

SEYCHELLES LEGAL ANNEX

REVIEWED LAWS:

1. Constitution of Seychelles 1993
2. National Assembly Standing Orders 1994 (up to date as of February 2008)

(* Law(s) reviewed but not containing relevant articles for this study.

RELEVANT ARTICLES:

1. Constitution of Seychelles 1993

Article 80

A person is qualified to be elected as a member of the National Assembly if -

- a. the person is qualified to vote at a Presidential or National Assembly election under this Constitution; and
- b. the person does not hold or act in any office the functions of which involve -
 - i. any responsibility for, or in connection with, the conduct of the National Assembly election for which the person wishes to stand; or
 - ii. any responsibility for the compilation or revision of an electoral register for that National Assembly election.

Article 81

1. A person ceases to be a member of the National Assembly and the seat occupied by that person in the of seats Assembly shall become vacant
 - a. on the dissolution of the Assembly;
 - b. if the person by notice in writing to the Speaker resigns;
 - c. if the person ceases to be a citizen of Seychelles;
 - d. if the person is absent without the permission, which shall not be unreasonably withheld, in writing of the Speaker -
 - i. from Seychelles for a continuous period in excess of thirty days; or
 - ii. during a session of the Assembly, for a continuous period in excess of ninety days during which time the Assembly has been summoned to meet and continues to meet;

e. if any circumstances arise which, if the person were not a member, would, pursuant to Article 80, cause that person to be disqualified for election as a member;

f. subject to clause (2), if the person becomes party to a contract with the Government for or on account of any public service or if any firm in which the person is a partner or any company of which the person is a director or manager or in which the person has a controlling interest becomes a party to any such contract or if the person becomes a partner in a firm or a director or manager or the-holder of a controlling interest in a company which is a party to such contract;

g. if the person is elected President or appointed, a Minister;

h. if, in the case of a proportionately elected member, the person ceases to be a member of the political party of which that person was a member at the time of election;

i. if, in the case of a directly elected member who was nominated for election by a political party, the person notifies the Speaker in writing that he has ceased to be a member that political party; or

j. if, in the case of a person who was directly elected as an independent member, the person notifies the Speaker in writing that he is a member of a political party.

2. Where clause (1)(f) applies, if in the circumstances it appears to the National Assembly to be just to do so, the Assembly may except the member from vacating the seat, if the member, before becoming a party to the contract or before or as soon as is practicable after becoming interested in the contract as provided In clause (1) (f), has disclosed in writing to the Speaker the nature of the contract and the interest, or the interest in the firm or company referred to in clause (1)(f), of the member.

3. A political party of which a proportionately elected member was a member at the time of election shall notify the Speaker in writing on the person ceasing to be a member of the party.

4. Subject to this Article and Article 82, where a person who is a proportionately elected member of the National Assembly ceases to be so, the political party of which the person was a member of the time of election may, by notice In writing to the Speaker, replace the person who has ceased to be a member by another person.

5. Where the seat of a directly elected member of the National Assembly becomes vacant under this Article, the Speaker shall, as soon as is practicable within seven days after the vacancy occurs, notify the Electoral Commissioner of this fact.

6. A certificate under the hand of the Speaker certifying that a person has ceased to be a member of the National Assembly shall be conclusive evidence of this fact and of the fact that the seat held by that person is vacant unless -

a. the person makes an application under Article 82 to the Constitutional Court within thirty days of the date of the certificate; and

b. the Constitutional Court determine that the person is still a member of the National Assembly and that person still occupies that seat.

7. Until the final determination of an application referred to in clause (6) (a) the person who made the application shall continue to be a member of the National Assembly in respect of the seat for which the person was elected.

SCHEDULE 5

(Article 143)

OMBUDSMAN

1.

1. Subject to this Schedule, the Ombudsman may

a. investigate an action taken by a public authority or the President, Minister, officer or member of the public authority, being action taken in the exercise of the administrative functions of the public authority in the circumstances specified in subparagraph (2);

b. investigate an allegation of fraud or corruption in connection with the exercise by a person of a function of a public authority;

c. assist an individual complainant in respect of legal proceedings in relation to a contravention of the provisions of the Charter;

d. with leave of the Court hearing proceedings relating to a contravention of the provisions of the Charter, become a party to the proceedings;

e. initiate proceedings relating to the constitutionality of a law or of the provisions of a law.

6.

