



Seychelles: Investment Laws as Affected by the Anti-Money Laundering Act, 1996

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SEYCHELLES: INVESTMENT LAWS AS AFFECTED BY THE ANTI-MONEY LAUNDERING ACT, 1996

Abstract

Between 1994 and 1995, Seychelles passed various laws aimed at attracting more foreign investments. Key among these laws was the Economic Development Act of 1995 that contained ubiquitous concessions and incentives to an investor or potential investor with \$10 million or more of investment capital. This Law appeared to provide a safe haven for all sorts of investors including criminal characters. Widespread international criticism spearheaded by the United States of this all embracing incentive program led Seychelles to enact the Anti-Money Laundering Act of 1996. This Law prescribes penalties for abusing the incentives contained in the various investment legislation through money laundering.

History

On November 25, 1994, the SEYCHELLES OFFICIAL GAZETTE published the Investment Promotion Bill of November 23, 1994.¹ The objects and reasons for the bill were:

...to grant incentives and provide concessions from taxation and immigration laws for the purposes of promoting investment in Seychelles.

According to the preamble of this Bill. The legislation conferred power on the responsible minister to grant certificates of approval to an existing or potential investor following the approval of the venture by the Cabinet. Once the certificate of approval is granted, the investor is a beneficiary of a wide range of incentives and concessions. As found in the Bill, these incentives and concessions could not be altered during the life of the investment in Seychelles to the disadvantage of the investor. The minister responsible, however, retained power to revoke the certificate of approval based on fraud or misrepresentation. These provisions are found in the Investment Promotion Act of December 23, 1994, effective, January 1, 1995.²

A variety of other business and investment laws were also passed during 1994 and 1995.

¹ **Supp. to the Seychelles Off. Gazette** of Nov. 25, 1994.

² **Supp. to the Seychelles Off. Gazette** of Dec. 27, 1994 and also of January 4, 1995.

These acts liberalized business, trade and investment to attract more foreign investors to Seychelles.³ One year later, the Economic Development Bill of October 25, 1995, was published.⁴ Its preamble, in part, enunciates its aims and objectives as:

...attracting investments which will ensure a very high level of sustainable economic development for Seychelles and its people. For this purpose, the Bill proposes setting up of a Board which will have the power to negotiate and grant to the potential investor, investors or the company through which the investors might wish to effect their investment certain wide ranging concessions and incentives. When granting these concessions and incentives, the Board will be empowered to enter into contract[s] on behalf of the government and the contract will incorporate the concessions and incentives. Consequently, the government will be bound in contract in respect of the concessions and incentives. In order to prevent future governments from reneging on these concessions and incentives once given, it is sought to provide that future legislation will not have the effect of annulling or withdrawing the concessions and incentives. In this connection, a law seeking to repeal or amend the proposed law, if and when it becomes law, will need to be first of all approved by 60% of the votes at a referendum and must be passed by a 2/3 majority.

The Board was to consist of the President of the country as its Chairman and the Minister responsible for Finance as the Vice Chairman together with four other members. The Economic Development Bill was enacted into law on November 27, 1995, under the aegis of the Economic Development Act, No. 20 of 1995.⁵ It was reinforced by other legislation such as the International Trade Zone Act, No. 8, 1995,⁶ that positively impacted the local environment for business, trade and investment.⁷

International indignation on the ubiquitous nature of these incentives and concessions, more especially by the United States, was registered following the promulgation of the Bill and the ultimate results contained in the provisions of the Economic Development Act, 1995. Primarily,

³ These include the International Business Act, No.24 of 1994, **Supp. to the Seychelles Off. Gazette**, of Dec. 27, 1994; Seychelles International Business Authority Act, No. 27, 1994, **Supp. to Seychelles Off. Gazette** of Dec. 27, 1994 and the International Trusts Act, No. 26, 1994, **Supp. to the Seychelles Off. Gazette** of Dec. 227, 1994.

⁴ **Supp. to the Seychelles Off. Gazette** of Nov. 6, 1995.

⁵ **Supp. to the Seychelles Off. Gazette** of Dec. 4, 1995.

⁶ **Supp. to the Seychelles Off. Gazette** of June 20, 1995.

