

**CONSOLIDATED TO 1 DECEMBER 2014**

**LAWS OF SEYCHELLES**

**CHAPTER 55**

**CURATELLE ACT**

*[1st July, 1892]*

Act 7 of 1892.  
Act 4 of 1920.  
Act 4 of 1955.  
Act 4 of 1956.  
Act 12 of 1962.  
Act 14 of 1963.  
S.I.95 of 1975.  
Act 13 of 1975.  
S.I.72 of 1976.  
Act 23 of 1976.  
S.I.38 of 1977.  
Dec. 31 of 1979.  
S.I.61 of 1988  
S.I.41 of 1991

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## **Short title**

1. This Act may be cited as the Curatelle Act.

## **Curator of Vacant Estates**

### **Office of Curator created. Office to be called the curatelle office.**

2. There shall be an officer called the Curator of Vacant Estates, who shall be appointed by the President\*.

The office of such Curator shall be called the Curatelle Office.

*\*Note: The Registrar General was appointed as Curator of Vacant Estates G.N. 149 of 1977*

### **Curator to be under the direction of the President.**

3. The Curator shall be under the direction of the President.

### **Salary and pension of Curator.**

- 4 (1) The Curator shall receive such salary as may be fixed by the President with the consent of the People's Assembly.

(2) He shall be entitled to a pension under the pension laws in respect of such salary.

### **Commission on vacant estates.**

- 5 (1) There shall be payable to Government in respect of any estate or property, whether movable or immovable, personal or real, vested in the Curator, a commission according to the scale set out in subsection (2), upon the gross amount of all sums of money received by such Curator either as principal, revenue, or rent; and, in case of a divesting order being granted, as hereinafter provided by this Act, before any part of the estate or property has been realised into cash, upon the gross value of such part of the estate or property.

(2) The scale of commission shall be as follows

10 percent on the first Rs.1,000 or fraction thereof.

8 percent on the second Rs.1,000 or fraction thereof.

5 percent on the next Rs.3,000 or fraction thereof.

3 percent on the remainder after and above Rs.5,000.

### **Curator to take oath of office.**

6. The Curator shall, as soon as possible after being appointed, take the oath of office.

**Curator to keep books and accounts and make returns.**

7 (1) The Curator shall keep books and accounts in accordance with such directions as he may from time to time receive from the President, and he shall make such returns as he may, by any directions of the President or by any regulation under this Act, be required to make.

(2) The books and accounts of the Curator shall be audited by the Auditor General at least once a year.

**President may appoint person to act if Curator prevented.**

8. It shall be lawful for the President to appoint any person to act for the Curator, whenever the latter is unable to act himself; and such person shall, as soon as possible after being appointed, take the oath of office.

**Annual list of estates to be furnished by Curator.**

9. The Curator shall annually lay before the President a list of all the estates under his charge and administration with the balance due to or by each estate.

The statement shall contain, as clearly as possible, the names, profession, countries, places of birth and last places of residence of the deceased or absent parties, to whom they respectively apply so far as the same can be ascertained.

**Duties of Curator.**

10 (1) It shall be the duty of the Curator to take charge of and administer any vacant estate, to take charge of and administer the property of absentees and to represent absentees, and generally to perform and discharge such other functions and duties as may devolve upon him by virtue of the provisions of this Act.

(2) The Curator shall remain in charge and shall continue to administer, subject to the provisions of this Act, all vacant estates or property belonging to absentees of which he may have been sent into possession or which may have been vested in the Deputy Curator before the commencement of this Act.

**Vacant Estates and Estates of Absentees**

**Definition of vacant estates.**

11 (1) Vacant estates shall comprise vacant successions and unclaimed property.

(2) Whenever any person shall have died and there shall be reason to believe that such person died possessed of property in Seychelles whether such property shall be ascertained or not, and that such person died intestate and without heirs in Seychelles, such person shall for the purposes of this Act be considered to have left a vacant succession.

(3) Wherever there shall be any property movable or immovable in Seychelles the owner of which cannot be ascertained, such property shall, for the purposes of this Act, be considered to

be unclaimed property.

