

Seychelles

Seychelles Conservation and Climate Adaptation Trust Act, 2015

Act 18 of 2015

Legislation as at 19 November 2015

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Seychelles Conservation and Climate Adaptation Trust Act, 2015

Act 18 of 2015

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Assented to on 16 November 2015

Commenced on 19 November 2015 by Conservation and Climate
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AN ACT to provide for establishment of the Conservation and Climate Adaptation Trust of Seychelles for the purpose of regulating the debt swap transactions and for matters connected therewith or incidental thereto.

ENACTED by the President and the National Assembly.

Part I – Preliminary

1. Short title and commencement

- (1) This Act may be cited as the Conservation and Climate Adaptation Trust of Seychelles Act, 2015.
- (2) It shall come into operation on such date as the Minister may, by notice published in the *Gazette*, appoint.

2. Interpretation

In this Act, unless the context otherwise requires—

“**administrative expenses**” means the expenditure incurred for payments of—

- (i) salaries and employment benefits to staff;
- (ii) fees to consultants engaged by the Trust; and
- (iii) expenses to meet the costs for training of staff, publications, office operation costs, staff vehicle, staff travel and such other costs as may be prescribed by regulations;

“**annual workplan**” means the work plan approved each fiscal year by the Board for spending the anticipated revenues of the Trust;

“**Board**” means the Board of Directors of the Trust appointed under section 8 and formally constituted under section 8(4);

“**budget**” means an annual budget of the Trust which sets forth the costs of—

- (i) monitoring and evaluating the Seychelles system of protected areas,
- (ii) administration of the Trust; and
- (iii) grants and financial commitments to projects consistent with the objects of the Trust;

“**Chairperson**” means the Chairperson of the Board appointed under section 10;

“**Chief Executive Officer**” means the Chief Executive Officer appointed by the Board in accordance with section [12](#);

“**debt swap incomes**” means the payments received by the Trust in respect of the debt swap transactions during the first 20 years of the commencement of this Act;

“**debt swap transaction**” means any purchase by the Trust of a portion of the sovereign debt of the Seychelles at a discount and any other arrangements or agreements entered into between the Trust and the Seychelles in respect of repayment, rescheduling, forgiveness or cancellation of such debt;

“**eligible protected area**” means a protected area determined as such by the Trust taking into account its biodiversity and natural, marine, social, infrastructure, scientific or scenic values;

“**Endowment Fund**” means the Endowment Fund referred to in section [21](#);

“**ex officio Director**” means a Director of the Board appointed under section [7\(2\)\(a\)](#);

“**fiscal year**” means the period of 12 months from 1st January to 31st December;

“**investment guidelines**” means the investment policy, objectives and guidelines approved by special majority vote;

“**Minister**” means the Minister responsible for finance;

“**operational manual**” means the operational manual approved by the Board for coordinating the anticipated activities and providing for the administrative policy guidance and instructions of the Trust;

“**protected area**” means an area of land or sea especially dedicated to the protection and maintenance of biological diversity or natural resources, managed through a legal or other effective means;

“**Seychelles system of protected areas**” means the system of protection and maintenance of the protected areas of Seychelles and includes any other eligible protected area;

“**special majority vote**” means the affirmative vote of—

- (i) each of the *ex officio* Directors; and
- (ii) at least two-thirds of other Directors appointed under section [7\(2\)\(b\)](#);

“**The Nature Conservancy**” means the charitable environmental organisation founded in the year of 1951 with its headquarters situated in the United States of America;

“**Trust**” means the Conservation and Climate Adaptation Trust of Seychelles established under section [4](#).

3. Act to prevail over other laws

- (1) The provisions of this Act shall, notwithstanding anything inconsistent contained in any other written law, for the time being in force, prevail to the extent of the inconsistency.
- (2) Without prejudice to subsection [\(1\)](#), the provisions of this Act shall be in addition to, and not in derogation of, any other written law for the time being in force.

Part II – Establishment of Trust, its objects, functions and powers

4. Establishment of Trust

There is hereby established a trust to be called as the Conservation and Climate Adaptation Trust of Seychelles, which shall be a corporate body.

