Part IV of the Revenue Administration Act, 2009, against that decision.

(29) Section 11 of the Revenue Administration Act, 2009, does not prevent the amendment of an assessment of a person for a tax year if —

(a) the amendment is made within seven years of the date the Commissioner General served or is treated as having served notice of the assessment to the person; and

- (b) the amendment is made for the purpose of giving effect to subsections (10) and (12).

(30) Where an adjustment is made by the Commissioner General, in relation to an arrangement between a person and another person that is a resident of Seychelles, the Commissioner General shall make a consequential adjustment to the taxable income of the other person.

(31) Where an adjustment is made by a person to give effect to subsections (20) to (24) in relation to an arrangement between the person and another person that is resident in Seychelles, the other person may apply to the Commissioner General to make a corresponding adjustment to the taxable income of the associate.

(32) The granting of an application under subsection (31) is at the discretion of the Commissioner General.

(33) Subsection (30) shall not apply to an adjustment made by the Commissioner General to give effect to the provisions of an agreement with the government of a foreign country referred to in Section 79(1) of this Act.