

SEYCHELLES BUREAU OF STANDARDS BILL, 2012

(Bill No. of 2012)

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SEYCHELLES BUREAU OF STANDARDS BILL, 2012



A BILL

OF

An Act to repeal and replace the Seychelles Bureau of Standards Act, 1987 to make better provision for the development, promotion and maintenance of standardisation and for matters connected therewith and incidental thereto.

ENACTED by the President and the National Assembly.

PART I – PRELIMINARY

1. This Act may be cited as the Seychelles Bureau of Standards Act, 2012 and shall come into operation on such date as the Minister may, by a Notice published in the Official Gazette.

Short title and
commencement

Interpretation

2. In this Act –

"Board" means the Board of the Seychelles Bureau of Standards constituted under section 5;

"Bureau" means the Seychelles Bureau of Standards established by section 3;

"Chief Executive Officer" means the Chief Executive Officer of the Bureau appointed under section 11;

"commodity" means an article, product or thing which is the subject of trade and commerce;

"conformity assessment" means the procedure used to determine, directly or indirectly, that the relevant requirements in a technical regulation or a standard are fulfilled;

"consensus" means general agreement, characterised by the absence of sustained opposition to substantial issues by an important part of the concerned interests, arrived at by a process that involves seeking to take into account the views of the parties concerned and to reconcile any conflicting arguments;

"inspector" means a person appointed under section 21(1) as an inspector;

"mandatory standard" means a Seychelles standard declared mandatory under section 17(1);

"mark" includes any device, brand, heading, label, ticket, name, signature, word, letter or numeral or any combination thereof;

"Minister" means the Minister responsible for Industry;

“premises” means –

- (i). a place where any business, industry, production or trade is carried on by a person whether by himself or through an agent;
- (ii). any part of a dwelling used for the purpose of carrying on any business, industry, production or trade;
- (iii). a place where any record, register or other document pertaining to any business, industry, production or trade is kept;
- (iv). a place where any instrument, weight or measure is manufactured, repaired, sold, used or kept for use in any trade; or
- (v). a place where any prepacked commodity is manufactured, made, packed, stored, distributed, sold, kept or offered for sale;

"Seychelles Standard" means a document declared under section 14(1);

"standard" means a document established by consensus and approved by a recognised body, that provides rules, guidelines or characteristics for activities or their results, aimed at the achievement of the optimum degree of order in a given context;

"standard mark" means a mark authorized under section 20(1);

"technical regulation" means a document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.

PART II – THE BUREAU

3. There is hereby established the Seychelles Bureau of Standards which shall be a regulatory body.

Establishment
of the Bureau

4. The functions of the bureau shall be to –

Functions of the
Bureau

- (a) promote standardisation in industry and commerce;
- (b) prepare draft standards and to declare them as Seychelles Standards;
- (c) make arrangements or provide facilities for the examination and testing of commodities and any material or substance from which or with which they may be manufactured, produced, processed or treated and for the manner of such manufacture, production, processing or treatment;
- (d) provide for use of standard marks;
- (e) provide for the assessment of manufacturing, process or management systems and the certification;
- (f) provide for the examination, testing and calibration of instruments, appliances, apparatus, weights and measures and weighing and measuring instruments in relation to their accuracy;
- (g) provide for the testing of commodities manufactured in Seychelles or imported into Seychelles for the purpose of determining whether the commodities comply with the provisions of this Act or any other law dealing with standards or technical regulations;
- (h) a place of deposit for the National Standards and Secondary Standards for weights and measures and to calibrate the working standards;

- (i) levy such fees and charges for the performance of its functions as may be prescribed;
- (j) coordinate the international, regional and bilateral relations with other standardisation organisations;
- (k) conclude agreements with standardisation organizations in other countries;
- (l) maintain a national information centre on matters of standardisation, industry, science and technology;
- (m) collect and collate information on research and development of relevance to Seychelles and evaluate and disseminate research findings;
- (n) maintain relationships with corresponding research and development organisations in other countries, where the national interest so require, to control and coordinate research carried out in Seychelles;
- (o) prepare, implement and execute, at the request and subject to the directions of the Minister, programmes in areas of industry, science and technology not inconsistent with the provisions of this Act.