### **Definition of absentees**

12. Whenever there is reason to believe that any person absent from and not legally represented in Seychelles is entitled to property therein, such person shall, for the purposes of this Act, be considered an absentee.

### **Monthly returns of vesting orders to be furnished by Registrar.**

13. (1) It shall be the duty of the Registrar of the Supreme Court to send to the President a monthly return of all rules of court issued by him putting the Curator in charge of vacant estates or of the property or rights of absentees.

(2) Whenever, in any month no property shall have been vested in the Curator, blank returns shall be forwarded.

### **Vesting Order**

#### **Curator to apply for vesting order.**

14 (1) Whenever the Curator shall have reason to believe that there exists in Seychelles any vacant succession, unclaimed property or any property or right belonging or accruing to an absentee, the Curator shall apply to a Judge for an order (hereinafter called a vesting order) vesting in him such vacant succession, unclaimed property or property or right of the absentee as the case may be.

(2) The order shall be granted as of course, upon the *â*Fex parte application of the Curator and affidavit that diligent inquiry has been made, and that he or other deponent believes that the estate or property for which the order is claimed is vacant or unclaimed or belongs to an absentee as the case may be.

(3) The Curator shall, if the estate has sufficient funds, notify the order by advertisement in two consecutive numbers of the Gazette.

#### **Vesting order may be made at instance of third party.**

15. Failing any such application by the Curator any person may apply, after the expiration of reasonable notice in writing calling upon the Curator to make such application, for an order vesting in the Curator any vacant estate or the right of any absentee. Such order may be made by a Judge upon a summons calling upon the Curator to show cause why it should not be made, and upon satisfactory proof being adduced that such order is necessary for the protection of the rights of the applicant.

#### **Advertisements of unclaimed immovable property.**

16. (1) In case property supposed to be unclaimed shall consist of immovable property, the Curator shall insert advertisements in the Gazette and shall cause notices to be posted up at the Central Police Station and on the verandah of the Court House, containing a description of the

property with abutments, and requiring all persons claiming to be entitled to such property to advise him of their claims within one month from the date of the last notice, and until the expiration of such month no vesting order shall be applied for by the Curator in respect of such property.

(2) If any person shall lay claim to the property, such person shall be made a defendant to the application for a vesting order. If issue is joined before the Judge, he shall refer the application to the court and shall try the question of ownership, and if it shall be found that the claimant is the owner of the property by title or prescription, the application shall be dismissed, otherwise the court shall make a vesting order.

#### **Property affected by vesting order.**

17. Subject to the provisions of this Act a vesting order shall, in the case of vacant succession, vest in the Curator all property and rights in Seychelles accruing to, or depending from, such succession, to the same extent as if he were the sole heir and representative of such succession.

And in the case of unclaimed property all rights of ownership in such property.

And in the case of absentees all rights and property of such absentees in Seychelles.

#### **Duration and force of vesting order.**

18. Every vesting order shall remain in force until an order is made divesting the Curator.

### **Administration of Vacant Estate**

#### **Curator to take possession of property and ascertain owners.**

19. (1) As soon as a vesting order shall have been made it shall be the duty of the Curator to take possession of all property affected thereby, and to communicate in writing with all persons known or believed by him to be interested in such property.

(2) He shall also, from time to time as occasion may arise, endeavour by advertisement or otherwise to ascertain the persons so interested.

(3) If the curator represents an absentee who is an alien or the vacant succession of an alien, the Curator shall also communicate with the consul of the State of which such alien is or was a subject, if there be such a consul in Seychelles.

#### **Inventory of movables.**

20. The Curator shall, immediately on any vesting order being made, proceed to make an inventory of the movable property thereby vested in him.

Such inventory shall be made in the presence of two witnesses, and shall be signed by the Curator and the witnesses, and shall have validity and authenticity as if made by a notary.

### **Moneys to be paid to Treasury.**

21. (1) All moneys found among effects taken possession of by the Curator shall within forty eight hours be paid by him to the Principal Secretary of the Ministry Finance.