5. Objects of Trust

The objects of the Trust shall be to—

- (a) develop and administer the Endowment Fund, the Revolving Fund and the Additional Endowment Fund, and any other sources of funding;
- (b) administer the assets of the Trust, intended to provide a sustainable flow of funds which supplements existing and future funds from any sources to enable the Trust to support the long-term management and expansion of the Seychelles system of protected areas and other activities which contribute substantially to the conservation, protection and maintenance of biodiversity and the adaptation to the climate change as identified through consultations with stakeholders; and
- (c) perform exclusively for charitable, educational and scientific purposes for the benefit of the public in accordance with this Act.

6. Functions and powers of trust

- (1) The functions of the Trust are to—
 - (a) accept donations which may be subject to conditions imposed by donors; and
 - (b) make loans, grants, borrow subject to the approval of the Minister or invest money—
 - (i) to achieve the objects of the Trust, in accordance with this Act; and
 - (ii) which in the opinion of the Board is reasonably expected not to impair the ability of the Trust to achieve its objects.
- (2) The Trust shall not incur any part of its earnings or assets to the benefit of any individual or distribute to its Directors, officers or other persons.
- (3) Without prejudice to subsection (2), the Board may authorise the payment of—
 - (a) any reasonable remuneration for services rendered by the officers and other persons; and
 - (b) any expenditure incurred in furtherance of the objects and purposes under this Act,subject to the condition that the aggregate of such payment does not exceed 5 percent of the annual revenue of the Trust for any fiscal year or such higher amount as may be prescribed by regulations.
- (4) The Trust shall not participate or intervene in any political campaign (including publishing or distributing statements) on behalf of (or in opposition to) any candidate for political office or any political party.
- (5) Subject to any restrictions prescribed by regulations, the Trust may advise the Government on—
 - (a) any matter concerning the objects of the Trust which may be affected by public policy;
 - (b) any matter which the Board determines may affect any protected area or eligible protected area; or
 - (c) any other matter for which the Trust is responsible for promoting or supporting and which is consistent with its objects.
- (6) Notwithstanding any other provision of this Act, the Trust shall not engage in any activity or exercise any power which is prejudicial to the objects of the Trust.

Part III – Board of Directors of Trust, its powers and functions

7. Board of Directors

- (1) There shall be a Board of Directors of the Trust consisting of Directors to be appointed under subsection (2), which shall be responsible for management and administration of the affairs and operations of the Trust.
- (2) The Board shall consist of—
 - (a) 2 *ex officio* Directors appointed by the Minister on the nomination made one each by—
 - (i) the Government of Seychelles;
 - (ii) the Nature Conservancy; and
 - (b) 7 other Directors having prescribed qualifications and experience to be appointed by the Minister as nominated by the institutions selected by the *Ex officio* Directors of the Board referred to in section 8(3).
- (3) A person shall be eligible to be appointed as a Director if he or she possesses qualifications and experience in the field, of ecological science, biodiversity conservation, finance, law, investment management, fundraising or such other areas of expertise consistent with the object of the Trust.

8. Appointment of non official Directors and reconstitution of Board

- (1) Notwithstanding anything in section 7, the first Board shall, on the commencement of this Act, be appointed by the Minister consisting of the *ex officio* Directors referred to in section 7(2)(a).
- (2) The first Board appointed under subsection (1), shall convene its first meeting as soon as practicable but not later than 6 months from the commencement of this Act.
- (3) The first Board shall, at its first meeting referred to in subsection (1) make recommendation for appointment of Directors from the institutions referred to in section 7(2)(b) by the unanimous vote of all *ex officio* Directors.
- (4) On the recommendation of the first Board made under sub-section (3) other Directors shall be appointed in accordance with section 7 and the Board shall be deemed to be formally constituted accordingly.

9. Terms of office of Directors of Board

- (1) An *ex officio* Director appointed under section 7(2)(a) shall hold place until the term of his or her appointment, or he or she is replaced by another Director appointed in accordance with section 7(2)(a), or until the date of resignation, death or incapacity, whichever comes first.
- (2) The other Directors appointed under section 7(2)(b) shall hold for a period of 3 years from the date of appointment.
- (3) Any Director of the Board may, at any time, resign from office by letter addressed to the Board and such Director shall cease to be a Director of the Board from the date on which the Board receives the letter.
- (4) Where any Director vacates office, another Director shall be appointed in accordance with this Act to replace that Director who shall hold office for the remaining period of term of office of that Director.
- (5) Where any Director is temporarily unable to perform, functions for a period exceeding 3 months, due to ill health, other infirmity, absence from Seychelles or any other reason the Board shall appoint any other person to act for such Director.