PART III— THE BOARD AND COMMITTEES

5.(1) The Bureau shall be managed by a Board appointed by the President and shall consist of –

Establishment
and composition
of the Board

- (a) a representative of the Ministry responsible for industry;
- (b) a representative of the Ministry responsible for Finance and Trade;
- (c) a representative of the Ministry responsible for Environment;
- (d) a representative of the Ministry responsible for Health;
- (e) a representative of the Ministry responsible for Agriculture;
- (f) a representative of the Ministry responsible for Physical Planning;
- (g) Three members from the academia or any NGO with sufficient knowledge and expertise in business management, finance, marketing or science and technology nominated by the President

(2) Where a Ministry referred to in subsection (1) has the responsibility for more than one portfolio referred to, the representative of that Ministry shall represent all such portfolios on the Board.

(3) The President shall cause the names of the members of the Board to be published in the Official Gazette.

(4) The Chief Executive Officer shall be an ex-officio member of the Board but not hold any other office on the Board and shall not have the right to vote.

(5) The President shall appoint one of the members of the Board to be its Chairperson.

(6) The members, other than the Chief Executive Officer, shall hold office for 3 years and shall be eligible for re-appointment.

(7) The term of office of a member shall lapse upon the member ceasing to be employed by the Ministry or organization that he or she represents or upon the employing Ministry or organization informing in writing that the member is no longer its representative where upon the office of the member shall be vacant.

(8) Where before the expiry of the term of office of a person holding the office of Chairperson, or any member, a vacancy arises for any reason the person appointed to fill the vacancy shall hold office for the unexpired period of the term for which his or her predecessor in office would have held if such vacancy has not arisen.

(9) The chairperson or any member may be removed from the office by the president, if any of them –

- a) is adjudged insolvent;
- b) is convicted of any offence involving moral turpitude;
- c) is unfit to continue in office by reason of infirmity of the mind and body;
- d) is found guilty of any misconduct or breach of trust in the discharge of his or her duties; or
- e) commits any offences that calls into question his or her professional standing.

(10) The chairperson or any members may resign from his or her appointment by giving one month notice in writing to the President and on such resignation being accepted, the Chairperson or Members shall be deemed to have vacated his or her office.

(11) A member shall be deemed to have vacated his or her office if he or she absents himself or herself from three consecutive meetings of the Board without leave of the Chairperson.

(12) The Chairperson or a member who has been removed from office under subsection (9) shall not be eligible for re-appointment.

Meetings of the Board

6.(1) The Board shall meet at least 4 times in a year and at such other times as the chairperson may determine.

(2) Two thirds of the number of members of the Board shall constitute a quorum for any meeting of the Board.

(3) The Chairperson or, in the absence of the Chairperson, a member elected by the members present at the meeting, shall preside at a meeting of the Board.

(4) The Board shall appoint an officer of the Bureau to be its secretary.

(5) The Board shall keep minutes of its proceedings and decisions.

(6) Subject to this Act, the Board shall regulate its own proceedings.

Conflict of Interest

7.(1) A member of the board who has a direct or indirect financial, personal or other interest in any matter which is to be discussed at a meeting of the Board and which entails or may entail a conflict or possible conflict of interest must, before or during such meeting, declare that interest.

(2) A member referred to in subsection (1) shall not participate in the meeting during the discussion of the matter and voting thereon.

Function of the Board

8.(1) The functions of the Board shall be to –

- (a) provide the strategic vision and plan of action of the Bureau;
- (b) approve the standard for the development of national standards;
- (c) approve documents as Seychelles Standards;
- (d) approve the annual draft budget before it is submitted to the Ministry of finance;
- (e) monitor the performance of SBS in accordance with the plan of action and budget;
- (f) to approve the annual report for the previous year before submission to the Minister;
- (g) provide advice and recommendations to the Minister on matters related to standardisation, conformity assessment and metrology.

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9. The Minister may give the Bureau directions in writing on the policy to be followed by the Bureau in the performance of its functions and the Bureau shall comply with those directions.

Directions
of the
Minister

10. (1) Where the Board deems it desirable that any matter relating to the functions of the Bureau or the Board be referred to a committee of the Board, the Board may appoint such committee.

Committee of
the Board

(2) The Bureau may appoint such committee as may be necessary for the efficient performance and exercise and discharge of its functions powers and duties.

(3) The composition, functions, rules and procedures of the committee of the Board and the terms and conditions of appointment of its members shall be determined by the Board.

(4) A committee of the Board shall cease to function after it has considered the matter referred to it and has rendered its advice to the Board.

11.(1) There shall be a Chief Executive Officer of the Bureau appointed by the President on such terms and conditions as may be prescribed.

Appointment of
the Chief
Executive Officer

(2) The Chief Executive Officer shall be a person suitably qualified in science and technology relevant to the functions of the Bureau.

