

CURATELLE BILL, 2021*(Bill No. 26 of 2021)***OBJECTS AND REASONS**

The object and purpose of this Bill is to align the present law relating to Curatelle with the provisions in the revised Civil Code of Seychelles Act, 2020 (*Act 1 of 2021*), which relate to the role of executors.

The Bill gives more express guidance to executors for the performance of their duties and gives the Curator the power to appoint executors and supervise the performance of their functions. The Bill also provides expressly for the situation where there may be a conflict of interest between the Curator and those whose interests the Curator is to protect.

Dated this 21st day of June, 2021.

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

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SCHEDULE

CURATELLE BILL, 2021

(Bill No. 26 of 2021)



A BILL

FOR

AN ACT to amend and update the law relating to Curatelle.

ENACTED by the President and the National Assembly.

Short title and commencement

1. This Act may be cited as the Curatelle Act, 2021, and shall come into operation on the same date that the Civil Code of Seychelles Act, 2020 (*Act 1 of 2021*), comes into operation.

Interpretation

2. In this Act, except where the context otherwise requires —

“absentee” means a person absent from and not legally represented in Seychelles who there is reason to believe is entitled to property in Seychelles;

“Civil Code’ means the Civil Code of Seychelles Act, 2020 (*Act 1 of 2021*);

“Constitutional Appointments Authority” means the Constitutional Appointments Authority established under article 139 of the Constitution of the Republic of Seychelles (Cap. 42);

“Court” means the Supreme Court;

“Comptroller General means the Comptroller General appointed under the Public Finance Management Act, 2012 (*Act 9 of 2012*).

“Curator” means the Curator appointed under this Act;

“register of executors” means the register of executors maintained by the Registrar General under this Act”;

“register of fiduciaries” means the register of fiduciaries maintained by the Registrar General under this Act”;

“Registrar” means the Registrar of the Court and includes “Assistant Registrar” and any person authorised to act in place of the Registrar;

“registry” means the registry of the Supreme Court;

“unclaimed property” means any property in Seychelles whose owner cannot be ascertained;

“vacant estate” means a vacant succession and includes unclaimed property;

“vacant succession” means the succession of a deceased in respect of whom there is reason to believe that he or she died possessed of property in Seychelles, whether the property is ascertained or not, and that the deceased died *intestate* and without heirs in Seychelles;

“vesting order” includes any judgment, order or decree of any court, tribunal, Magistrate or Judge by which the Curator has been sent or put in possession of or been vested with, any succession, property or right;

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

Appointment and removal of Curator

3.(1) The Curator shall be appointed by the President from candidates proposed by the Constitutional Appointments Authority.

(2) A person is qualified for appointment as Curator if —

- (a) the person has been entitled to practice before a court of unlimited jurisdiction for not less than 5 years; and
- (b) in the opinion of the Constitutional Appointments Authority, the person can effectively, competently and impartially discharge the functions of Curator under this Act.

(3) The salary, gratuity and allowances payable to the Curator shall be equivalent to those payable to a Master of the Court under the Judiciary Act (Cap. 104) and shall be a charge on the consolidated fund.

(4) The salary, allowances or gratuity payable to and the term and conditions of service of a Curator shall not be altered to the disadvantage of the Curator after appointment.

(5) The Curator shall, as soon as possible after being appointed, take and subscribe the oath of office before the President.

(6) The Curator may resign from office upon giving not less than 3 months written notice to the President.

(7) The President may, on the recommendation of the Constitutional Appointments Authority, remove the Curator from office, only —

(a) for inability to perform the function of the office, whether arising from infirmity of body or mind or from any other cause, or for misbehavior; and

(b) in accordance with subsections (8), (9) and (10);

(8) Where the Constitutional Appointments Authority considers that the question of removing a Curator from office under subsection (7) ought to be investigated the Constitutional Appointments Authority shall —

(a) conduct an inquiry; or

(b) appoint a tribunal consisting of a chairperson and at least two other members, all selected from among persons who hold or have held office as a Judge of a court having unlimited original jurisdiction or a court having jurisdiction in appeals from such a court or from among persons who are eminent jurists of proven integrity to inquire into the matter, report on the facts thereof and recommend whether or not the Curator ought to be removed.

(9) The Curator shall not be removed from office under subsection (7), unless the Curator has been given an opportunity of being heard.

(10) Where the question of removing a Curator is the subject of any inquiry under subsection (8), the President may, if the President considers it necessary so to do, suspend the Curator from performing the functions of Curator until the completion of the inquiry but the suspension —

(a) may, on the advice of the Constitutional Appointments Authority, be revoked at any time by the President;

- (b) shall cease to have effect if the Constitutional Appointments Authority recommends to the President that the Curator ought not to be removed from office.

