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SEYCHELLES REVENUE COMMISSION ACT, 2009

(Act 26 of 2009)

I assent



A handwritten signature in dark ink, appearing to read "Michel".

J. A. Michel
President

30th December, 2009

AN ACT to establish the Seychelles Revenue Commission; to define the functions and powers of the Commission; to transfer to the Commission specified functions and powers of specified Revenue bodies and to provide for related matters.

ENACTED by the President and the National Assembly.

PART I - PRELIMINARY

1. This Act may be cited as the Seychelles Revenue Commission Act, 2009, and shall come into operation on such date as the Minister may, by Notice published in the Official Gazette, appoint.

Short title and
commencement

Interpretation

2. In this Act –

“Revenue Commissioner” means the Revenue Commissioner appointed under section 4(1);

“Deputy Revenue Commissioner” means the Deputy Revenue Commissioner appointed under section 4(3);

“Minister” means the Minister responsible for finance;

“revenue bodies” means the Seychelles Revenue Commission, the Seychelles Licensing Authority in collecting licence fees, the Social Security Fund in administering and enforcing the collection of SSF contributions, the Seychelles Pension Fund in administering and enforcing the collection of SPF contributions and any other body that may be prescribed by regulation;

“revenue law” means a law providing for revenue;

“revenue” means taxes, duties, contributions, fees, levies, charges, penalties, fines and other monies payable under the laws specified in the Schedule or any other revenue law;

“SLA” means the Seychelles Licensing Authority;

“SPF” means the Seychelles Pension Fund;

“SSF” means the Social Security Fund.

PART II – SEYCHELLES REVENUE COMMISSION

Establishment
of Seychelles
Revenue
Commission

3.(1) There is hereby established a body to be known as the Seychelles Revenue Commission.

(2) The Seychelles Revenue Commission shall be the body responsible for the administration of revenue laws listed in the Schedule of this Act.

Appointments

4.(1) There shall be a Revenue Commissioner who shall be appointed by the President.

(2) The Revenue Commissioner shall be the Chief Executive Officer of the Commission responsible to the Minister for the management of the Commission and the administration of the revenue laws.

(3) There shall be a Deputy Revenue Commissioner appointed by the President.

(4) The Revenue Commissioner and the Deputy Revenue Commissioner shall each be appointed for a term of 3 years and shall be eligible for re-appointment.

5. (1) The President may terminate the appointment of the Revenue Commissioner or the Deputy Revenue Commissioner if the relevant person –

Dismissal

- (a) is convicted of an offence under a revenue law;
- (b) is registered as a tax agent;
- (c) is insolvent or has been declared bankrupt whether in Seychelles or elsewhere or enters into an arrangement or composition with the person's creditors;
- (d) is mentally or physically incapable of carrying out the person's functions under this Act;
- (e) resigns the person's office by notice in writing to the President giving at least three months' notice, or
- (f) is absent from duties for 30 consecutive days without the permission of the Minister.

(2) A person whose appointment is terminated under subsection (1) may appeal to the Supreme Court or to a review forum provided for by regulations made under this Act.

6. (1) The Minister may appoint a person to act in the office of Revenue Commissioner –

Acting
appointments

- (a) during a vacancy in that office; or

- (b) during any period in which the person holding that office is absent from duty or from Seychelles or is, for any other reason, unable to perform the functions of that office.
- (2) The Minister may appoint a person to act in the office of Deputy Commissioner –
- (a) during a vacancy in that office; or
- (b) during any period in which the person holding the office of Deputy Commissioner is absent from duty or from Seychelles is acting in the office of Commissioner or is, for any other reason, unable to perform the functions of the office of Deputy Commissioner.
- (3) While a person is acting in the office of Commissioner, the person has and may exercise all the powers, and shall perform all the duties, of the Commissioner under this Act or any other law.
- (4) For the purposes of subsection (3), the Commissioner's powers and functions shall include the powers and functions of the Registrar of the Seychelles Business Register.
- (5) The validity of anything done by or in relation to a person purporting to act in the office of Commissioner or in the office of Deputy Commissioner shall not be called in question on the ground that the occasion for the appointment had not arisen, that there was a defect or irregularity in or in connection with the appointment, that the appointment had ceased to have effect or that the occasion for the person to act had not arisen or had ceased.