(2) No sums due to any person represented by the Curator, or on account of any property vested in or of any sale by, him shall be paid to the Curator, but such sums shall be paid to the Principal Secretary of the Ministry of Finance and on account of each particular estate to which such moneys belong and the receipt in writing of the Curator, countersigned by the Principal Secretary of the Ministry of Finance, shall by necessary to constitute a valid receipt and discharge in respect thereof.

(3) No interest shall be payable by the Government on any sum vested in the Curator.

### **Curator to administer property.**

22. Subject to the provisions of this Act the Curator shall administer all vacant successions and manage all property and exercise all rights vested in him, as he may reasonably deem best for the interests of the persons beneficially entitled thereto.

It shall be lawful for any court, upon the application of the Curator to stay any legal proceedings commenced in such court, or any sale of immovable property, or the execution of any will, or generally any proceeding, judicial or extra judicial, by which the rights of persons represented by the Curator may be affected, for such time and upon such terms as to the court may seem just.

### **Sale of movable property.**

23. Movable property may be sold by the Curator in the following cases:

(1) when such sale is necessary in order to pay the debts of any succession or absentee, or the charges upon any property;

(2) when the property is of a perishable nature, or likely to diminish in value, or when its custody would entail expense;

(3) when the President shall be of opinion that it is desirable that it should be sold.

The sale of such property shall be effected in such manner as the President shall direct.

### **Sale of immovable property by order of Judge.**

24. Immovable property may be sold by the Curator upon an order of a Judge, in the following cases:

(a) when the movable property of any vacant succession or absentee shall be insufficient to pay the debts of such succession or absentee;

(b) when the annual revenue of any particular property is insufficient to pay the annual charges thereon;

(c) when for the due preservation of property, it is necessary to repair or construct buildings thereon at a cost exceeding two years' revenue of such property;

(d) when the value of the immovable property belonging to any succession or absentee, or of any unclaimed immovable property, does not exceed three thousand rupees;

(e) whenever the immovable property, whatever be its value, shall be remained vested in the Curator for five years and the Judge considers that sufficient cause has been shown for the sale thereof.

**Procedure on sale of immovable property.**

25. Immovable property sold by order of a Judge shall be sold subject to the following formalities and conditions:

(1) The Curator shall apply to the Judge for an order by way of a petition setting forth the circumstances under which the sale is to take place.

(2) The petition shall be accompanied by an appraisalment made by an appraiser appointed by the Judge and a memorandum of the charges and conditions of sale setting forth

(i) the name of the deceased or absent owner of the property;

(ii) a reference to the title deeds of the property;

(iii) a description of the property;

iv) the mise à prix, the conditions of sale, and the terms of payment:

Provided that not less than one tenth of the purchase price shall be required to be paid in cash at the time of adjudication.

(3) The Judge's order of sale shall specify the day on which the sale is to take place; four clear weeks intervening between the order and the day of sale.

(4) Upon such order being made, the Curator shall cause advertisements to be inserted in the Gazette and in one local newspaper if any and to be posted up at the Court House, the Central Post Office and the police station nearest to the property in question two weeks previous to the day on which the sale is fixed to take place; such advertisements shall describe the property to be sold, and state the place and time of sale. The Curator shall forward by registered post, two weeks previous to the day on which the sale is fixed to take place, a copy of such advertisements to every inscribed creditor (including any holding vendor's privilege) who has taken his inscription before the deposit of the memorandum of charges.

(5) Any inscribed creditor may apply at least eight days before the day of the sale by way of petition to the Judge for a change in or modification of the memorandum of charges and conditions of sale; the Judge shall thereupon make his order upon the petition appointing a day for hearing; a copy of the petition and order shall be served upon the Curator and other parties required to show cause at least two days previous to the day of hearing. The Judge may after hearing the petitioner, the Curator and other parties modify the memorandum and conditions and if necessary adjourn the sale as in subsection (6) provided. The costs of the petition shall be borne by the unsuccessful party.

(6) The sale shall take place by public auction before the Judge on the day fixed, unless the Judge shall think proper for some sufficient cause to adjourn the same, or unless the Curator shall apply for an adjournment sine die, or to a definite date, in which case the Judge shall make an order for such adjournment; but in no case shall a sale take place unless it shall appear to the Judge that the advertisements and notices required by subsection (4) have been published and forwarded, both as regards the original date fixed as well as regards any adjourned date fixed for the sale unless such adjournment was ordered in open court on a date fixed.