(11) Where the office of the Curator is vacant for any reason or the Curator is unable to perform the functions of Curator, or the Curator is suspended under subsection (10), the President may appoint a Master of the Supreme Court or any other a person, who is qualified to be appointed as Curator, to perform the functions of Curator for a period not exceeding 6 months and such person shall, as soon as possible after being appointed, take and subscribe the oath of office before the President.

Functions of the Curator

4.(1) The Curator shall —

- (a) take charge of and administer any vacant estate;
- (b) take charge of and administer the property of absentees;
- (c) represent absentees;
- (d) appoint fiduciaries for the purpose of the Civil Code;
- (e) monitor the performance of fiduciaries and the fulfilment of their fiduciary duties;
- (f) partition co-owned property with the agreement of the co-owners;
- (g) conduct sales among co-owners for the purposes of article 821 of the Civil Code;
- (h) appoint executors for the administration of successions under the Civil Code;
- (i) monitor the performance of executors and the fulfilment of their fiduciary duties; and

- (j) generally perform and discharge such functions and duties as may devolve on the Curator by this or any other Act.

(2) The Curator shall, in the exercise of the functions under this Act, do all the Curator considers necessary to protect the interests of absentees, co-owners, and persons with succession rights.

Vesting Order

5.(1) Whenever the Curator has reason to believe that there is a vacant succession, unclaimed property, or any property belonging or accruing to an absentee, the Curator shall apply to a Judge for an order to vest that vacant succession, unclaimed property or property of the absentee in the Curator.

(2) The order shall be granted as of course, upon the *ex parte* petition of the Curator supported by affidavit that diligent inquiry has been made and that the Curator or other deponent believes that the succession or property for which the order is claimed is vacant or unclaimed or belongs to an absentee as the case may be.

(3) The Curator shall, if the succession has sufficient funds, notify the order by publication in 2 consecutive numbers of the *Gazette* and a newspaper published daily in Seychelles.

Request for Curator to act

6.(1) Failing application by the Curator under section 5 any person may apply, after reasonable notice has been given in writing calling upon the Curator to make an application under section 5, by petition supported by affidavit for an order vesting in the Curator any vacant estate, unclaimed property or the right of any absentee.

(2) An order made under subsection (1) may be made by a Judge on a summons calling on the Curator to show cause why it should not be made, and on satisfactory proof being adduced that such order is necessary for the protection of the rights of the applicant.

Notice for immovable property

7.(1) Where the property believed to be unclaimed is immovable, the Curator shall insert advertisements in 2 consecutive numbers of the *Gazette*

and a newspaper published daily in Seychelles and shall cause notices to be posted at the registry, containing a description of the property with abutments, and requiring all persons who claim to be entitled to such property to notify the Curator of their claims within 60 days from the date of the last notice.

(2) No vesting order shall be applied for by the Curator in respect of such property until 60 days after the last publication has elapsed and giving of notice under subsection (1).

(3) Any person who claims the property shall be made a defendant to the application for a vesting order.

(4) If issue is joined before a Judge, the Judge shall refer the application to the Court and shall try the question of ownership, and if it is found that the claimant is the owner of the property by title or prescription, the application shall be dismissed; otherwise the Court shall make a vesting order.

Vesting order consequences

8.(1) Subject to this Act a vesting order shall vest in the Curator —

- (a) in the case of a vacant succession, all property accruing to, or depending from, such succession, to the same extent as if the Curator were the sole heir and representative of the succession;
- (b) in the case of unclaimed property, all rights of ownership in such property;
- (c) in the case of an absentee, all rights and property of the absentee in Seychelles.

(2) A vesting order shall remain in force until an order is made divesting the Curator.

Administration of Vacant Estates

9.(1) As soon as a vesting order has been made the Curator shall take possession of the property affected by the order, and communicate in writing to all persons known or believed by the Curator to be interested in such property.

(2) The Curator shall also, as occasion may arise, endeavour by advertisement or otherwise to ascertain the persons so interested.

(3) If the Curator represents an absentee who is not a citizen of Seychelles or the vacant succession of such a person, the Curator shall also communicate with the diplomatic representative in Seychelles of the State of which such person is or was a subject, if there is such diplomatic representative in Seychelles.

(4) As soon as possible after entering into possession the Curator shall insert advertisements in two consecutive numbers of the *Gazette* and a newspaper published daily in Seychelles and shall cause notices to be posted at the registry, calling in all claims outstanding against the estate.

(5) The Curator shall carefully examine the claims put forward and may require the claimants to verify and support their claims by affidavit or may require the claimants to bring their action before the competent court.