10. Chairperson, Vice-chairperson, and Treasurer

The Board shall, at the first meeting after its format constitution under section 8(4), elect from amongst the Directors, a Chairperson, Vice-Chairperson, Treasurer and Secretary of the Board.

11. Meetings of Board

- (1) There shall be not less than 2 meetings of the Board every year and not more than 6 months shall intervene between one meeting and the next meeting;
- (2) The Chairperson may by written notice convene a special meeting of the Board for any purpose specified in the notice.
- (3) The Chairperson or, in the absence of the Chairperson, the Vice-Chairperson, shall preside at any meeting of the Board.
- (4) Any question arising at a meeting of the Board shall be decided by the special majority votes.
- (5) The quorum for a meeting of the Board shall be both *ex officio* Directors and 5 other Directors.
- (6) Subject to this Act, the Board shall, by rules regulate its own procedure.

12. Chief Executive Officer

- (1) There shall be a Chief Executive Officer appointed by the Board, on such terms and conditions specified by rules, subject to the Government, policy applicable to the public bodies.
- (2) The Chief Executive Officer—
 - (a) shall be responsible for the administration of the day to day functions of the Trust and discharge such other duties as may be assigned to him or her by the Board;
 - (b) shall be responsible for the implementation of the decisions of the Board;
 - (c) may, subject to the direction of the Board, sign documents on behalf of the Trust; and
 - (d) may, subject to the direction of the Board, delegate to any employee of the Trust any duty and responsibility.
- (3) Subject to any direction of the Board, the Chief Executive Officer shall participate in the meetings of the Board but shall not have the right to vote.

13. Committees of Board

- (1) The Board may establish such committees as it may consider appropriate to advise it or to carry out such responsibilities of the Board in accordance with the procedures prescribed by rules.
- (2) A Director of the Board shall be appointed as the chairperson of the committee established under subsection (1).

14. Staff of Trust

The Board shall, on such terms and conditions as may be determined in the operational manual of the Board, employ such persons as may be necessary in the performance of functions of the Trust, subject to the budgetary and other restrictions prescribed by regulations.

15. Powers and functions of Board

- (1) The Board shall, as soon as practicable after the first meeting of the Board but not later than 1 year from the commencement of this Act, cause the Trust to take all necessary steps to enter into the debt swap transaction in accordance with this Act.

- (2) Without prejudice to subsection (1), the Board shall have powers to—
- (a) amend, repeal or replace any agreements related to the debt swap transaction;
 - (b) adopt, amend or repeal the rules of procedure, operational manual and investment guidelines;
 - (c) perform such other functions as may necessary or expedient
 - (d) receive and approve projects concerning the objects of the Board for consideration;
 - (e) adopt, amend or repeal the operational manual;
 - (f) adopt, amend or repeal the investment guidelines of the Trust; and
 - (g) appoint or replace the investment manager of the Trust.
- (3) The Board may, subject to such restriction as may be prescribed by regulations, delegate in writing any of its powers or functions under this Act to a Director, Chief Executive Officer or any committee.

16. Board to be trustee

The Board shall be the trustee of the Trust and each Director of the Board stands in a fiduciary relationship toward the Trust and shall discharge his or her duties in good faith.

17. Liabilities of Directors of Board

- (1) A Director, Chief Executive Officer or other employees of the Board shall not be personally liable to the Trust or any other person or entity for any action taken or omitted to be taken in good faith.
- (2) Subsection (1) shall not apply to any action—
- (a) taken or omitted to be taken in bad faith or which constitutes fraud or willful misconduct; or
 - (b) from which the Director, officer or any connected party derived any financial or other personal benefit not authorised under this Act.

18. Disclosure of interest

A Director or the Chief Executive Officer of the Board, who has direct or indirect interest in any matter to be decided by the Board, shall—

- (a) disclose the nature of such interest at the meeting of the Board; and
- (b) not take part in any deliberation or decision in respect of that matter.

19. Removal of Directors of Board

A Director may, subject to a special majority vote, be removed from office, who—

- (a) has been found guilty of any misconduct, default or breach of trust in the discharge of any duties;
- (b) is convicted of an offence; or
- (c) is mentally or physically incapable of carrying out the functions under this Act.

20. Remuneration of Director

The Directors shall serve on a voluntary basis and shall not receive any remuneration or allowances for holding office as Directors, provided a Director may be paid such reasonable expenses incurred by the Director in connection with the affairs of the Trust, as may be determined in the operational manual by the Board.

