

PROBATES (RE-SEALING) BILL, 2022*(Bill No. 11 of 2022)***EXPLANATORY STATEMENT**

The object of this Bill is to modernize the law in relation to probate re-sealing in Seychelles. Probate re-sealing is an expression used by legal practitioners to describe a simplified process by which the executors or administrators of the estate of a foreign domiciled deceased person, who died with a will or otherwise, can administer the Seychelles-based estate or assets. Once a reseal of probate has been granted, the executor or administrator can deal with the assets in Seychelles by producing the documents issued in the deceased person's country of domicile as opposed to starting the process for appointment of an executor afresh in Seychelles. The resealed grants essentially have the same effect as if they were granted by the Curator appointed under the Curatelle Act, 2021.

For instance, if a person dies in a foreign country with shares in a Seychellois company or money in a Seychelles financial institution and grants of probate or letters of administration are issued by a foreign court or authority, the executor may seek have the grants of probate or letters of administration recognized in Seychelles through a very simplified procedure. This may be helpful for companies especially after the death of a shareholder to ensure that deceased's shares are not frozen for an extended period and that there are no undue delays in dividends being paid on the shares or for the executor of the estate of the deceased person who held funds in a Seychelles financial institution to receive the funds.

The Probate (Re-sealing) Act of 1935 governs the circumstances under which grants of probate or letters of administration issued by foreign courts may be resealed in Seychelles. One of the problems with the 1935 Act is that this law only applies to grants issued by courts of probate in Her Majesty's dominions that is to say, a British protectorate or protected State and any territory in respect of which a trusteeship agreement on behalf of the United Nations Organization has been accepted by Her Majesty (please see section 2 of the Probate (Re-sealing) Act). The 1935 Act renders grants obtained from most countries across the globe being incapable of being resealed in Seychelles and therefore, fresh applications for the appointment of executors of the deceased's estate in Seychelles would need to be made.

The legal framework for addressing matters in relation to executors and administrators of estate in Seychelles had changed after 1935. The Civil Code of Seychelles Act, 1976, and subsequently the Civil Code of Seychelles Act, 2020 together with the Curatelle Act, 2021 revamped the legal framework in relation to executors and administrators of estate in Seychelles. This Bill therefore will modernize the law in relation to probate resealing taking into account these legislative changes. For instance, in 1935 the Supreme Court would deal with probate resealing but given the legislative developments in Seychelles whereby the Curator appoints the executor, it is being proposed that the Curator deals with these matters in light of the Curatelle Act, 2021.

The Attorney General has conducted careful research to identify the countries and territories which have equivalent or similar processes to that of Seychelles when it comes to issuing and resealing grants. It is proposed that a Schedule is created to list the jurisdictions that are recognized for the purposes of re-sealing in Seychelles grants issued by courts or authority in those jurisdictions. The list includes most Commonwealth countries and territories, the United States of America, Hong Kong and other countries. It is proposed that the Minister responsible for legal affairs can amend the Schedule to add or remove a country should the need arise.

This Bill, if enacted by the President and the National Assembly, should provide further incentives and comfort to business owners and shareholders from the recognized jurisdictions to establish more businesses or companies in Seychelles, with the knowledge that there is a simplified procedure to the transfer of their shares to their heirs, albeit shareholders can always establish a trust under the laws of Seychelles.

Dated this 22nd day of June, 2022.

**FRANK D.R. ALLY
ATTORNEY-GENERAL**

PROBATES (RE-SEALING) BILL, 2022

(Bill No. 11 of 2022)

ARRANGEMENT OF SECTIONS

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PROBATES (RE-SEALING) BILL, 2022

(Bill No. 11 of 2022)



A BILL

FOR

AN ACT TO PROVIDE FOR THE RESEALING OF PROBATES AND LETTERS OF ADMINISTRATION GRANTED BY A COURT OF PROBATE IN A RECOGNISED JURISDICTION IN RESPECT OF THE ESTATE OF THE DECEASED PERSONS AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

ENACTED by the President and the National Assembly.

Short title

1. This Act may be cited as the Probates (Re-sealing) Act, 2022.

Interpretation

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

“court of probate” means any court or authority, by whatever name designated, that has jurisdiction in matters of probate in a recognized jurisdiction;

“Curator” means the Curator appointed under the Curatelle Act, 2021;

“Minister” means the Minister responsible for legal affairs;

“probate or letters of administration” include confirmation in Scotland and any instrument of probate or letters of administration in a recognized jurisdiction;

“recognized jurisdiction” means any of the jurisdictions specified in Schedule 1.

Resealing of probate or letters of administration

3.(1) Where a court of probate in a recognized jurisdiction has, either before or after the coming into force of this Act, granted probate or letters of administration in respect of the estate of a deceased person, the probate or letters so granted may, on being produced to, and a copy in accordance with section 5 thereof deposited with, the Curator, be sealed with the seal of the Curator.