(6) When the claim of a person alleged to be a creditor has been admitted and paid by the Curator with the authority above required, the Curator or the Government shall not be liable to any person by reason of such payment having been made.

(7) Nothing in subsection (6) shall prevent the Curator or any person interested in the property from recovering from the alleged creditor anything unduly paid.

Vesting of movable property

10.(1) The Curator shall, immediately on any vesting order being made, proceed to make an inventory of the movable property thereby vested in the Curator.

(2) Such inventory shall be made in the presence of two witnesses, and shall be signed by the Curator and the witnesses, and shall have the same validity and authenticity as if made by a notary.

Accounting

11.(1) All money found among effects taken possession of by the Curator shall within 2 working days be paid by the Curator to the Comptroller General.

(2) No sums due to any person represented by the Curator, or on account of any property vested in or of any sale by the Curator shall be paid to the Curator but they shall be paid to the Comptroller General and to the account of that particular estate.

(3) The receipt in writing of the Curator, countersigned by the Comptroller General is necessary to constitute a valid receipt and discharge.

(4) No interest shall be payable by the Government on any sum vested in the Curator.

Sale of movable property

12.(1) Movable property may be sold by the Curator —

- (a) when such sale is necessary in order to pay the debts of any succession or absentee, or the charges, pledges or other security upon any property;
- (b) when the property is of a perishable nature, or likely to diminish in value, or when its custody would entail expense;
- (c) by order of the Court.

(2) Where the value of a movable property fixed by an appraiser in excess of SCR500,000/- is vested in the Curator, the Curator shall apply to the Court for an order by way of a petition setting forth the circumstances under which the sale is to take place.

(3) The Judge shall order that the sale of such property shall be effected in such manner, at such minimum price, in case of a sale by auction or tender, or at such price in case of a private sale and subject to such conditions as the Judge shall direct.

Division of property among co-owners

13.(1) A court may make, in respect of co-owned property, an order —

- (a) for the sale of the property and the division of the proceeds among the co-owners; or

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- (b) for the division of the property in kind among the co-owners;
or
 - (c) requiring one or more co-owners to purchase the share in the property of one or more other co-owners at a fair and reasonable price;
 - (d) directing how the expenses of any sale or division of the property are to be borne;
 - (e) directing how the proceeds of any sale of the property, and any interest on the purchase amount, are to be divided or applied;
 - (f) allowing a co-owner, on a sale of the property, to make an offer for it, on any terms the court considers reasonable concerning —
 - (i) the non-payment of a deposit; or
 - (ii) the setting-off or accounting for all or part of the purchase price instead of paying it in cash.
 - (g) requiring the payment by any person of a fair occupation rent for all or any part of the property;
 - (h) providing for, or requiring, any other matters or steps the court considers necessary or desirable as a consequence of the making of the order under this section.

(2) Before determining whether to make an order under this section, the court may order the property to be valued and may direct how the cost of the valuation is to be borne.

(3) No order may subdivide immovable property in a manner that is contrary to any rule relating to the subdivision of land or to the requirements of the building laws.

Sale of immovable property

14.(1) For the sale of immovable property vested in the Curator, the Curator shall apply to a Judge for an order by way of a petition supported by an affidavit of facts accompanied by an appraisal of the immovable property made by an appraiser.

(2) The Petition shall set forth —

- (a) the circumstances under which the sale is to take place;
- (b) the name of the deceased or absent owner of the property;
- (c) a reference to the title deeds of the property;
- (d) a description of the property;
- (e) the reserved price (*mise à prix*);
- (f) the conditions of sale and the terms of payment;

(3) The Judge shall order that the sale of such property shall be effected in such manner, at such reserved price (*mise à prix*), in case of a sale by auction or tender, or at such price in case of a private sale and subject to such conditions as the Judge shall direct.

(4) Where the Judge orders the sale by public auction or tender —

- (a) the Judge shall specify the day on which the sale is to take place subject that 20 working days shall intervene between the order and the day of sale;
- (b) the Curator shall cause advertisements to be inserted in the *Gazette* and in one newspaper published in Seychelles and shall cause notices to be posted at the registry 10 working days before the day on which the sale is to take place;
- (c) the advertisements shall describe the property to be sold, and state the place and time of sale;