(7) On the day of the sale the Registrar shall read aloud the conditions of the sale in the presence of the Judge, and the property shall then be put up for sale. In case the biddings do not reach the upset price, the Judge may, upon application then and there made by the Curator, order that the property shall be sold below the upset price, and shall in such case fix a day when the property shall again be put up for sale, which day shall be at least two weeks from the date of such order.

(8) The purchase money or so much of it as is paid down shall be paid to the Registrar, and the balance, if any, shall be paid to the Principal Secretary of the Ministry of Finance, within the time specified in the conditions of sale.

(9) Upon payment of such deposit or of the whole sale price when the whole is paid down at the time of the adjudication, the Judge shall finally award the property to the purchaser, and shall endorse upon the memorandum of conditions a certificate of adjudication, which shall also be subscribed by the Curator and the purchaser; and such memorandum shall thereupon constitute a deed of sale, and shall be registered and transcribed as if the sale had taken place under the provisions of the Immovable Property (Judicial Sales) Act.

(10) A purchaser shall be at liberty to pay at the time of the sale the whole of the purchase money and also to pay at any time by anticipation into the hands of the Principal Secretary of the Ministry of Finance, balance due on the purchase price.

(11) In case any adjudicatee fail to execute the conditions of sale incumbent upon him the property shall be resold by folle enchère at the request of the Curator subject to the formalities and conditions set out in sections 141 to 144 both inclusive of the Immovable Property (Judicial Sales) Act.

(12) The final price of adjudication shall, for all intents and purposes, be deemed to be the final and definitive value of the property, and the adjudicatee shall be exonerated and liberated from all privileged and mortgage claims thereon by paying his price conformably to law.

### **Sale by order of Judge**

26. Notwithstanding anything contained in section 25, when the value of the immovable property as fixed by an appraiser appointed by the Judge does not exceed three thousand rupees, it shall be lawful for the Judge to order that the sale of such property shall be effected in such manner, at such price, and subject to such conditions as the Judge shall direct.

### **Leases.**

27. (1) It shall be lawful for the Curator to grant a lease of immovable property under his administration, provided notice be published in the Gazette and posted up at the court House, the Customs House and the Central Police Station calling for tenders or provided the lease be put up to auction, but no lease shall be granted by the Curator unless the terms and conditions thereof shall have been approved by the President and in no case shall such property be let for more than seven years.

(2) Whenever the President shall be satisfied that the costs of advertisements calling for tenders would exceed one year's rent, he may authorise the Curator to grant a lease without having previously called for tenders.

(3) Nothing herein contained shall prevent the Curator from letting any property by the month whenever such a course is approved by the President.

(4) In no case shall the Curator have any interest direct or indirect in any sale or lease of property under his charge.

### **Curator to watch over and administer estates under his care.**

28. The Curator shall see to the due execution of the conditions of the leases, and shall take care that all the property, movable or immovable, in his custody be kept in good order; it shall be his duty to compel payment from all persons indebted to the estate.

### **Curator to examine claims against estates.**

29. As soon as possible after entering into possession the Curator shall, in two consecutive numbers of the Gazette and by advertisement posted up at the Court House, the Customs House and the Central Police Station, call in all claims outstanding against the estate. He shall carefully examine the claims put forward, any of which he may require the claimants to verify by affidavit or he may require the claimants to bring their action before the competent court.

(2) When a claim of a person alleging himself to be a creditor has been admitted and paid by the Curator with the authority above required, the Curator or the Government shall not be liable to any person by reason of such payment having been made:

Provided nothing herein contained shall prevent the Curator or any person interested in the estate from recovering from the alleged creditor anything unduly paid to him.

### **Affixing and removal of seals on movable property.**

30. (1) Upon the death of any person leaving movable property apparently liable to be administered by the Curator, the Registrar of the court or any officer of the registry deputed by him, shall, unless such property shall have been previously taken possession of by the Curator, affix seals on all the effects and papers of the deceased, immediately on information being given of the existence of such property, and shall give notice to the Curator of the fact and of the day when the seals will be broken.

