

Seychelles

National Drugs Enforcement Agency Act, 2008

Act 20 of 2008

Legislation as at 31 December 2015

FRBR URI: /akn/sc/act/2008/20/eng@2015-12-31

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PDF created on 28 April 2024 at 03:51.

Collection last checked for updates: 30 June 2014.

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Seychelles

National Drugs Enforcement Agency Act, 2008

Act 20 of 2008

Commenced on 15 September 2008

[This is the version of this document as it was at 31 December 2015 to 18 July 2017.]

[Repealed by [National Drugs Enforcement Agency \(Repeal\) Act, 2017 \(Act 19 of 2017\)](#) on 1 November 2017]

[Act 20 of 2008; S.I. 68 of 2008]

1. Short title and interpretation

(1) This Act may be cited as the National Drugs Enforcement Agency Act, 2008.

(2) In this Act—

"**Acting Chief Officer**" means the person appointed under [section 12\(8\)](#);

"**benefit from criminal conduct**" mean any money or property that is derived, obtained or realised, directly or indirectly, by any person from criminal conduct;

"**cash**" has the meaning set out in the Anti-Money Laundering Act 2006;

"**Central Bank**" means the Central Bank of Seychelles;

"**Commissioner**" means the Commissioner of Police;

"**Chief Officer**" means the person appointed under [section 12 \(1\)](#);

"**Court**" means the Supreme Court of Seychelles;

"**Court of Appeal**" means the Court of Appeal of Seychelles;

"**criminal conduct**" shall have the meaning set out in the Anti-Money Laundering Act 2006;

"**data**" means representations in any form of information or concepts;

"**Deputy Chief Officer**" means the person appointed under [section 12 \(2\)](#);

"**drug offence**" means—

(a) any offence contrary to the Misuse of Drugs Act 1995 and where the context so permits or requires includes—

(i) any offence contrary to any act connected to or related to any such offence either generally or during an investigation or any court proceedings arising during or from such investigation; and

(ii) the offence of money laundering where that offence relates wholly or partly, directly or indirectly to the proceeds of drug trafficking; and

(b) any act, whether in the Republic or elsewhere and whether before or after the commencement or the relevant provisions of this Act, in relation to property obtained, whether directly or indirectly, from anything done in relation to a controlled drug, that amounts to an offence contrary to the Anti-Money Laundering Act, 2006 or, in the case of an act done in a country or territory outside the Republic, would amount or have amounted to such an offence if done in corresponding circumstances in the Republic;

"**F.I.U**" means the Financial Intelligence and Assets Recovery Unit as established under the Anti-Money Laundering Act 2006;

"**law enforcement agency**" means the government department under the Commissioner of Police or the Director General of Immigration and includes the Seychelles Revenue Commission;

"**member of the family**", in relation to an individual who is an NDEA agent, means the spouse, parent, grandparent, step-parent, child (including a step-child or an adopted child), grandchild, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece of the individual or of the individual's spouse, or any person who is cohabiting or residing with the individual;

"**member of the police**" means a police officer;

"**Minister**" means the Minister responsible for internal affairs;

"**NDEA**" means the National Drugs Enforcement Agency established under [section 2](#);

"**NDEA agent**" means a person appointed as such under [section 13](#)

"**police function**" means any power or duty conferred on any member of the police under any Act (including an Act passed after the passing of this Act) or the common law;

"**proceedings**" include any hearing before any court, tribunal, commission or any committee of the government or appointed by the government;

"**property**" includes—

- (a) money and all property, real or personal, heritable or moveable, including choses in action and other intangible or incorporeal property and references to property shall be construed as including references to any interest in property; and
- (b) property outside the Republic where by virtue of its domestic jurisdiction generally, *in rem* or in *personam* or by virtue of an arrangement with any other country or territory, the Court might be in a position to enforce, and/or secure compliance with any order it might make or otherwise exercise jurisdiction in relation to that property;

"**regulatory agency**" means any statutory agency set up and regulated by an Act in the Republic;

"**reporting entity**" has the meaning set out in section 2 of the Anti-Money Laundering Act 2006;

"**suspicious transactions report**" means a report made or to be made by a reporting entity under the Anti-Money Laundering Act, 2006;

2. Establishment and the objectives of the NDEA

- (1) There is hereby established an agency to be known as the National Drugs Enforcement Agency to be called shortly the "NDEA".
- (2) Subject to the provisions of this Act, the objectives of the NDEA shall be the taking of all appropriate actions to lead, manage, coordinate and implement the national effort of the Republic to combat drug offences.