(3) Where the Chief Executive Officer for any reason unable to perform functions, the President may appoint a Deputy Chief Executive to discharge such functions until the Chief Executive Officer resumes office.

12.(1) Subject to the directions of the Board, the Chief Executive Officer –

Functions of the
Chief Executive
Officer

(a) shall administer the day to day affairs of the Bureau;

(b) may sign documents on behalf of the Bureau;

(c) may delegate any function to any other officer of the Bureau.

13. The Bureau may employ such officers and other staff as are necessary for the performance of the functions of the Bureau on terms and conditions and according to the procedures applicable to such employees of public bodies.

Staff of the
Bureau

PART IV – SEYCHELLES STANDARDS

14.(1) The Bureau shall formulate and implement a procedure for the development of Seychelles Standards which —

Seychelles
Standards

- (a) details the process for the development, approval and publication of a Seychelles Standard based on international best practices;
- (b) ensures that the interests of all parties concerned are considered;
- (c) ensures that as far as possible the latest technological developments are considered;
- (d) ensures that Seychelles Standards are harmonized with relevant international or regional standards;
- (e) contains an appeals procedure for resolving disputes relating to the development of standards.

(2) Where the Bureau intends to declare or amend or revise a Seychelles Standard, it shall prepare a draft standard in accordance with the procedure formulated under subsection (1).

(3) Where a commodity, process or practice in respect of which a draft standard is prepared is under the control or supervision of any Ministry or Government department, the Bureau shall consult the relevant Ministry or Department.

(4) The Bureau shall, by a notice published in a local newspaper and by other means determined by the Bureau, give wide publicity to the draft standard prepared pursuant to subsection (2), and specify in such notice a place for the inspection of the draft standard.

(5) Any person may within 60 days of the publication of the notice under subsection (4) lodge with the Chief Executive Officer a written objection or representation in respect of the draft standard.

(6) The Bureau may, having regard to any objection or representation lodged under subsection (5), confirm with or without modification the draft standard and declare by notice published in the Official Gazette the draft standard as a Seychelles Standard.

(7) The notice under section (6) shall state the title and number of the Seychelles Standard, and contain a summary of the scope and purpose of that Seychelles Standard or the amendment or revision thereof.

15.(1) The copyright of Seychelles Standards shall be vested in the Bureau notwithstanding any other law, and the Bureau shall not be deprived of such copyright if a Seychelles Standard is incorporated in another law in terms of the provisions of such a law.

Copyright of
Seychelles
Standards

(2) A person shall not publish, reproduce, record or transmit any Seychelles Standard or any part of such standard subject to copyright without the authorisation of the Bureau.

(3) A person may not falsely claim, declare or conduct the person's affairs or business or carry out an occupation or trade under a name or in a manner likely to create the impression that any commodity, product or service complies with a Seychelles Standard or other publication of the Bureau.

(4) The Bureau may institute legal proceedings to restrain or claim for damages in relation to subsections (2) or (3)

16.(1) A Seychelles Standard, or any provision thereof, that has been published in terms of this Act in respect of any commodity product or service which may affect public safety, health or the environment, may be incorporated by reference in any law.

Incorporating
Seychelles
Standards in
Law

(2) The reference under subsection (1) shall refer at least to the title and the number of the relevant Seychelles Standard.

(3) If the Seychelles Standard or any provision, incorporated under subsection (1) is amended or revised, such amendment or revision is deemed to be incorporated as well.

17.(1) The Minister may, on the recommendation of the Board, in respect of any commodity which may affect public safety, health or the environment, declare a Seychelles Standard mandatory or withdraw the Seychelles Standard previously declared mandatory, by notice in the Gazette

Declaration of
mandatory
standard

(2) The notice under subsection (1) shall —

- (a) refer to the title of the Seychelles Standard, and the standard as amended or revised shall be mandatory;
- (b) contain particulars necessary for the administration of the mandatory standard, such as markings, conformity assessment requirements and sanctions; and
- (c) provide for the date or dates on which the mandatory standard or different provisions thereof come into operation, which dates shall not be less than 60 days after the date of publication of the notice.

(3) The Minister shall before declaring a mandatory standard under subsection (1) cause a preliminary notice to be published in the Official Gazette —

- (a) specifying the Seychelles Standard intended to be declared mandatory;
- (b) setting out administrative particulars of the proposed mandatory standard under subsection (2)(b); and
- (c) requesting interested persons to comment on the proposed mandatory standard in writing within 60 days after the date of publication of the preliminary notice.