(2) The Curator shall have the right to attend at any affixing or removal of seals, if he shall have reason to believe that the property affected thereby may be such as he ought to administer, although he may not, at the time of such affixing or removal, have obtained a vesting order in respect of such property.

### **Execution of will to be stayed in certain cases.**

31. Whenever it shall come to the knowledge of the Curator that a will in any succession in which absent heirs are interested, is invalid or contains any provisions infringing the legal rights of any absent party not duly represented in Seychelles, the Curator shall have the right to move the Supreme Court for a rule calling upon the executors and all parties interested to show cause why the execution of the will should not be stayed, wholly or partly for a reasonable time, so that the Curator may obtain special instructions from such absent heir or heirs, or that such absent heir or heirs may appear personally or by some duly authorised agent:

Provided also that it shall be lawful for the court to allow the executor or universal legatees, or next of kin, as the case may be, to take any measures which may prevent loss or injury to any portion of the estate, real or personal.

### **Power to compromise and refer to arbitration.**

32. (1) It shall be lawful for the Curator to consent that any suit, action or claim in which he is or may be a plaintiff or defendant, be referred to the arbitration of one or more arbitrators, and if need be also, to the award of an umpire with or without conditions.

(2) It shall also be lawful for the Curator to compromise any claim, debt or right either before or after action brought by or against him; and such compromise as well as the reference to arbitration mentioned in subsection (1), shall be to all intents and purposes binding upon all persons having any interest whatsoever in the estate of which the Curator has charge as well as upon all creditors of such estate:

Provided that such compromise shall be homologated and confirmed by a Judge.

### **Curator to purchase in certain cases and borrow money.**

33. In case of the sale by licitation of any property a co owner of which is represented by the Curator, he may upon an order of a Judge bid for or purchase the same for the benefit of the owner represented by him.

He may in any case, upon the order of a Judge, borrow money upon mortgage on any

immovable property vested in him:

Provided that no such order shall be made unless the Judge is satisfied that it is advisable in the interests of the succession or absentees, to which or to whom such property belongs or necessary for the improvement or preservation of such property, that the property should be so purchased, or that the money should be so borrowed.

### **Payments by the Curator.**

34. (1) No money shall be paid on account of any vacant estate except by means of an order of the Curator upon the Principal Secretary of the Ministry of Finance. Nor shall any property be given up except upon an order of a Judge.

(2) In case there shall be no funds in the hands of the Principal Secretary of the Ministry of Finance to meet the necessary expenses of the administration of any vacant estate, or to protect the rights of a succession or of absentees, the President after consultation with the Minister responsible for Finance may authorise the Principal Secretary to advance a sum from the Consolidated Fund for the purpose to be repaid to the Consolidated Fund out of the first available funds accruing to the estate.

(3) No money due by any vacant estate shall be paid either as an advance or otherwise by another vacant estate, but each and every vacant estate shall have its account, unconnected with any other vacant estate.

### **Control over Executors**

#### **Curator to superintend the administration of executors in certain cases**

35. (1) The Curator shall superintend the administration of testamentary executors in so far as any absent heirs or legatees may be interested therein, whenever such absent heirs or legatees are not represented by an agent legally authorised to act on their behalf in Seychelles.

(2) It shall be lawful for the Curator to claim from time to time, from all executors or parties having the seisin of a succession, whenever an absentee represented by the Curator or a vacant estate of which he is in charge is interested in such succession, a summary statement of their administration, and executors or other parties seised with such succession who shall fail when requested to furnish such statement may be ordered by a Judge to furnish it within a period to be fixed by such Judge.

(3) Any executor or other person against whom such an order has been made who shall fail to deliver such statement to the Curator within the period fixed by the Judge shall be personally liable in damages to the estate or absentee represented by the Curator.

### **Divesting Order**

#### **Divesting order may be made on application of person entitled.**

36. Any person claiming to be entitled to administer any succession vested in the Curator, or to represent absentees represented by the Curator, or to be entitled to property vested in the

Curator as unclaimed, or who having been an absentee has returned to Seychelles, may apply to the court for an order divesting the Curator of such succession, or of the representation of such absentee or former absentees, or of the ownership of such property, as the case may be. Such order may be made upon a summons calling upon the Curator to show cause why it should not be made.