3. Function of the NDEA

Without prejudice to the generality of subsection (2), the functions of the NDEA, operating through its NDEA agents and such other persons as the Chief Officer or the Deputy Chief Officer with the consent of the President, shall from time to time decide, shall be the taking of all necessary actions—

- (a) to co-ordinate investigations into drug offences;
- (b) to achieve effective deterrence and prevention of drugs offences;
- (c) to co-ordinate the national operational response to drug offences;

- (d) to commence, take over, direct or take part in any investigation or operation by any law enforcement or other agency, other than the FIU, that relates wholly or partly to drug offences or any part thereof,

and such actions to include, where appropriate, subject to any international agreement, and also as may be directed by the President, cooperation with any police force, institution or agency of a territory or country other than the Republic or any international organisation, institution or agency.

4. Conferral of additional functions of the NDEA

- (1) The President may (and if necessary is hereby conferred with all authority to do so) by order—
 - (a) confer on the NDEA or its NDEA agents such additional functions connected with the objectives and functions of the NDEA; and
 - (b) make such provision as the President considers necessary or expedient in relation to matters ancillary to or arising out of the conferral on the NDEA or its NDEA agents of functions under this section or the performance by the NDEA or its NDEA agents of functions so conferred.

5. Powers of the President

The President may—

- (a) by order, amend or revoke an order made by him under this Act;
- (b) make regulations consistent with this Act—
 - (i) for or with respect to any matter that by this Act is required or permitted to be prescribed; or
 - (ii) that is necessary or convenient to be prescribed for carrying out or giving to this Act.

6. Reports

- (1) As soon as may be, but not later than three months, after the end of each year, the NDEA shall present a report to the President of its activities during that year and the President shall cause a copy of the report to be tabled before the National Assembly.
- (2) Each report under subsection (1) shall include information in such form and regarding such matters as the President may direct.
- (3) The NDEA shall, whenever so requested by the President, furnish to him information as to the general operations of the NDEA.

7. Immunity

No action shall lie against the Chief Officer, any officer, employee or agent of the NDEA or any person acting under the director of the NDEA, for anything done in good faith in the exercise or discharge of any powers, duties or functions under this Act.

8. Non-disclosure of audit information

The Auditor General and every person acting on behalf of or under the direction of the Auditor General shall not disclose any information that they have obtained or to which they have had access in the course of their audit of the NDEA except in the performance of their functions and when ordered by a court of law.

9. Powers of the NDEA

Notwithstanding any Act, rule of law or practice to the contrary, the NDEA—

- (a) shall have the authority to collect any information that the NDEA considers relevant to its functions and duties and is publicly available, including commercially available databases, information that is collected or maintained and information that is stored in databases maintained by the government;
- (b) shall have the authority to request information from reporting entities, any supervisory or regulatory agency and any law enforcement agency for the purposes of this Act;
- (c) may compile statistics and records and may disseminate information within the Republic or elsewhere as well as make recommendations arising out of any information received;
- (d) may provide training programs for law enforcement agencies and any other person thought proper;
- (e) may conduct research into trends and developments in the area of drug offences and associated criminal conduct and improved ways of detecting, preventing and deterring drug trafficking and associated criminal conduct;
- (f) may educate the public and create awareness on matters relating to illegal drugs and associated criminal conduct;
- (g) may enter into any agreements or arrangements with any local institution or agency regarding exchange of information;
- (h) may receive copies of suspicious transaction reports made to the FIU under the Anti-Money Laundering Act 2006.

10. Disclosure of reports or information upon approval

The NDEA may, with the approval of the Attorney-General disclose any report or information in its possession or control to an institution or agency of a foreign country or to an international organisation or institution or agency established by the governments of foreign countries that has powers and functions similar to those of the NDEA—

- (a) on such terms and conditions as are set out in the agreement or arrangement between the Republic and/or the NDEA and that foreign country or international organisation, institution or agency regarding the exchange of such information; or
- (b) where such an agreement or arrangement has not been entered into between the Republic and/or the NDEA and that foreign country or international organisation or institution or agency, on such terms and conditions as may be agreed upon by the Republic and/or the NDEA and the foreign country, international organisation, institution or agency at the time of disclosure and such terms and conditions shall include the following—
 - (i) a restriction on the use of the report or information for purposes relevant to investigating or prosecuting drug trafficking, or an offence of financing of terrorism, or an offence that is substantially similar to any such offences, and for the purpose of restraint, seizure and forfeiture of assets derived from, traceable to, or intended to be used for drug trafficking; and
 - (ii) a stipulation that the report or information be treated in a confidential manner and not be further disclosed,

unless the NDEA with the consent of the Attorney-General shall in writing otherwise agree.