(4) The Minister shall consult any Ministry or department responsible for the import, sale or supply of any commodity that is subject of a preliminary notice under subsection (3).

18. Where a mandatory standard has come into operation in respect of a commodity every person concerned at any stage of the manufacture, production, processing, treatment or distribution of that commodity shall ensure compliance with that mandatory standard.

Producers etc.
to conform to
mandatory
standard

19.(1) A person shall not import, sell or supply a commodity to which a mandatory standard applies except in accordance with that mandatory standard.

Importers etc.
to conform to
mandatory
standard

(2) Any person who imports, sells or supplies a commodity to which a mandatory standard applies, shall keep or supply to the Bureau such records as may be prescribed by the Minister in the administrative provisions.

20.(1) The Minister may, on the recommendation of the Bureau, authorise a Standard Mark.

Standard
Mark

(2) A standard mark shall distinguish a commodity, process or practice which conforms to a Seychelles Standard from those that are not recognised as conforming to that standard.

(3) The Bureau may, subject to such conditions as it may impose, permit a person to use a standard mark authorised under subsection (1) where the commodity, process or practice in respect of which it is used conforms to a Seychelles Standard.

(4) An application for a permit under subsection (3) shall be made in writing to the Chief Executive Officer in the form and manner prescribed by regulations.

PART V — INSPECTORS

21.(1) The Bureau may appoint such number of inspectors as may be necessary for the purposes of this Act.

Appointment
of Inspectors

(2) Every inspector shall be issued with an identity card including a recent photograph and the National Identity Number (NIN) and signed by the Chief Executive Officer.

(3) An inspector shall if required, produce the inspector's identity card before exercising power under this section.

Power of
Inspectors

22. (1) An inspector shall carry out such inspections as the Bureau may direct and verify the conformity of goods, processes or services with the relevant mandatory standards or legal weights and measures and the payment of fees under this Act.

(2) An inspector may —

- (a) at all reasonable times enter any premises in which any commodity is or is reasonably believed to be manufactured, processed, produced, treated or kept for the purpose of any trade or business;
- (b) inspect or take samples of any commodity or of any material used or reasonably believed to be intended for use in the manufacture, production, processing or treatment of the commodity;
- (c) inspect any process or practice and make any notes in relation to the process or practice;
- (d) inspect any operation carried out in the premises in connection with any commodity;
- (e) require any person to produce any document which relates to any commodity, process or practice in that person's possession, custody or control;
- (f) examine and make copies or take extracts from such document; and
- (g) require any person to answer any questions relating to a commodity, process or practice.

23. Except for the purposes of this Act or when required by any court, an inspector or other officer shall not disclose information in relation to any commodity, process or practice acquired in the exercise of functions under this Act.

Confidentiality

PART VI — ASSETS, FINANCE AND ACCOUNTS

24.(1) The Bureau shall have its own Fund and all payments by the Bureau shall be made the Fund.

Funds of
the Bureau

- (2) The funds of the Bureau shall consist of:-
- (a) moneys granted under an appropriation Act or otherwise by the National Assembly;
 - (b) moneys lawfully received by the Bureau for the purpose of the Bureau;
 - (c) moneys lawfully charged by the Bureau.
- (3) The funds of the Bureau shall be applied by the Bureau in the -
- (a) payment or discharge of debts, expense and other obligations of the Bureau; and
 - (b) payment of emoluments, fees and allowances payable to the Members and staff of the Bureau.
- (4) The Bureau may spend such sums as it thinks fit for the performing its functions under this Act and such sum shall be treated as expenditure of the Bureau.

25.(1) The Bureau shall prepare and submit to the Minister and the Minister of Finance the estimates of income and expenditure of the bureau in respect to each financial year.

Estimates

(2) The Minister may, after consultation with the Minister of Finance, approve with or without modification the estimates submitted under subsection (1).

(3) The estimates approved under subsection (2) shall be the estimates of the Bureau for the financial year to which they relate.

(4) The financial year of the Bureau shall be the period of 12 months ending on the 31st of December.

26.(1) The Bureau shall keep proper accounts and records in relation to the accounts and shall prepare in respect of each financial year a statement of accounts in such form and manner as may be prescribed by regulations.

Accounts

(2) The accounts and the statement of accounts shall be audited by the Auditor General, in accordance with article 158 of the Constitution.

27. The Bureau shall prepare once every calendar year, in such form and within such time as may be prescribed, an annual report giving a full account of its activities during the previous years and copies together with statement of account audited under section 26 which shall be forwarded to the Minister, who shall cause the same to be tabled before the National Assembly.

