

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

(Bill No. 64 2021)

OBJECTS AND REASONS

This Bill seeks to provide for custody, management and disposal of seized, forfeited or confiscated properties and for matters connected therewith or incidental thereto.

The Financial Action Task Force (FATF), an inter-governmental body established in 1989 by the Ministers of the member jurisdictions has set out the standards to promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and financing of proliferation and other related threats to the integrity of the international financial system. The recommendations of the FATF has set out a comprehensive and consistent framework of measures, which the States are required to implement, to combat money laundering and terrorist financing activities.

The Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), a regional body founded in August, 1999 has been tasked to oversee the member countries of the Group in combating money laundering and terrorism financing by implementing the FATF recommendations. The ESAAMLG has evaluated the Anti-Money Laundering and Countering Financing of Terrorist measures in place in the Republic of Seychelles and submitted its Mutual Evaluation Report (MER) in September, 2018. The shortcomings identified by the ESAAMLG in its MER are required to be met out in time bound manner. Recommendation Nos. 4 and 38 of the FATF relates to confiscation and provisional measures and mutual legal assistance in confiscation and freezing respectively. The ESAAMLG observed that the Republic is Partially Compliant (PC) in respect of recommendation Nos. 4 and 38. In order to meet out the shortcomings identified by the ESAAMLG, the proposed Bill, *inter alia*, provides that —

Part I provides for preliminary matters such as short title, commencement, application, interpretation of various expressions used in the Bill.

Part II provides for establishment of Asset Management Unit, functions of the Asset Management Unit, taking over of the properties by the Asset Management Unit, steps to prevent funds or assets to the designated persons, coordination with other countries in the seizure, forfeiture or confiscation of the properties, policies and procedure for management of seized business, measures to trace, identify and evaluate the property and measures to manage and maintain and dispose the properties subjected to seizure, forfeiture or confiscation.

Part III provides for establishment of Asset Recovery Fund and receipts and disbursements from the Asset Recovery Fund.

Part IV provides for miscellaneous provisions which includes regulations making power, protection of action taken in good faith and transitional provision, which enables the transfer of assets to the Asset Management Unit on and from the date as may be notified by the Minister.

Dated this 9th day of December, 2021.

FRANK D.R. ALLY
ATTORNEY-GENERAL

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

(Bill No. 64 2021)

ARRANGEMENT OF SECTIONS

SECTIONS

**PART 1
PRELIMINARY**

1. Short title and commencement
2. Interpretation

**PART 2
ASSET MANAGEMENT UNIT**

3. Asset Management Unit
4. Functions of Asset Management Unit
5. Taking over of the properties by Asset Management Unit
6. Steps to prevent funds or assets to the designated persons
7. Coordination with other countries in the seizure, forfeiture or confiscation of the properties
8. Policies and procedure for management of seized business
9. Measures to trace, identify and evaluate the property
10. Measures to manage and maintain and disposal of the properties subjected to seizure, forfeiture or confiscation

**PART 3
ASSET RECOVERY FUND**

11. Establishment of Asset Recovery Fund
12. Receipts and disbursements from the ARF

**PART 4
MISCELLANEOUS**

13. Protection of action taken in good faith
14. Regulations
15. Transitional provision

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

(Bill No. 64 of 2021)



A BILL

FOR

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

ENACTED by the President and the National Assembly.

**PART 1
PRELIMINARY**

Short title and commencement

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

Interpretation

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

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

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

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

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

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

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

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

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

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

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

“Republic” means the Republic of Seychelles.

PART 2

ASSET MANAGEMENT UNIT

Asset Management Unit

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

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

Functions of Asset Management Unit

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

-
- (g) to take steps, which will not allow the opposite parties to file applications which may prevent the Republic to take actions to freeze, seize or recover the property that is liable for forfeiture or confiscation;
 - (h) to support the domestic authorities to take appropriate investigate measures to identify the properties that are to be frozen or seized;
 - (i) to support and administer the identification, tracing and evaluation of property that is subject to forfeiture or confiscation;
 - (j) to support the administration of provisional measures, such as freezing or seizing, to prevent any dealing, transfer or disposal of property subject to forfeiture or confiscation;
 - (k) to maintain proper records of the properties frozen, seized, forfeited or confiscated to the Republic;
 - (l) to take steps for identifying the auctioneers for the disposal of the forfeited or confiscated property;
 - (m) to take steps for identifying the persons or agencies or institutions to maintain the frozen or seized property;
 - (n) to assist the Attorney General's Office in coordinating with other countries in the freezing, seizure and forfeiture of properties and disposal of the properties between the countries when the forfeiture or confiscation is directly or indirectly a result of co-ordinated law enforcement actions;
 - (o) to assist the domestic authorities for coordinated mechanism for disposal of the forfeited or confiscated properties;
 - (p) to take all necessary measures to protect the rights of bona fide third parties;

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

Taking over of the properties by Asset Management Unit.

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

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

(3) If any person, knowingly fails to provide the data to the Asset Management Unit, the same shall be regarded as dereliction of duties and necessary action shall be taken against such person responsible for laches as per the provisions of Public Services Order.

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

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

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

(6) The Asset Management Unit shall continue the process started by the respective Ministry or Department for disposal of such properties and the actions need not be initiated afresh.

(7) The Asset Management Unit shall dispose of the properties as per the provisions of this Act.

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

Steps to prevent funds or assets to the designated persons.

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

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

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

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

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

(3) The Asset Management Unit shall develop a mechanism by guidelines for coordination between the domestic authorities for custody, management and disposal of properties.

Policies and procedures for management of seized business

8. The Asset Management Unit shall devise policies and procedures with the approval of the Minister for management of seized businesses on case to case basis, which may be warranted from time to time.

Measures to trace, identify and evaluate the property

9. The Minister may by regulations prescribe the procedures to trace, identify and evaluate the property, which is subjected to forfeiture or confiscation.

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

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

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

PART 3 ASSET RECOVERY FUND

Establishment of Asset Recovery Fund

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

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

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

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

Receipts and disbursements from the ARF

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

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

(2) The Minister may authorise payments out of the ARF to —

- (a) compensate victims who suffer losses as a result of offences under respective laws in force;
- (b) pay expenses relating to recovery, management and disposition of property under the provisions of any law in force, including mortgages and liens against relevant property, and the fees for receivers, trustees, managers, institutions or other professionals providing assistance;
- (c) allocate funds to the Department of Legal Affairs to meet the expenses of the prosecution division;

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

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

PART 4 MISCELLANEOUS

Protection of action taken in good faith

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

Regulations

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

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

- (a) the procedures to trace, identify and evaluate the property, which is subjected to forfeiture or confiscation under section 9;

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

Transitional Provision

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