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- (d) the Curator shall forward by registered post, 10 working days before the day on which the sale is to take place, a copy of such advertisements to every inscribed or charged creditor (including any holding a vendor's privilege) whose inscription or charge was taken before the deposit of the petition and any inscribed or charged creditor may apply at least 7 working days before the day of the sale by way of petition to the Judge for a change in or modification of any facts stated in the Petition, the reserved price (*mise à prix*) or conditions of sale.
- (e) in any proceedings under paragraph (d) of this subsection —
- (i) the Judge shall upon receiving the petition, make an order on the petition appointing a day for hearing, and a copy of the petition and order shall be served upon the Curator and other parties required to show cause at least two clear days before the day of hearing;
 - (ii) the Judge may after hearing the petitioner, the Curator and other parties make any modification in respect of the sale and if necessary, adjourn the sale under paragraph (g) of this subsection; and
 - (iii) the costs of the petition shall be borne by the unsuccessful party;
- (f) the sale shall take place by public auction before the Judge on the day fixed, unless the Judge shall think proper for some sufficient cause to adjourn the same, or unless the Curator applies for an adjournment *sine die*, or to a definite date, in which case the Judge shall make an order for such adjournment;
- (g) no sale shall take place unless it appears to the Judge that the advertisements and notices required under paragraph (b) of this subsection have been published and forwarded, both as regards the original date fixed as well as regards any

adjourned date fixed for the sale unless such adjournment was ordered in open court on a date fixed;

- (h) on the day of the sale the Registrar shall read aloud the conditions of the sale in the presence of the Judge, and the property shall then be put up for sale;
- (i) if the biddings do not reach the reserved price (*mise à prix*), the Judge may, upon application then and there made by the Curator, order that the property shall be sold below the reserved price (*mise à prix*), and shall in such case fix a day when the property shall again be put up for sale, which day shall be at least 10 working days from the date of such order;
- (j) the proceeds of sale or any part of it paid shall be deposited to the Registrar, and any balance shall be paid to the Comptroller General, within the time specified in the conditions of sale;
- (k) upon payment of such deposit or of the whole sale price when the whole is deposited at the time of the adjudication, the Judge shall finally award the property to the purchaser, and shall issue a certificate of adjudication, which shall also be subscribed by the Curator and the purchaser;
- (l) the certificate under paragraph (k) of this subsection shall constitute a deed of sale or instrument of transfer, and shall be registered and transcribed, as the case may be, as if the sale had taken place under the Immovable Property (Judicial Sales) Act;
- (m) upon registration or transcription of the certificate under paragraph (k) of this subsection, any charge, mortgage or other restraints on disposition in terms of the Land Registration Act against the property shall be discharged, erased or lifted, as the case may be;
- (n) a purchaser may, at the time of the sale, pay the whole of the

purchase money and may pay at any time by anticipation into the hands of the Comptroller General, any balance due on the purchase price;

- (o) where an adjudicatee fails to execute the conditions of sale the property shall be resold by *folle enchère* (resale) at the request of the Curator subject to the formalities and conditions set out in sections 141 to 144 both inclusive of the Immovable Property (Judicial Sales) Act;
- (p) the final price of adjudication shall for all purposes be deemed to be the final and definitive value of the property, and the adjudicatee shall be exonerated and liberated from all privileged and mortgage or charge claims thereon by paying the price conformably to law.

Application for order under section 14

15.(1) If not already a party to the proceeding on an application under section 14, a copy of the application must be served on —

- (a) a co-owner of the property;
- (b) a person who has an estate or interest in the property that may be affected by the granting of the application;
- (c) a person claiming to be a party to, or entitled to a benefit under, an instrument relating to the property.

(2) The court to which the application is made may, by order made on an application for the purpose, change, or dispense with service on those who must be served under subsection (1).

(3) A court considering whether to make an order under section 14 must have regard to the following —

- (a) the nature and location of the property;
- (b) the number of other co-owners and the extent of their shares;

- (c) the hardship that would be caused to the applicant by refusal of the order, in comparison with the hardship that would be caused to any other person by the making of the order;
- (d) the value of any contribution made by any co-owner to the cost of improvements to, or the maintenance of, the property;
- (e) any other matters the court considers relevant.

Grant of leases by Curator

16.(1) The Curator may grant a lease of immovable property, provided that notice is published in the *Gazette* and a newspaper published daily in Seychelles and posted at the registry of the court calling for tenders or provided the lease is put up to auction.

(2) No such lease shall be granted by the Curator unless the terms and conditions have first been approved by the President and in no case shall such property be let for more than seven years.

(3) Where the Curator is satisfied that the costs of advertisements calling for tenders would exceed one year's rent, the Curator may grant a lease without having previously called for tenders.

(4) The Curator may at any time let any property by the month.

Conflict of interest

17. In no case shall the Curator have any interest direct or indirect in any sale or lease of property under the charge of the Curator.

Curator to watch over and administer estates under his care

18.(1) The Curator shall see to the due execution of the conditions of the leases, and shall take care that all the property in curatelle is kept in good order.