**Divesting order may be applied for by Curator.**

37. In case any person represented by the Curator is, or is represented by any other person, in Seychelles, the Curator may himself apply for a divesting order.

Such order may be made by a Judge upon a summons calling upon such person or representative to show cause why it should not be made.

**Payment of charges to be made a condition of divesting order.**

38. In no case shall any divesting order be made, except after payment or tender by the person in whose favour it is made of all charges due to the Curator or the Government, in respect of the property or rights involved or unless the Curator holds sufficient funds to meet all such charges, in which case the order shall be made subject to the condition that all charges shall be deducted from such funds.

**Non-liability of Government or Curator.**

39. Whenever any estate or property shall have been handed over under a divesting order, neither the Government nor the Curator shall be liable to any person subsequently claiming such estate or property.

Provided nothing herein contained shall prevent such other person from claiming from the person to whom the estate or property may have been delivered, any thing by him unduly received from the Curator.

**Supplemental Provisions**

**Power to appoint a Curator ad litem.**

40. Whenever the Curator of Vacant Estates shall be plaintiff in a suit or action at law, on account of any vacant estate, and shall have been made a defendant in the same suit or action at law, on account of another vacant estate, it shall be lawful for the President to appoint a Curator ad litem.

**Attorney and counsel.**

41 (1) When the Curator shall require to employ attorney or counsel, for any legal proceeding concerning the estate or absentee represented by him, he shall instruct such attorney or retain such counsel as shall be selected by the Attorney General. Such counsel shall receive such fees as shall be fixed by the Minister.

(2) When an attorney prosecutes a sale on behalf of the Curator under section 25 of this

Act he shall have the right to claim

(a) his disbursements as taxed by the Registrar;

(b) a percentage upon the sale price according to the scale laid down in section 73 of the Immovable Property (Judicial Sales) Act.

Such claim shall be paid by the purchaser over and above the purchase price.

### **Real property how dealt with.**

42. Whenever the Curator shall have under his charge real property, he may give notice of the fact to the Senior Lands Officer, whose duty it shall then be to keep, watch, superintend and protect such property on behalf and at the expense of the vacant estate concerned.

### **Estate of small value.**

43 (1) Whenever the Curator shall certify in writing that in his opinion, the value of any property or estate for which a vesting order is claimed or which is under his charge does not exceed five hundred rupees, all proceedings under this Act relative to any such property or estate shall be free of stamp and registration dues and fees of court:

Provided that if on a subsequent inventory or sale of such property, its value be found to exceed five hundred rupees, the Curator shall be bound to refund to Government out of the estate the fees which would have been chargeable for such dues and fees.

(2) Whenever a minor or interdicted person shall be entitled to recover any sum or property from the Curator, and such sum or the value of such property shall not exceed two hundred rupees, the Curator may lawfully pay such sum, or deliver such property to the guardian or administrator of such minor or interdicted person, without requiring the previous appointment of a sub guardian and inscription of legal mortgage, or other formality.

### **Meaning of vesting order.**

44. In this Act the expression "vesting order" means an order made by a Judge under section 14 and also includes any judgment, order or decree of any court, tribunal, magistrate or Judge by which any Curator to a vacant succession within the meaning of the Civil Code of Seychelles or any Curator of intestate estates, or Curator of Vacant Estates, under any Act now repealed, or under Ordinance No. 12 of 1876 has been sent or put in possession of or vested with, any succession, property or right before the commencement of this Act; and the expression "Curator of Vacant Estates" or "the Curator" includes any Curator mentioned in any such judgment, or order or decree.

### **Interpretation.**

45. In this Act unless the context otherwise requires:

"Curator" means the Curator of Vacant Estates.

"Judge" means a Judge of the Supreme Court and includes the Chief Justice and a Puisne Judge.

"Court" means the Supreme Court.

"Registrar" includes "Assistant Registrar" and any clerk authorised to act in place of the Registrar.

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**NO SUBSIDIARY LEGISLATION**

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