Powers of
the Deputy
Revenue
Commissioner

7.(1) Subject to subsection (2) and any regulation, the Deputy Commissioner has all the powers and functions of the Commissioner under a revenue law.

(2) Subsection (1) does not apply in relation to a provision of a revenue law that –

- (a) provides that the Commissioner has the exclusive administration of that revenue law; or

- (b) requires the Commissioner to furnish to the Minister a report on the working of the revenue law during any period.

(3) When a power or function of the Commissioner under a revenue law is exercised or performed by the Deputy Commissioner, the power or function shall, for the purposes of the revenue law, be deemed to have been exercised or performed by the Commissioner.

(4) The exercise of a power or the performance of a function of the Commissioner under a revenue law by the Deputy Commissioner does not prevent the exercise of the power or the performance of the function by the Commissioner.

8.(1) The Commissioner may, either generally or as otherwise provided by the instrument of delegation signed by the Commissioner, delegate to the Deputy Commissioner or any other person all or any of the Commissioner's powers or functions under a revenue law or any other law, other than this power of delegation.

Delegation

(2) For the purposes of this section, the Commissioner's powers and functions include the powers and functions of the Registrar of the Seychelles Business Register conferred on the Commissioner.

(3) Subject to subsection (4), a power or function so delegated, when exercised or performed by the delegate, shall be deemed to have been exercised or performed by the Commissioner.

(4) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Commissioner.

(5) A delegation under this section may be made subject to a power of review and alteration of the acts, done in pursuance of the delegation, by the Commissioner within a period specified in the instrument of delegation.

9.(1) The Commissioner may, subject to the approval of the Minister –

Staff of the
Commission

- (a) formulate and operate a scheme of service;
- (b) establish such divisions and units as are necessary, and

- (c) appoint other officers and staff on such terms and conditions as the Commissioner deems fit,

to enable the Commissioner to perform the Commissioner's functions.

(2) Every person employed under subsection (1) shall be under the administrative control of the Commissioner.

Exercise of
powers

10.(1) The Commissioner may, subject to such limitations as the Commissioner may think fit to impose, authorise any person or officer under the Commissioner's control to exercise and perform any of the functions of the Commissioner under this Act.

(2) Subject to this Act, for the purposes of subsection (1) any person whose services are provided by a Government or an agency to assist with the administration of this Act shall be deemed to be under the control of the Commissioner.

Officers to
observe
secrecy

11.(1) For the purposes of this section and section 12, "officer" means a person who is or has been appointed or employed by the Government or whose services are provided by another Government or an agency to assist with the administration of this Act, and who, by reason of that appointment or employment or by reason of so assisting, or in the course of that employment or of so assisting, may acquire information respecting the affairs of any other person, disclosed or obtained under the provisions of this Act or any other Act.

(2) Subject to this section a person being an officer shall not, either directly or indirectly, except in the performance of any duty as an officer, and either while the person is or after the person ceases to be an officer, make a record of, or divulge or communicate to any other person any such information so acquired by the person.

(3) An officer shall not be required to produce in court any return, assessment or notice of assessment, or to divulge or communicate to any court any matter or thing coming under the officer's notice in the performance of the officer's duties, except when it is necessary to do so for the purpose of carrying into effect the provisions of this Act or other revenue law.

(4) Nothing in this section shall prevent –

- (a) any officer or person from revealing any document or information relating to the income of any person or any confidential instructions in respect of the administration of this Act to any other such officer or person, so employed, in the course of that officer's or person's duties or to any court or person for the purposes of this Act;
- (b) any officer from revealing any document or information referred to in paragraph (a) solely for revenue or statistical purposes to any person in the service of the Government in a revenue or statistical division where such document or information is needed for the purposes of the official duties of the person in that service and when the person in that service has made and subscribed a declaration of secrecy in relation to any information coming to that person's knowledge in the course of that person's official duties;
- (c) any officer from revealing any document or information referred to in paragraph (a) to the Director of Audit or to any authorised member of the Director's division or to an internal auditor in the Department of Finance, where such document or information is needed for the performance of their official duties, or
- (d) any officer from revealing any document or information referred to in paragraph (a) to the Director of Social Security or to any person of the Social Security Section authorised by the Director, where the document or information is needed for the performance of official duties of the Director or the person authorised by the Director.