Annual
report

PART VII — MISCELLANEOUS

28.(1) A person, other than the Bureau, shall, except with the consent of the Minister in writing, use a name which contains any combination of the words "Seychelles Bureau of Standards" or "Seychelles Standards".

Restriction on
use of certain
words

(2) Subsection (1) shall not apply to a person using a name described in that subsection prior to the commencement of this Act or to any name so used prior to such commencement.

29. Where a commodity, process or practice conforms or is alleged to conform to a Seychelles Standard or a standard mark is used in connection with any commodity, process or practice shall not give rise to any claim against the Bureau.

Protection
against claims

30. Notwithstanding any provision in any other law or in an undertaking in respect of disclosure of information, a worker shall not be liable to any penalty for disclosure of information to an inspector under section 22 (2) and the employer of that worker shall not do anything to the prejudice of the worker on account of such disclosure.

Disclosure of
information by
worker or any
person

PART VIII — OFFENCES

31.(1) Any person who -

- (a) falsely claims or declares, or knowingly conducts the person's affairs, business, occupation or trade in a manner likely to create the impression, that any commodity complies with a Seychelles Standard;
- (b) uses a standard mark without a permit granted by the Bureau or contravenes any condition of the permit;
- (c) makes any statements or representation whether in writing or used a standard mark which conveys or is likely to convey the impression that a commodity, process or practice conforms to a Seychelles Standard, as the case may be, when it does not do so;
- (d) without the consent of the Bureau in writing or fraudulently makes any statement or representation, whether in writing or not, whereby comparison is made in respect of any commodity, process or practice with and Seychelles standard;

Compliance
with Seychelles
Standard

commits an offence and is liable on conviction to a fine of SCR 100,000 or imprisonment for 2 years, or both.

32. (1) Any person who being a person concern at any stage of the manufacture, production, processing, treatment or distribution of a commodity in respect of which a mandatory has been declared contravenes section 18 or 19 commits an offence and is liable on conviction to a fine of SCR 50,000 or imprisonment for 1 year or both and the commodity or a consignment or batch of the commodity in respect of which the offence was committed shall be liable for forfeiture.

Offences

(2) Any person who —

- (a) prevents, hinders or obstructs an inspector in the exercise of the inspector's functions under this Act;
- (b) fails to produce any document or to appear or answer any questions when required to do so under section 22 (2),;

commits an offence and is liable for a conviction to a fine of SCR 25,000.

33. Where the Chief Executive Officer is satisfied that a person has committed an offence against the Act and the person has admitted that fact and agreed in writing to be dealt with under this section, the Chief Executive Officer may, with the approval of the Board compound the offence as prescribed by regulation.

Compounding
of offence

34.(1) The Minister may make regulations for carrying into effect the purposes and provisions of this Act.

Regulations

(2) Without prejudice to the generality of subsection (1) regulations may provide for —

- (a) matters relating to packing, labelling, description and advertising of any commodity for which a standard has been declared;
- (b) matters relating to inspection, taking samples and testing of commodities;
- (c) fees and forms;
- (d) for the propose and effecient administration of this Act; and
- (e) prescribing all matters which by this Act are required to be prescribed or which are necessary or convinient to be prescribed for giving effect to this Act.

35.(1) The Seychelles Bureau of Standards Act 1987 is hereby repealed.

Repeal

36.(1) Subject to the provisions of this Act, all employees of the Seychelles Bureau of Standards in employment immediately before the coming into operation of this Act shall upon the coming into operation of this Act be transferred to the Bureau on the same terms and conditions as applied to them previously.

Saving and
transitional

(2) All property, assets and liabilities of the Seychelles Bureau of Standards constituted under Act 1987 existing immediately before the coming into operation of this Act shall upon the coming into operation of this Act vest in the Bureau, and the Bureau shall have all powers necessary to take possession of, recover and deal with such assets and discharge such liabilities.

(3) All suits and other legal proceedings pending or which could have been instituted by or against Government immediately before such day or any matter in relation to the Seychelles Bureau of standard constituted under Act 1987, shall be continued or instituted as if the Bureau was a part thereto.

(4) All acts done decision taken, authorisation or permission granted by the Chief Executive Officer , officers or employees of the Seychelles Bureau of Standards constituted under Act 1987 which were validly done, taken or granted under any written law or under and in accordance with the repealed Act shall continue to have effect in accordance with their terms or until amended, annulled or withdrawn in accordance with the written law.