Part IV – Finance, accounts and audit

21. Assets of Trust

- (1) The Trust shall, as long as it receives the debt swap incomes, each year use at least: 35 percent of the annual payments received from the debt swap incomes to deposit in the Endowment Fund in order to generate income by investing the Endowment Fund in such appropriate manner as the Board may determine.
- (2) Until such time as the debt swap incomes terminates or a period of 20 years, whichever comes later, the Trust shall not distribute or use in any way any of the principal of, or income generated by, the Endowment Fund, except in the eventuality that the funds being paid by the government does not suffice to reservice the debt.
- (3) After the debt swap incomes terminate or a period of 20 years, whichever comes later, the Trust may, subject to subsection (5), periodically distribute income generated by the Endowment Fund.
- (4) The Trust shall not withdraw, borrow from, borrow against, or dispose of the Endowment Fund or the income generated by the Endowment Fund other than in accordance with this Act, regulations, operational manual and the annual workplan made thereunder.
- (5) Any moneys shall not be paid out of the assets of the Trust, except with the authority, and in accordance with any generator special direction, of the Board.
- (6) The assets of the Trust shall, regardless of the source of the assets, be considered in all respects to be separate from the consolidated revenues of the Government, and shall not be subject to any law governing public or government funds, except otherwise provided in this Act.
- (7) The Trust may transfer funds of the Trust into and out of Seychelles, maintain foreign currency account and deal with in any foreign currency in accordance with the Public Finance Management Act, 2012.
- (8) The income of the Trust from any source other than the Endowment Fund, may be disbursed as grants, used to cover the administrative expenses of the Trust and operating costs, as set forth by or under this Act, or invested in accordance with section 23.
- (9) Upon the termination of the debt swap incomes or a period of 20 years, whichever comes later, the Board may, at the end of each fiscal year, cause up to 5 percent of the average net asset value of the Endowment Fund over the preceding 3 years to be disbursed as grants or used to cover the administrative expenses and operating costs of the Trust.
- (10) Notwithstanding anything in this Act—
 - (a) the assets or income of the Endowment Fund shall not be dispersed or used to cover any expenses or other costs of the Trust until such time as the debt swap incomes has terminated or a period of 20 years, whichever comes later; and
 - (b) at no time any income from the Endowment Fund shall be transferred to a sinking fund or Revolving Fund other than as part of a grant made by the Trust in accordance with this Act.

22. Revenue of Trust

- (1) The revenues of the Trust may be generated from the following sources—
 - (a) the debt swap transaction;
 - (b) income generated from the Endowment Fund and any other funding sources;
 - (c) gifts and bequests;
 - (d) public and private donations from national and international sources;

- (e) the budgetary allocations made by the Government by an Appropriation Act;
 - (f) any fees, levies, taxes and fines specifically allocated to the Trust by or under any written law;
 - (g) revenues from investments;
 - (h) proceeds from the sale, lease or transfer of tangible and intangible property;
 - (i) proceeds from services provided by the Trust; and
 - (j) any other sources of revenue deemed appropriate by the Board.
- (2) The Board may reject any gifts, bequests, donations, revenues, proceeds or incomes which may be offered to or otherwise accrue to the Trust.

23. Eligibility of payments

Subject to the requirements provided in the operational manual, an agency shall be eligible for a payment from the Trust, if—

- (a) it has continuously maintained for at least 1 year prior to the date of application active operations in the Seychelles consistent with the purposes of the grant and the objects of the Trust;
- (b) it is an agency of the Government or a non-governmental organisation;
- (c) the purpose of the grant and its intended use is consistent with the objects of the Trust;
- (d) the grant does not, directly or indirectly, be used to pay for—
 - (i) operating or administrative costs of ministries, departments or agencies of the Government or any other country;
 - (ii) salaries of executive officers and core staff of non-governmental organisations, except as such salaries relate to services performed by such persons on behalf of the Trust;
 - (iii) activities relating to the extraction of non-renewable natural resources; or
 - (iv) any other use not consistent with the objects of the Trust; and
- (e) it satisfies such other criteria, priorities and procedures for grants prescribed by rules.