1. Subject to subparagraph (7), where after an investigation the Ombudsman is of the opinion that -

a. the action which was the subject of the investigation -

- i. was contrary to law;
 - ii. was unreasonable, unjust, oppressive or discriminatory;
 - iii. was based on a mistake of facts or a wrongful assessment of facts;
 - iv. was based partly on a mistake of law and facts;
 - v. was based on an improper exercise of a discretionary power or an exercise of a discretionary power based on irrelevant considerations;
 - vi. was an improper refusal to exercise a discretionary power;
 - vii. was based on an exercise or improper use of authority or power;
 - viii. was in accordance with law but the law is unreasonable, unjust, oppressive or discriminatory;
 - ix. was otherwise, in all circumstances, wrong;
 - x. should be cancelled, varied or given further consideration; or
- b. reasons for the action which was the subject of the investigation should have been given;
 - c. there was unreasonable delay before the decision or action which was the subject of the investigation was taken;
 - d. there was an omission which needs to be rectified;
 - e. the law or practice on which the action which is the subject of the investigation is based should be reconsidered;
 - f. the practice or pattern of conduct of a public authority or the President, a Minister, officer or member of the public authority which is the subject of the investigation is contrary to law or unreasonable, unjust, harsh, oppressive or discriminatory; or
 - g. (g) the allegation of fraud or corruption is well founded;
 - h. the Ombudsman shall report the opinion and reasons together with any recommendation or remedy the Ombudsman considers fit to make to the President, Minister, officer, member or chief executive officer of the public authority, as the case may be.

2. The Ombudsman shall, where the report is not required to be sent to the President or Minister, send a copy of the report to the President and any relevant Minister.

3. The Ombudsman may specify in the report referred to in subparagraph (1) a time limit within which it is reasonable for the report to be acted upon.

4. Where a report submitted under subparagraph (1) is not, in the opinion of the Ombudsman, adequately acted upon -

a. within the time specified in the report; or

b. if no time has been specified, within such reasonable time as the Ombudsman is of the opinion is reasonable,

c. the Ombudsman may submit the report and recommendation together with such further observations the Ombudsman thinks fit to make to the President and the National Assembly.

5. The Ombudsman shall attach to every report submitted to the President and the National Assembly under subparagraph (4) a copy of any comments made thereon by or on behalf of the chief executive officer of the public authority concerned or the President, Minister, officer or member of the public authority, as the case may be.

6. The Ombudsman shall not later than the thirty-first January in each year make a general report to the National Assembly with a copy to the President on the exercise of the functions of the Ombudsman under this Constitution during the previous year.

7. The Ombudsman shall, in every case where a complaint is received by the Ombudsman, inform the complainant of the result of the complaint.

1. For the purposes of the law of defamation, absolute privilege is attached to the publication of any matter by the Ombudsman or any other person acting under the authority of the Ombudsman.

2. The Ombudsman or any other person acting under the authority of the Ombudsman shall not be liable for anything done or omitted to be done in good faith in the performance or purported performance of the functions of the Ombudsman.

2. National Assembly Standing Orders 1994 (up to date as of February 2008)

MEMBERS FINANCIAL INTERESTS

84. (1) Apart from the provisions of law requiring¹ a Member to disclose the extent of any direct pecuniary interests, a Member shall not vote on any subject in which he has a direct personal pecuniary interest.

(2) A motion to disallow a Member's vote on the ground of personal

¹ See Confirmations File. A disclosure bill drafted by the Attorney General's office as of February 2008. It has not yet been submitted to the Parliament. **Is it the same bill as mentioned here or is there another law?**

pecuniary interest may be moved as soon as the numbers of the Members voting on the question shall have been declared.

(3) The Speaker or Chairman shall have discretion whether or not to propose the question upon such a motion, and in exercising such discretion shall have regard to the subject matter of the question upon therein of the Member whose vote is challenged is direct and pecuniary and belongs separately to him and is not an interest in common with the rest of the citizens of Seychelles or whether the vote of the Member was given on a matter of state policy.

(5) If the question for disallowing a Member's vote is agreed to, the Speaker or Chairman shall direct the Clerk to correct the numbers voting in the division accordingly².

Employment of members in professional capacity

90. A Member of the Assembly shall not appear before the Assembly or any Committee thereof as advocate or counsel for any party, or in any capacity for which he is to receive a fee or reward.

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² There was no (4)