(5) Any person to whom information is communicated under subsection (4), and any person under the control of that person, shall in respect of that information have the same rights, privileges, obligations and liabilities under subsection (2), (3) or (4) as if the person were an officer.

(6) An officer shall, if and when required by the Commissioner to do so, make an oath in the manner and form prescribed by regulations and sign a confidentiality and secrecy declaration so prescribed, to maintain secrecy in accordance with this section.

(7) Nothing in this section shall operate so as to prevent the disclosure of information in pursuance of a requirement under any other law to do so or for the purposes of any other law.

Offences
by
revenue
officers

12.(1) In this section, "revenue officer" includes any person employed or engaged by the Commissioner in any capacity, and includes a former officer or employee.

(2) A revenue officer who, in contravention of section 11 and without lawful excuse, reveals to any person any document or information which has come into the possession or knowledge of that person in the course of performing official duties, or permits any other person to have access to any document in the possession or custody of the Commissioner in that official capacity is guilty of an offence and on conviction is liable to a fine of not less than SR 10,000 and to imprisonment for not more than 1 month.

(3) A revenue officer who directly or indirectly asks for, or takes in connection with any of the officer's duties, any payment or reward whatsoever, whether pecuniary or otherwise, or promise or security for any such payment or reward not being a payment or reward that the officer is lawfully entitled to receive, is guilty of an offence and on conviction is liable to a fine of not less than SR 100,000 and to imprisonment for not less than one month but not more than 60 months.

(4) A revenue officer who enters into or acquiesces in any agreement to –

- (a) do any act or thing;
- (b) abstain from doing any act or thing;
- (c) permit or connive in the doing of any act or thing; or
- (d) conceal any act or thing,

whereby the Government is or may be defrauded of revenue, or that is contrary to the provisions of a revenue law or to the proper execution of the officer's duty is guilty of an offence and on conviction is liable to a fine of not less than SR 100,000 and to imprisonment for not less than one month but not more than 60 months.

13.(1) The functions of the Commissioner shall be –

Functions
of the
Commissioner

- (a) to assess, collect and account for all Government revenue authorised under the laws listed in the Schedule;
- (b) to administer efficiently and effectively all revenue laws in force;
- (c) to advise the Government on matters of policy relating to revenue;
- (d) to improve the standard and quality of services provided to payers of revenue;
- (e) to counteract revenue evasion;
- (f) to monitor and control the cost of revenue collection, and
- (g) to undertake other work related to revenue administration as required by the Government.

(2) The Commissioner may do all such acts as it may be deemed necessary and expedient for collecting, receiving and accounting for the revenue in the like manner as the Commissioner is authorised to do in relation to any other functions of the Commissioner.

14. On the coming into operation of this Act, there shall be transferred to, and vest in or subsist against, the Commissioner by virtue of this Act –

- (a) the affairs of the revenue bodies in so far as they pertain to the collection of revenue; and

Transfer of
assets and
liabilities of
revenue
bodies in
respect of
collection of
revenue

- (b) subject to this Act, all rights, liabilities and obligations which immediately before the coming into operation of this Act were the rights, liabilities and obligations of the revenue bodies in so far as they pertain to the collection of revenue.

(2) Subject to subsection (1), every agreement other than an agreement for personal services to which any of the revenue bodies was a party immediately before the commencement of this Act, whether in writing or not, and whether or not the property, rights, liabilities and obligations thereunder could be assigned, shall have effect as from the coming into operation of this Act as if –

- (a) the Commissioner had been a party thereto; and
- (b) any reference in an agreement referred to in this section to any officer of any of the revenue bodies shall be deemed to be a reference to such officer as the Revenue Commissioner shall designate.

(3) Any document, other than those referred to in subsection (2), which refers specifically or generally to any of the revenue bodies shall be construed in accordance with subsection (2) as far as applicable.