(2) The Curator shall enforce payment by all debtors of the estate.

Fixing of seals

19.(1) Where a person dies leaving movable property apparently liable to

be administered by the Curator, the Registrar shall, unless the property has already been taken into possession by the Curator, affix seals on all the effects and papers of the deceased, immediately on information being given of the existence of such property, and shall give notice to the Curator of the fact and of the day when the seals will be broken.

(2) The Curator may attend at any affixing or removal of seals, if there is reason to believe that the property affected may be such as the Curator ought to administer, although, at the time of such affixing or removal, the Curator may not have obtained a vesting order in respect of such property.

Wills affecting the rights of absentees

20.(1) Where the Curator knows or has reason to believe that a will in any succession in which absent heirs are interested, is invalid or contains provisions infringing the legal rights of any absent party not duly represented in Seychelles, the Curator may move the Court for an order calling upon the executors and all parties interested to show cause why the execution of the will should not stayed, wholly or partly for a reasonable time, so that the Curator may obtain special instructions from such absent heir or heirs, or that such absent heir or heirs may appear personally or by some duly authorised agent.

(2) The Court may allow the executor or universal legatees, or next of kin, as the case may be, to take any measures which may prevent loss or injury to any portion of the property.

Sale by licitation

21.(1) In case of the sale by licitation of property a co-owner of which is represented by the Curator, the Curator may on an order of a Judge bid for or purchase the property for the benefit of that co-owner.

(2) The Curator may, on the order of a Judge, borrow money upon mortgage or charge on any immovable property vested in the Curator.

(3) No order under this section shall be made unless the Judge is satisfied that it is advisable in the interests of the succession or absentees, to which or to whom such property belongs or necessary for the improvement or preservation of such property, that the property should be so purchased, or that the money should be so borrowed.

Payments

22.(1) No money shall be paid on account of any vacant estate except by means of an order of the Curator upon the Comptroller General, nor shall any property be given up except upon an order of a Judge.

(2) Where there are no funds in the hands of the Comptroller General to meet the necessary expenses of the administration of any vacant estate, or to protect the rights of a succession or of absentees, the Minister responsible for Finance may authorise the Comptroller General to advance a sum from the Consolidated Fund for the purpose to be repaid to the Consolidated Fund out of the first available funds accruing to the estate.

(3) No money due by any vacant estate shall be paid either as an advance or otherwise by another vacant estate, but each and every vacant estate shall have its account, unconnected with that of any other vacant estate.

Appointment of Executors

23.(1) The appointment of testamentary executors shall be confirmed by the Curator.

(2) If the succession consists of immovable property, or of both immovable and movable property, and if the testator has not appointed a testamentary executor or if an executor so appointed has died or if the deceased has left no will, the Curator shall appoint an executor, at the instance of any person having a lawful interest.

(3) A legal person may be appointed to act as an executor.

(4) A person who is subject to a legal incapacity may not be appointed to act as executor.

(5) A person who seeks the confirmation of the appointment of a testamentary executor under subsection (1) shall submit to the Curator a petition seeking confirmation of the appointment supported by an affidavit of facts accompanied by —

(a) the will or a duly authenticated copy of the will containing the appointment;

- (b) the death certificate of the deceased;
- (c) proof of the person's identity;
- (d) affidavits of alias where necessary in order to explain or reconcile any differences or discrepancies in names which appear in the supporting documents.

(6) A person who seeks the appointment of an executor under subsection (2) shall submit to the Curator a petition seeking the making of an appointment supported by affidavit of facts containing a statement that the deceased owned or is entitled to immovable property or interest or rights therein and accompanied by —

- (a) in the case of testamentary succession, the will or a duly authenticated copy of the will;
- (b) the death certificate of the deceased;
- (c) the marriage certificate of any surviving spouse of the deceased;
- (d) the death certificate of the deceased's spouse, if any;
- (e) the birth certificates of all heirs; and
- (f) affidavits of alias where necessary in order to explain or reconcile any differences or discrepancies in names which appear in the supporting documents.

(7) A person who seeks the appointment of an executor under article 774 (c) of the Civil Code shall submit to the Curator a petition seeking the making of an appointment supported by affidavit of facts accompanied by —

- (a) in the case of testamentary succession, the will or a duly authenticated copy of the will;
- (b) the death certificate of the deceased;

- (c) the marriage certificate of any surviving spouse of the deceased;
 - (d) the death certificate of the deceased's spouse, if any;
 - (e) the birth certificates of all heirs; and
 - (f) affidavits of alias where necessary in order to explain or reconcile any differences or discrepancies in names which appear in the supporting documents.
- (8) The Curator shall as soon as possible after the appointment of an executor —
- (a) cause an extract of the order of appointment of the executor to be registered at the Mortgage and Registration Office; and
 - (b) cause the publication in the *Gazette*, a notice substantially in the form prescribed in Form 1 of the Second Schedule of the appointment of the executor.