24. Investment of assets of Trust

- (1) The Endowment Fund and any other assets of the Trust shall be invested by an internationally recognised investment manager selected by the Board through a transparent and competitive public tender process, subject to the approval of a special majority vote.
- (2) All investments shall be made in accordance with the operational manual and investment guidelines made by the Board.
- (3) At the end of each fiscal year, the Board may cause all or a portion of unspent and unbudgeted funds, regardless of the source, to be invested in the Endowment Fund, which shall become part of the Endowment Fund and be subject to all the restrictions applicable to the Endowment Fund set out by or under this Act.
- (4) Any portion of unspent and unbudgeted funds referred to in subsection (3), which the Board does not invest in the Endowment Fund shall be deposited in an account in accordance with the bye-laws or otherwise used in a manner permitted under this Act.

25. Annual workplan and budget

- (1) The Board shall, in each fiscal year, prepare and approve an annual workplan and a budget in respect of the annual payments received from the debt swap incomes.
- (2) The Board shall, within 30 days, submit the annual workplan and budget made under sub section (1) to the Minister who shall cause them to be laid before the National Assembly.

26. Limit on administrative expenses

The Trust may, in each fiscal year use, up to 25 percent of its annual budget referred to in section [25\(1\)](#), for a period of 2 fiscal years, and thereafter, not more than 15 percent of its annual revenue for meeting administrative expenses.

27. Accounts of trustee

- (1) The Trust shall maintain proper accounts and other relevant records and prepare an income and expenditure statement in such form and in such manner as may be prescribed by regulations.
- (2) The accounts of the Trust shall be audited by the Auditor General in accordance with Article 158 of the Constitution.
- (3) Where the accounts and statement of accounts of the Trust in respect of any financial year have been audited, the Trust shall furnish the Minister a copy of the statement together with a copy of any report by the Auditor General on the statement of accounts or on the accounts of the Trust.

28. Exemption from taxation

- (1) The Trust shall, notwithstanding any other written law, be exempt from the payment of the business tax.
- (2) All property of, and all instruments executed by or on behalf of, the Trust shall be exempt from the payment of stamp duty or any other duty.
- (3) The Trust may, with the approval of the Minister, apply for exemption of tax in a foreign country or territory, including applying to register or establish independent tax-exempt fundraising organisation in a foreign country or territory.

Part V – Miscellaneous

29. Dissolution of Trust

- (1) The Board may—
 - (a) in the event of bankruptcy of the Trust;
 - (b) if its tax-exempt status provided for in section [28](#) is revoked; or
 - (c) if it has become impracticable to achieve the objects of the Trust,by an extraordinary resolution adopted by a special majority vote dissolve the Trust.
- (2) Upon the dissolution of the Trust, the assets of the Trust, except the Endowment Fund, without prejudice to any other provisions, shall be distributed to any organisation not affiliated with any Ministry or government agency which has as its purpose a charitable, educational or scientific purpose for the benefit of the public that is substantially similar, to the objects of the Trust.

30. Application of provision of Penal Code

The Directors, officers, employees of the Trust or any other person acting under the direction of the Trust shall be deemed to be employed in the public service for the purpose of sections 91 to 96 of the Penal Code.

31. Regulations

The Minister shall, on the advice of the Board, make regulations, consistent with this Act, for carrying into effect the provisions of this Act which may provide for all or any of the following matters—

- (a) other costs in relation to administrative expenditure under section 2;
- (b) the percentage of aggregate of the annual revenue of the Trust under section 6(3);
- (c) the restrictions on advice under section 6(5);
- (d) the budgetary and other restrictions on appointment of other employees under section 14;
- (e) the restriction on delegation of powers or functions by the Board to a Director or any committee under section 15(3);
- (f) the form and manner of accounts and other relevant records and the income and expenditure statement under section 27(1);
- (g) any other matter which is necessary or required to be prescribed by regulations under this Act.

32. Rules

The Trust shall make rules, consistent with this Act and the regulations made under section 31, for carrying into effect the provisions of this Act which may provide for all or any of the following matters—

- (a) rules of procedure for transaction of business under of section 11(5) and the procedures for establishment of committees under section 13(1);
- (b) the terms and conditions of the service of the Chief Executive Officer and other employees of the Trust under sections 12(1) and 14;
- (c) the procedure, operational manual and investment guidelines under section 15(2)(c);
- (d) the requirements under which an agency shall be eligible for a payment from the Trust and the other criteria, priorities and procedures for grants under section 23(1);
- (e) any other matter which is necessary or required to be prescribed by rules under this Act.