11. Agreements on exchange of information

- (1) The NDEA may, with the approval of the President, enter into an agreement or arrangement in writing with the government of a foreign country, or an organisation, institution or agency established by the government of a foreign country or an international organisation, an institution

or agency regarding the exchange of information which might be relevant or helpful in combating drug trafficking whether by prevention, detection, prosecution or the forfeiture of assets.

- (2) Agreements or arrangements entered into shall include the following—
 - (a) a restriction on the use of the information for purposes relevant to investigating or prosecuting a drug trafficking offence, or an offence that is substantially similar to or connected with any such offence and for the purpose of restraint, seizure and forfeiture of assets derived from, traceable to, or intended to be used for drug trafficking; and
 - (b) a stipulation that the information be treated in a confidential manner and not be further disclosed,

unless the NDEA with the consent of the Attorney-General shall in writing otherwise agree.

12. Appointment of Chief Officer, Deputy Chief Officer and Acting Chief Officer

- (1) There shall be a chief officer of the NDEA who shall be known, and is referred to in this Act, as the Chief Officer.
- (2) There shall be a deputy chief officer of the NDEA who shall be known, and is referred to in this Act, as the Deputy Chief Officer.
- (3) The President shall from time to time, appoint to the NDEA the Chief Officer and the Deputy Chief Officer and may, at any time, remove the Chief Officer or the Deputy Chief Officer from his appointment with the NDEA.
- (4) The Chief Officer shall carry on and manage and control generally the administration and business of the NDEA.
- (5) Where a power is exercised or a function performed by the Chief Officer, the Deputy Chief Officer, or an NDEA agent, no question or issue shall be raised in any court or other proceedings regarding the capacity of that person to exercise the power or perform the function and it shall not be a defence that the exercise of the power or performance of the function should have been by another person.
- (6) The Chief Officer shall be responsible to the President for the performance of the functions of the NDEA.
- (7) In the event of temporary incapacity through illness, or absence or otherwise of the Chief Officer, the Deputy Chief Officer shall perform the functions of the Chief Officer and while so acting, the Deputy Chief Officer shall have and exercise all the powers and functions of the Chief Officer during the relevant period.
- (8) Without prejudice to the foregoing, in the event of any incapacity through illness, or absence of the Chief Officer or any other cause as decided by the President, the President may appoint to the NDEA, a person who shall be known as the Acting Chief Officer, to perform the functions and exercise the powers of the Chief Officer during the period of his appointment.
- (9) The President shall remove the Acting Chief Officer from that appointment upon being satisfied that the incapacity or absence of the Chief Officer or other reason has ceased.
- (10) For the purposes of this Act, the Chief Officer, the Deputy Chief Officer and the Acting Chief Officer, shall be NDEA agents while so appointed.

13. Appointment of NDEA agent

- (1) The President may appoint such persons as he thinks fit to be NDEA agents.
- (2) In addition to the executive powers vested in the President by the Constitution, the President is hereby granted the power to vest in an NDEA agent the powers, functions, duties, protections and authorities mentioned in this section.