Time limits on executor

24.(1) An executor shall fulfil its function and wind up the succession within 24 months from the date of the death of the deceased.

(2) The Curator may approve an extension of the time under subsection (1).

(3) Approval shall not be given without cause nor for a period of more than 12 months at a time.

(4) An application under this subsection (2) shall be made by petition supported by affidavit of facts.

Supervision of Executors and revocation of appointment of Executors

25.(1) The Curator shall superintend the administration of executors.

(2) The Curator may from time to time require from an executor, a party with the seisin of a succession, or any fiduciary, a summary statement of the administration of the property and that person shall furnish the statement within the period fixed by the Curator in the notice of request.

(3) Any person to whom subsection (2) refers who fails to deliver the statement requested within the period designated shall be personally liable in damages to the succession or to the co-owners represented by the fiduciary for that failure.

(4) A Judge may revoke the appointment of an executor.

(5) An application under subsection (4) shall be made by petition supported by affidavit of facts and unless the Curator is the petitioner, the Curator shall be made a party thereto.

Divesting Order

26.(1) A person who claims to be entitled to, or to administer, any succession vested in the Curator, or to represent absentees represented by the Curator, or to be entitled to property vested in the Curator as unclaimed, or who having been an absentee has returned to Seychelles, may apply to the Court for an order divesting the Curator of such succession, or of the representation of such absentee or former absentees, or of the ownership of such property, as the case may be.

(2) An order under subsection (1) may be made upon a summons calling upon the Curator to show cause why it should not be made.

(3) Where a person represented by the Curator is represented by any other person in Seychelles, the Curator may apply for a divesting order.

(4) An order under subsection (3) may be made by a Judge upon a summons calling upon such person or representative to show cause why it should not be made.

(5) In no case shall any divesting order be made, except after payment or tender by the person in whose favour it is made of all charges due to the

Curator or the Government, in respect of the property or rights involved or unless the Curator holds sufficient funds to meet all such charges, in which case the order shall be made subject to the condition that all charges shall be deducted from such funds.

Non-liability of Government or Curator

27.(1) Where property has been handed over under a divesting order, neither the Government nor the Curator shall be liable to any person subsequently in respect of that property.

(2) Nothing in subsection (1) prevents a person from claiming from the person to whom the property has been delivered, anything that person received unduly from the Curator.

Compromise and arbitration

28.(1) The Curator may agree that any suit, action or claim in which the Curator is or may be a plaintiff or defendant, be referred to the arbitration of one or more arbitrators, and if need be also, to the award of an umpire with or without conditions.

(2) The Curator may compromise any claim, debt or right either before or after action brought by or against the Curator and such compromise as well as the reference to arbitration mentioned in subsection (1), shall be to all intents and purposes binding upon all persons having any interest whatsoever in the estate of which the Curator has charge as well as upon all creditors of such estate.

(3) The compromise shall be homologated and confirmed by a Judge.

Monthly accounting

29.(1) The Registrar shall send to the Minister responsible for finance a monthly return of all orders which put the Curator in charge of vacant estates or of the property or rights of absentees.

(2) Where in any month no property has been vested in the Curator, blank returns shall be forwarded.

Courts

30. The Court may, upon the application of the Curator, stay any legal proceedings, or any sale of immovable property, or the execution of any will, or generally any proceeding, judicial or extrajudicial, by which the rights of persons represented by the Curator may be affected, for such time and upon such terms as to the Court may seem just.

Fees

31. A fee according to the scale set out in the First Schedule shall be payable to Government in respect of any succession or property vested in the Curator or in respect of any procedure involving the Curator under this Act.

Vesting order consequences

32.(1) The Curator shall keep books and accounts in accordance with such directions as are given by the Minister responsible for finance.

(2) The Curator shall make such returns as are required by the Minister or by legislation.

(3) The books and accounts of the Curator shall be audited by the Auditor General at least once a year.

(4) The Curator shall annually report to the Minister responsible for finance listing all the property in the charge of the Curator and the balance due to or by each estate and shall contain as clearly as possible, the names, profession, countries, places of birth and last places of residence of the deceased or absent parties, to whom they respectively apply so far as the same can be ascertained and the number of successions under the supervision of the Curator.

Curator *ad litem*

33. Where the Curator is the plaintiff in an action on account of a vacant estate, and has been made a defendant in the same action, on account of another vacant estate, the Court shall appoint a Curator *ad litem* for the defendant.