(2) Where a grant of probate or letters of administration are sealed with the seal of the Curator pursuant to subsection (1), the probate or letters of administration so sealed shall have the like force and effect, and have the same operation in Seychelles, as if it were an order of confirmation of an executor, by the Curator.

(3) The provisions of the Curatelle Act, 2021 and the Civil Code of Seychelles Act, 2020 in relation to executors shall *mutatis mutandis* apply to an executor or administrator of an estate whose appointment is confirmed under this Act.

(4) An application under subsection (1) may be made by the executor or any interested person.

(5) A person who seeks to reseal the grant of probate or letters of administration under subsection (1) shall submit to the Curator a petition supported by an affidavit accompanied by —

- (a) a copy of the grant of probate or letter of administration in accordance with section 5 that the petitioner seeks reseal;
- (b) the death certificate of the deceased;
- (c) proof of the person's identity of the applicant;
- (d) affidavits, or a declaration in the affidavit in support, of alias where necessary in order to explain or reconcile any differences or discrepancies in names which appear in the supporting documents.

Conditions to be fulfilled before sealing

4.(1) The Curator shall, before sealing a grant of probate or letters of administration under this Act, be satisfied that probate duty or succession duty has been in respect of so much, if any, of the estate as is liable to probate duty or succession duty in Seychelles.

(2) For the purposes of subsection (1), the Curator may require such evidence, if any, as the Curator thinks fit as to the domicile of the deceased person.

Effect of duplicate of probate or letters of administration

5.(1) For the purposes of this Act, a duplicate of any grant of probate or letters of administration sealed with the seal of the court of probate in a recognized jurisdiction, or a copy thereof certified as correct by or under the authority of the court of probate in a recognized jurisdiction, shall have the same effect as the original.

(2) The Curator shall as soon as possible after sealing the grant of probate or letter of administration —

- (a) cause an extract of the order to be registered at the Mortgage and Registration Office; and

cause the publication in the *Gazette*, a notice of confirmation under this Act read together with section 23 (8) of the Curatelle Act in the form prescribed in Schedule 2.

Rules

6. The Minister, in consultation with the Curator, may make rules for regulating the procedure and practice, including fees and costs, on and incidental to an application for sealing a grant of probate or letters of administration under this Act.

Amendment of Schedule

7. The Minister, in consultation with the Curator, may by regulations amend any Schedule.

Repeal

8. The Probates (Re-sealing) Act, Cap. 183, is repealed.

SCHEDULE 1 (Section 2)

LIST OF RECOGNIZED JURISDICTIONS

1. Anguilla
2. Antigua and Barbuda
3. Australia
4. Bahamas
5. Barbados
6. Belize
7. Bermuda
8. Botswana
9. British Antarctic Territory
10. British Columbia
11. British Sovereign Base Areas in Cyprus
12. British Virgin Islands

13. Brunei
14. Canada (including each of the Provinces thereof, except Quebec)
15. Cayman Islands
16. Christmas Islands (Australia)
17. Cocos (Keeling) Islands
18. Commonwealth of Dominica
19. England and Wales
20. Falkland Islands Dependencies
21. Fiji
22. Gambia
23. Ghana
24. Gibraltar
25. Grenada
26. Guernsey
27. Guyana
28. Hong Kong (including the Hong Kong Special Administrative Region of the People's Republic of China)
29. Isle of Man
30. India
31. Jamaica
32. Jersey
33. Kenya
34. Kiribati
35. Lesotho
36. Malawi
37. Malaysia
38. Montserrat
39. New Guinea Territory
40. New Zealand
41. Nigeria
42. Norfolk Island
43. Northern Ireland
44. Papua New Guinea
45. St. Helena
46. Republic of Cyprus
47. St. Kitts and Nevis
48. Saint Lucia
49. St. Vincent

- 50. Scotland
- 51. Sierra Leone
- 52. Singapore
- 53. Solomon Islands
- 54. South Africa
- 55. Sri Lanka
- 56. Swaziland
- 57. Tanzania
- 58. Trinidad and Tobago
- 59. Turks and Caicos Islands
- 60. Tuvalu
- 61. Uganda
- 62. United States of America
- 63. Zambia
- 64. Zimbabwe

SCHEDULE 2
(Section 5(2)(b))

FORM 1

Notice of Appointment of Executor

Notice is hereby given that on the [insert date], the Curator confirmed the grant of probate/letter of administration [insert details of the grant of probate/letters of administration] whereby [insert name] of [insert address] [insert identity number] was appointed/confirmed as executor or administrator of the estate of [insert name of the deceased and any alias] under section [insert section of ___ of the Probates (Re-sealing) Act, 2022, read with section 23(8) of the Curatelle Act]

Dated this day of, 20.....

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Curator