⁷ This law also amended pertinent sections of the Immovable Property (Transfer Restrictions) Act, Ch. 95 of the Laws of Seychelles, the Business Tax Act, Ch. 20 of the Laws, The Trade Tax Act, Ch. 240, The Social Security Act, Ch.225; the Seychelles Pensions Scheme Act, Ch. 220, the Immigration Act, Ch.113, the Licenses Act (which was rendered inapplicable to any matters covered by the International Trade Zone Act and the International Business Companies Act, No. 24 of 1994. These changes were to benefit those who operated in the international trade zone.

these objections were based on the premise that this Law appeared to provide a safe haven for all types of investors including those engaged in criminal activities and other unsavory enterprises.⁸

In response to some of this international criticism as spearheaded by the United States, the Government of Seychelles enacted a variety of laws to ameliorate the matter including the Anti-Money Laundering Act, No. 8 of 1996.⁹

Salient features of the Economic Development Act

According to the preamble to this Act is to:

... provide for the granting of incentives and concessions to qualified individuals desirous of investing in Seychelles for the purpose of ensuring the high level of sustainable economic growth of Seychelles, for the establishment of a Board which shall be responsible for determining and granting the concessions and incentives....

The Board consists of the President of Seychelles as Chairman as above prescribed in the Bill together with five others including the Minister responsible for Finance who is the Vice Chairman. The Board approves investment ventures and grants concessions and incentives. Perhaps section 5 of this Law has sparked the controversy and international concern. Under this section, the Board may grant to any investor or potential investor with \$10 million or more to invest in Seychelles any concessions and/or incentives the Board deems fit. Section 5 (7) of the Act further states that:

For the purposes of this section a concession or incentive includes:

- (a) immunity from prosecution for all criminal proceedings whatsoever except criminal proceedings in respect of offenses involving acts of violence and drug trafficking in Seychelles;
- (b) immunity from compulsory acquisition or sequestration of the assets belonging to an investor other than a confiscation or forfeiture made by the court in relation to a criminal proceeding which is expected under paragraph (a).

The Act also carried the Bill provisions concerning rigorous requirements to change this law in the future. Such alterations were to be subject to a referendum of 60% or more of the votes cast in this referendum and also passed by 2/3 of the members of the legislature voting at each process of passage. The Economic Development Act is still in force.

⁸ See generally, C. Mwalimu, "Seychelles-Money Laundering" *The World L. Bull.* (No.96-09 of Sept. 1996) (Law Library, Library of Congress) at 3.

⁹ *Supp. to the Seychelles Off. Gazette* of April 29, 1996, effective August 1, 1996, *Supp. to the Seychelles Off. Gazette* of August 5, 1996, S.I. 61 of 1996. The Anti-Money Laundering Act also contained provisions which augmented and reinforced the Mutual Assistance in Criminal Matters Act, No. 7 of 1995, *Supp. to the Seychelles Off. Gazette* of April 10, 1995.

III: The Anti-Money Laundering Act 1996.

The Anti-Money Laundering Bill of March 3, 1996 ¹⁰ specifically stated that, one of its objectives or one of the reasons behind this measure was "to prevent the exploitation of the investment incentives granted under the various laws enacted in the recent past and now in force and to dissuade any attempts for the incentives to be abused by investors..."

The Anti-Money Laundering Act, No. 8 of 1996 criminalizes money laundering. At the same time it requires financial institutions to maintain procedures for record-keeping and identity purposes. Under this Act, money laundering is an extraditable offence. According to section 3 (i) of the Act therefore:-

"A person who-

- (a) engages, directly or indirectly in a transaction that involves money or other property that is proceeds of a crime;
- (b) receives, possesses, conceals, disposes of or brings into Seychelles any money, or other property that is proceeds of crimes,

knowingly or having reasonable grounds for knowing that the money or other property is derived or realized, directly or indirectly from any unlawful activity, commits the offense of money laundering".

This definition of money laundering also includes conspiracies to commit this offence. Punishment for money laundering covers a 15 year prison term and a fine for individuals, a fine only for corporate offenders as well as forfeiture of any money and/or property.

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¹⁰ Supp. to the Seychelles Off. Gazette of Mach 11, 1996.