Employment of legal counsel

34.(1) When the Curator needs to employ counsel for any legal proceedings concerning the estate or absentee represented by the Curator, the Curator shall notify the Attorney-General who may represent the Curator in such legal proceedings or appoint an Attorney-At-Law for the purpose.

(2) Counsel appointed under subsection (1) shall receive such fees as shall be fixed by the Minister.

(3) Counsel who prosecutes a sale on behalf of the Curator under section 14 has the right to claim —

(a) disbursements as taxed by the Registrar;

(b) a percentage of the sale price according to the scale laid down in section 73 of the Immovable Property (Judicial Sales) Act.

(4) Such claim shall be paid by the purchaser over and above the purchase price.

Report on immovable property

35. Whenever the Curator is in charge of immovable property, the Curator may give notice of the fact to the principal secretary of the department of Government responsible for land, whose duty it shall then be to keep, watch, superintend and protect such property on behalf and at the expense of the vacant estate concerned.

Small estates

36.(1) Where the Curator certifies in writing that the value of any property for which a vesting order is claimed or which is in curatelle does not exceed SCR25,000, all proceedings under this Act relative to such property shall be free of all dues and court fees.

(2) Where, on a subsequent inventory or sale of such property, its value is found to exceed SCR25,000, the Curator shall pay the Government out of the property the dues and fees which would otherwise have been charged.

(3) Where a ward is entitled to recover any property from the Curator and the value of the property is less than SCR50,000, the Curator may pay deliver the property to the guardian of the ward without other formality.

Appeal

37.(1) A person aggrieved by a decision of the Curator may appeal to the Court.

(2) The Court may affirm, reverse, amend or alter, the decision appealed from, or remit the matter to the Curator with the directions of the Court thereon, and may make any orders as to costs and all such orders shall be final and conclusive on all parties.

(3) No appeal under this section shall operate as a stay of execution, but the Curator, or after an appeal has been lodged, the Court, may stay execution on such terms as may be just and necessary.

(4) An appeal shall be brought by notice in writing, which shall be lodged with the Curator within 30 working days after the date of the decision appealed against.

(5) The notice shall set forth the substance of the decision and the grounds of the appeal and shall be substantially in the form prescribed in Form 2 the Second Schedule.

(6) On receipt of such notice, the Curator shall file the same in the Registry with the original record (if any) and a brief statement of the grounds of the Curator's decision.

(7) The Registrar shall fix a date for the hearing of the appeal and the order of the Registrar together with a copy of the notice of appeal shall be served upon the appellants and respondents, if any, without delay.

(8) After the decision of the Court, the Registrar shall transmit a certified copy of the decision to the Curator.

(9) The Appeal Rules (S.I. 11 of 1961) shall *mutatis mutandis* apply to an appeal under subsection (1).

(10) The Chief Justice may make rules to regulate the practice and procedure in appeals before the Court not otherwise provided for in this Act.

(11) Without prejudice to the generality of the foregoing powers such rules may prescribe the forms in respect of appeals made under this Act and fees to be taken in proceedings in the Court in respect of an appeal.

(12) Until the coming into operation of any rule in respect of such fees, the fees payable in an appeal to the Court from a decision of the Magistrates' Court shall *mutatis mutandis* apply to an appeal under subsection (1).

Register of Executors and Fiduciaries

38.(1) The Registrar General shall maintain a register of executors appointed under this Act and under article 774 (b) of the Civil Code.

(2) The Registrar General shall maintain a register of fiduciaries appointed under article 818 of the Civil Code.

(3) In this section —

(a) “deceased” means the deceased person that the executor has been appointed executor of his or her succession;

(b) “land register” means the land register under the Land Registration Act (Cap. 107);

(c) “land registrar” means the land registrar under the Land Registration Act (Cap. 107);

(d) “*repertoire*” means the *repertoire* under the Mortgage and Registration Act (Cap. 134);

(4) Where a person is appointed as executor of a succession that consists of land registered under the Land Registration Act (Cap. 107), the land registrar shall on the written application of the Curator, the executor or any interested person record the appointment of the executor in the land register of any parcel of land registered in the land register in the name of the deceased;

(5) Where a person is appointed as executor of a succession that consists of immovable property that is not registered under the Land Registration Act (Cap. 107), the Registrar General shall on the written application of the Curator, the executor or any interested person record the appointment of the executor in the *repertoire* of the deceased;

(6) Where a person is appointed as fiduciary of land that is registered under the Land Registration Act (Cap. 107), the land registrar shall on the written application of the Curator, the fiduciary or any interested person record the appointment of the fiduciary in the land register of the parcel of land specified in the document of appointment.