- (3) An appointment under this section shall be known as an instrument of appointment, and shall—
- (a) be in writing;
 - (b) specify the date of the appointment;
 - (c) specify the power, functions, duties, protections and authorities to be vested in the NDEA agent, and whereupon the NDEA agent shall have the protections and duties and shall be entitled to exercise the powers, functions and authorities under this section for the purposes of this Act.
- (4) Where in an instrument of appointment the President vests in an NDEA agent the power, functions duties, protections and authorities that vest in a person by virtue of him being—
- (a) a police officer;
 - (b) an officer of the Seychelles Revenue Commission
 - (c) an officer of Customs; and
 - (d) an immigration officer,
- or such appointment shall be deemed to be an appointment of the NDEA agent under the relevant Acts and shall operate to vest in the NDEA agent all the powers, functions, duties, protections and authorities of a duly appointed and fully authorised police officer, officer of the Revenue Commission, officer of Customs, and/or an immigration officer, and/or as may be otherwise specified in the instrument of appointment, and so that any subsequent amendment of any such Act shall be deemed to apply to the NDEA agent as if the amended Act was in force at the time of his appointment.
- (5) In addition to the power and duties contained in his instrument of appointment the power and duties vested in an NDEA agent for the purposes of this Act, shall, subject to subsections (6), (7) and (8), be the powers and duties vested in the NDEA agent, as the case may be, by virtue of—
- (a) being a member of the agency, body or organisation to which he was attached prior to being appointed an NDEA agent; and
 - (b) the Revenue Laws or, any provision of any other Acts, whether passed before or after the passing of this Act, which relates to revenue, including any appointment, authorisation or nomination made thereunder; and
 - (c) the Social Security Act, including any appointment made thereunder; and
 - (d) any other appointment or qualification; and
 - (e) such executive power as shall be granted to that NDEA agent by the President; and
 - (f) this Act.
- (6) An NDEA agent, when exercising or performing any powers or duties, shall be under the direction and control to the Chief Officer.
- (7) Where in any case an NDEA agent who, prior to being appointed an NDEA agent, was required to exercise or perform any power or duty on the direction of any other person, it shall be lawful for the agent to exercise or perform such power or duty on the direction of the Chief Officer.
- (8) An NDEA agent may—
- (a) be accompanied or assisted in the exercise or performance of that agent's powers or duties by such other persons (including NDEA agents) as the first-mentioned agent, the Chief Officer or the Deputy Chief Officer considers necessary;

- (b) take with him, to assist him in the exercise or performance of his powers or duties, any equipment or materials as that agent, the Chief Officer or the Deputy Chief Officer considers necessary.
- (9) An NDEA agent who accompanies or assists another NDEA agent under subsection (8)(a) shall have and be conferred with the powers and duties of the first-mentioned NDEA agent for the purposes of that assistance and vice versa.
- (10) Any information or material obtained by an NDEA agent for the purposes of this Act, may be disclosed by an NDEA agent to—
 - (a) another NDEA agent, and
 - (b) with the consent of the Chief Officer to—
 - (i) any member of the police, armed forces or other body, agency or organisation having responsibility for combating criminal conduct including drug offences, or preserving the security of the Republic, for the purposes of that organisation;
 - (ii) any officer or Inspector of the Revenue Commission for the purposes of the Revenue Laws or any provision of any other Acts, whether passed before or after the passing of this Act, which relates to revenue functions;
 - (iii) any other officer of a Ministry of the Government or the Governor of the Central Bank for the purposes of that other officer or person exercising or performing his powers or duties;
 - (iv) any officer of an agency established by the Government for the collection of intelligence or information for the purpose of combating criminal conduct including drug offences and/or preserving the security of the Republic; and
 - (v) the FIU.
- (11) An NDEA agent, notwithstanding his appointment as such, shall continue to be vested with and may exercise the powers or perform duties of a member of the police, an officer of the Revenue Commission or an Immigration Officer or an officer or inspector of the Social Security Fund as the case may be for purposes other than the purposes of this Act, as well as for the purposes of this Act.
- (12) The President may, at his absolute discretion, at any time, remove any NDEA agent, from the NDEA whereupon the appointment of that person as an NDEA agent shall cease.
- (13) Nothing in this Act shall affect the powers and duties of a member of the police, an officer of the Revenue Commission or any other relevant person, who is not an NDEA agent.
- (14) An NDEA agent, shall hold his appointment on such terms and conditions (including terms and conditions relating to remuneration and superannuation) as the President may determine.

14. Funds of the NDEA

The funds of the NDEA shall consist of monies voted by the National Assembly for the use of the NDEA.

15. Anonymity

- (1) Notwithstanding any requirement made under any Acts of any other requirement in administrative and operational procedures, including internal procedures, all reasonable care shall be taken to ensure that the identity of an NDEA agent, who is not a member of the police or, other than the Chief Officer or the Deputy Chief Officer, shall not be revealed.
- (2) Where an NDEA agent who is not a member of the police is or may be required by Act or practice, for the purposes of exercising or performing his powers or duties, to produce or show any written

authority or instrument of appointment under any Act or otherwise to identify himself, the NDEA agent shall—