Legal
proceedings

15.(1) Without prejudice to the provisions of this Act, where any right, liability or obligation vests in or subsists against the Commissioner by virtue of this Act, the Commissioner and all other persons affected thereby shall, as from the coming into operation of this Act, have the same rights, powers and remedies and, in particular, the same rights as to the instituting or defending of legal proceedings or resisting of applications to any authority for ascertaining, perfecting, defending or enforcing that right, liability or obligation as they would have had, as if it had at all times been a right, liability or obligation of the Commissioner.

(2) After the coming into operation of this Act, proceedings in respect of any right, property, liability or obligation which was vested in, held, enjoyed, incurred, suffered by, or subsisted against any of the revenue bodies pertaining to the collection of revenue, may be instituted by or against the Commissioner.

16. On or after the coming into operation of this Act, a reference in any written law or any legal document to the Commissioner of Taxes or to the Comptroller of Trades Tax or to the Chief Executive Officer of the Seychelles Licensing Authority in collecting licence fees, or to the Director of Social Security Fund in administering and enforcing the collection of SSF contributions, or to the Chief Executive Officer of the Seychelles Pension Fund in administering and enforcing the collection of SPF contributions, shall be read and construed as a reference to the Commissioner appointed under section 4 of this Act.

References in any written law or legal document

17.(1) The seal, stamp and logo of each of the revenue bodies shall be treated as those of the Commissioner.

Seal of Commissioner

(2) The affixing of the seal of the Commissioner shall be authenticated by the Commissioner or some other person authorised in that behalf by the Commissioner.

PART III - FINANCIAL AND OTHER PROVISIONS

18.(1) In consultation with the Commissioner and the Minister, the Government will provide annually the funds necessary for the Commissioner to discharge the Commissioner's statutory functions.

Funding of the Commissioner

(2) The Government will provide further funding for the Commissioner to carry out special compliance activities or functions or to fully execute any additional project assigned to the Commissioner.

19. The Commissioner is responsible to the Minister for the administration of this Act and revenue laws but the Commissioner shall act independently of ministerial control in exercising the powers vested in the Commissioner in regard to the liability to revenue of individuals and entities.

Reporting

20.(1) The Commissioner shall keep books of accounts and maintain proper records relating to the Commissioner's operations in accordance with acceptable accounting principles.

Accounts and audit

(2) The books of accounts and records kept under subsection (1) shall be audited by the Auditor General.

Annual
reports

21.(1) As soon as practicable, but not later than 3 months after the end of the financial year, the Commissioner shall submit to the Minister a report concerning performance of functions under this Act during that year.

(2) The report referred to in subsection (1) shall include –

- (a) a statement of income certified by the Treasury;
- (b) a statement of expenditure certified by the Treasury; and
- (c) such other information as the Minister may require.

(3) The Minister shall, within 30 days after the first sitting of the National Assembly after the receipt of the report referred to in subsection (1), lay the report before the National Assembly and publish it as soon as reasonably practicable thereafter.

Regulations

22.(1) The Minister may make regulations for giving effect to the provisions and principles of this Act.

(2) The Minister may by regulations amend the Schedule to this Act.

Protection

23. The Commissioner, the Deputy Commissioner or any employee under the Commission shall not be liable civilly or criminally in respect of any loss arising from exercising a power under any law in good faith.

Repeal and
savings

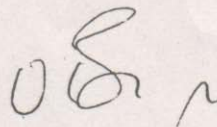
24.(1) The Seychelles Revenue Commission Act, 2008 is hereby repealed.

(2) Instruments (such as regulations, approved forms, determinations, authorisations and notices) made under the Act repealed by subsection (1) shall continue to operate until they are amended under this Act.

SCHEDULE
REVENUE LAWS

1. Seychelles Revenue Commission Act, 2009
2. Seychelles Revenue Commission Act, 2008
3. Business Tax Act, 2009
4. Business Tax Act (Cap 115) 1987
5. Revenue Administration Act, 2009
6. Goods and Services Tax Act, 2001 (Act 10 of 2001)
7. Social Security Act (Cap 225)
8. Trades Tax Act (Cap 240)
9. Seychelles Pension Fund Act, 2005 (Act 8 of 2005)
10. Licences Act (Cap. 113)
11. Excise Tax Act, 2009
12. Seychelles Business Number Act, 2009

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 15th December, 2009.



Veronique Bresson
Clerk to the National Assembly