(7) Where a person is appointed as the fiduciary of land that is not registered under the Land Registration Act (Cap. 107), the Registrar General shall on the written application of the Curator, the fiduciary or any interested person record the appointment of fiduciary of the land in the *repertoire* of the owner of the land specified in the document of appointment;

(8) No entry shall be made under subsections (4), (5), (6) or (7) unless satisfactory proof as to registration of the land or ownership of the immovable property in relation to the deceased is adduced to the land registrar or the Registrar General, as the case may be.

(9) An application under subsections (4), (5), (6) or (7) and any entry thereunder may be subject to any fees.

(10) The Minister responsible for legal affairs in consultation with the Registrar General shall prescribe —

- (a) the form of the register;
- (b) the means that it shall be recorded or stored;
- (c) the manner for its inspection;
- (d) the issue of an extract or a certificate in relation to any entry in the register;
- (e) the fees for inspection of the register, the issue of an extract or a certificate in relation to any entry in the register, an

application to record an entry in the register and the recording of an entry in the register.

(11) The Registrar General may issue guidelines or administrative directions for the efficient administration of this section.

Regulation-making power

39. The Minister responsible for legal affairs may make regulations for more effectually carrying out the purposes and provisions of this Act and amend the Schedules to this Act.

Rule-making power

40.(1) The Curator may make rules to regulate the practices and procedures of the Curator in the exercise of the Curator's functions under this Act.

(2) Without prejudice to the generality of the foregoing powers such rules may prescribe the fees and charges for —

- (a) the filing of a petition for confirmation of appointment or the appointment of an executor;
- (b) the filing of a petition for appointment of a fiduciary;
- (c) for publication or posting of any order, notice, advertisement under this Act.

(3) Until the coming into operation of rules under subsection (2), the fees and charges applicable for entering and hearing of a petition for appointment of executor or fiduciary under the Court Fees (Supreme Court) and Costs Rules, of the Court Fees (Supreme Court) and Costs Act (Cap 53) shall *mutatis mutandis* apply.

(4) Rules made under this Act shall be published in the *Gazette* as subsidiary legislation.

Transitional

41.(1) The Curator shall remain in charge and shall continue to administer, subject to the provisions of this Act, all vacant estates or property belonging to absentees which have been vested in the Curator before the commencement of this Act.

(2) The Curatelle Office in existence at the commencement of this Act shall continue as if established under this Act.

(3) Until the appointment of the Curator, the Master of the Court shall discharge the functions of Curator.

(4) A Master exercising the function of Curator under subsection (3) shall receive such allowances as the President may determine.

Repeal

42. The Curatelle Act (Cap 55) is repealed.

FIRST SCHEDULE

(Section 31)

FEES

(1) The commission payable to the Government under section 33 is —

10 percent on the first SCR1,000 or fraction thereof.

8 percent on the second SCR1,000 or fraction thereof.

5 percent on the next SCR3,000 or fraction thereof.

3 percent on the remainder above SCR5,000.

(2) The commission shall be paid on the gross amount of all sums of money received by Curator either as principal, revenue, or rent and, in case of a divesting order granted under this Act, before any part of the succession or property has been realised into cash, on the gross value of such part of the succession or property.

SECOND SCHEDULE

(Section 23 (8)(b))

FORM 1

Curatelle Act

Notice of Appointment of Executor

Notice is hereby given that on the [insert date], the Curator appointed [insert name] of [insert address] [insert identity number] as executor of the succession of [insert name of the deceased and any alias] under section [insert section of Curatelle Act]

Dated this Day of, 20.....

Curator

FORM 2

(Section 37 (5))

Notice of Appeal

Before the Supreme Court of Seychelles

In the matter between

[insert full name of appellant]

Appellant

And

[insert full name of respondent, if any]

Respondent

Case No. / 20.....

NOTICE OF APPEAL

Take Notice that [insert name of appellant] being dissatisfied with the decision of the Curator appointed under the Curatelle Act, 2021, given on the day of 20..... hereby appeals to the Supreme Court against the whole of the

decision (or against such part of the decision as the case may be) that (setting out details) upon the grounds set out in paragraph 2 and will at the hearing of the appeal seek the relief set out in paragraph 3.

And the Appellant further states that the names and addresses of the persons directly affected by the appeal are those set out in paragraph 4.

2. Grounds of Appeal

- (1)
- (2)
- (3) etc.

3. Relief sought form the Supreme Court.

4. Persons directly affected by the appeal:

Name Address

- (1)
- (2) etc.

Dated atthis day of 20

.....
Appellant/Attorney of the Appellant

To: The Curator