- (a) not be required to produce or show any such authority or instrument of appointment or to so identify himself, for the purposes of exercising or performing his powers or duties under those Acts; and
 - (b) be accompanied by an NDEA agent who is a member of the police and the NDEA agent who is a member of the police shall on request by a person affected identify himself as a member of the police, and shall state that he is accompanied by an NDEA agent and shall inform the relevant person the provisions in this subsection whereupon that person shall be obliged to accept the authority of the NDEA agent.
- (3) Where an NDEA agent who is not a member of the police, exercises or performs any of his powers or duties in writing under any Acts, whether passed before or after the passing of this Act, such exercise or performance of his powers or duties shall be done in the name of the NDEA and not in the name of the individual NDEA agent involved, notwithstanding any provision to the contrary in any of those Acts.
- (4) Any document relating to proceedings arising out of the exercise or performance by an NDEA agent of his powers or duties shall not reveal the identity of any NDEA agent who is not a member of the police, provided that where such document is adduced in evidence, subsection (6) shall apply.
- (5) In any proceedings the identity of any NDEA agent who is not a member of the police, other than that he is an NDEA agent, shall not be revealed other than, in the case of hearing before a court, to the judge hearing the case, or in any other case the person in charge of the hearing, provided that, where the identity of such an NDEA agent is relevant to the evidence adduced in the proceedings, subsection (6) shall apply.
- (6) In any proceedings where an NDEA agent may be required to give evidence, whether by affidavit or certificate, or oral evidence—
- (a) the judge, in the case of proceedings before the court; or
 - (b) the person in charge of the proceedings, in any other case,
- may, on the application of the Chief Officer or the Deputy Chief Officer, if satisfied that there are reasonable grounds in the public interest to do so, give such directions for the preservation of the anonymity of the NDEA agent as he thinks fits, including directions as to—
- (i) the restriction of the circulation of affidavits or certificates;
 - (ii) the deletion from affidavits or certificates of the name and address of any NDEA agent, including the deponent and certifier; or
 - (iii) the giving of evidence in the hearing but not the sight of any person.

16. Offences

- (1) A person who publishes or causes to be published—
- (a) the fact that an individual not being or having been a member of the police, is or was an NDEA agent; or
 - (b) the fact that an individual is a member of the family of—
 - (i) an NDEA agent; or
 - (ii) a former NDEA agent; or
 - (c) the address of any place as being the address where any—
 - (i) NDEA agent;

- (ii) former NDEA agent; or
 - (iii) member of the family of any NDEA agent, or former NDEA agent, resides,shall be guilty of an offence.
- (2) Reference to publication of a fact or an address in this section shall include publication of any material from which a reasonable person could readily identify the fact or ascertain the address as the case may be.
- (3) Subject to the provisions of this section, it shall be an offence to communicate with the Attorney-General or an officer of the Attorney-General, a member of the Police, an NDEA agent or a lawyer who acts on behalf of the Attorney-General in his official capacity for the purpose of influencing the making of a decision to withdraw or not to initiate criminal proceedings or any particular charge in criminal proceedings under this Act or any other Act.
- (4) If a person referred to in subsection (3) becomes of opinion that a communication is in breach of that subsection, it shall be the duty of the person not to entertain the communication further.
- (5) This section does not apply to—
 - (a) communications made by a person who is a defendant or a complainant in criminal proceedings or believes that he is likely to be a defendant in criminal proceedings; or
 - (b) communications made by a person involved in the matter—
 - (i) either personally; or
 - (ii) as a legal or medical adviser to a person involved in the matter; or
 - (iii) as a social worker; or
 - (iv) as a member of the family of a person involved in the matter.
- (6) A person who—
 - (a) assaults or attempts to assault an NDEA agent or any member of the family of an NDEA agent;
 - (b) utters or sends threats to or, in any way, intimidates or menaces an NDEA agent or any member of the family of an NDEA agent;
 - (c) delays, obstructs, impedes, interferes with, resists or delays an NDEA agent or any person lawfully accompanying or assisting an NDEA agent in the exercise or performance of his powers or duties or attempts or conspires to do any of the foregoing,is guilty of an offence.

17. Penalties

- (1) A person who is guilty of an offence under [section 16\(1\)](#) or (3), is liable on conviction, to a fine not exceeding R5,000,000, or to imprisonment for a term not exceeding 5 years, or to both.
- (2) If a financial institution or other person whose trade or business is regulated by a licence or permit is convicted of an offence under this Act, the Judge may order the licence to be revoked or suspended for such period as thought proper, in addition to any other penalty or sentence that may be imposed.
- (3) A person who is guilty of an offence under [section 16\(6\)](#) is liable on conviction, to a fine not exceeding R5,000,000 or to imprisonment for a term not exceeding 20 years, or to both.