

PUBLIC OFFICERS' SECURITY ACT

Cap 339 – 21 October 1871

ARRANGEMENT OF SECTIONS

SECTION

- | | |
|--|---------------------------------------|
| 1. Short title | 9. Opposition to application |
| 2. Form of security bond | 10. Where discharge granted |
| 3. Deposit of bond by notary | 11. Disposal of opposition |
| 4. Deposit of bond by sureties | 12. Heirs of deceased and third party |
| 5. Certificate of Master and Registrar | 13. Saving |
| 6. Fee on deposit | FIRST SCHEDULE |
| 7. Furnishing security by mortgage | SECOND SCHEDULE |
| 8. Discharge of security | THIRD SCHEDULE |

PUBLIC OFFICERS' SECURITY ACT

1. Short title

This Act may be cited as the Public Officers' Security Act.

2. Form of security bond

(1) A personal bond given by sureties on behalf of pawnbrokers, brokers and land surveyors may be drawn up by a notary or be under private signature, and shall be in the form set out in the First Schedule.

(2) A bond under subsection (1) shall not be annulled or invalidated by defect of form.

3. Deposit of bond by notary

A notary who draws up a personal bond shall deposit it at the Registry.

4. Deposit of bond by sureties

(1) The sureties of a personal bond under private signatures shall deposit it at the Registry and declare to the Master and Register that the bond has been duly signed by them.

(2) Where, in lieu of a personal bond, the person bound to give security tenders a policy of insurance, the Master and Registrar may receive in deposit in lieu of the policy of insurance the provisional receipt given by the insurance company, provided it is issued by the Attorney-General or the Solicitor-General and provided that, within 4 months, the policy of insurance itself is deposited.

5. Certificate of Master and Registrar

(1) The Master and Registrar shall, on receiving the bond, endorse it with a certificate in the form set out in the Second Schedule—

- (a) showing the date of the deposit; and
- (b) recording the fact that the parties who have deposited it, where the bond is under private signature, have duly acknowledged the signatures affixed to the bond to be their signatures and the bond to be their bond.

(2) The certificate of the Master and Registrar shall be, except in cases of forgery or fraud, evidence of the genuineness of the signatures.

[S. 5 amended by Act 29 of 1992.]

6. Fee on deposit

The Master and Registrar shall receive a fee of one rupee for every bond deposited with him.

7. Furnishing security by mortgage

Where a public officer is required or allowed by law to furnish security by mortgage on an immovable property for the due discharge of his functions—

- (a) an application shall be made, by or on behalf of the public officer furnishing security, to a Judge in Chambers, for an order approving the security tendered and authorising the Master and Registrar to receive the security;
- (b) before deciding on the application, the Judge in Chambers shall refer it to the Ministère Public for conclusions;
- (c) on receiving the conclusions of the Ministère Public, the Judge in Chambers may make an order accepting the security tendered and authorising the Master and Registrar to receive the security so accepted in the manner provided in paragraphs (d) and (e);
- (d) notwithstanding article 2177 of the Code Civil Mauricien, the security shall be given by a bond, with a mortgage on the immovable property approved by the Judge, in the form set out in the Third Schedule, and not by notarial deed;
- (e) the security bond shall be drawn up by the Master and Registrar and transmitted forthwith to the Conservator of Mortgages who shall take the inscription in virtue of the approved bond on the immovable property.

8. Discharge of security

(1) Any notary, attorney, curator, usher or other person, who—

- (a) from the nature of his duties, is obliged to furnish security by mortgage or otherwise for the due discharge of his duties; and
- (b) may wish to be discharged from his security after the fulfilment of his duties,

shall make a declaration to that effect at the Registry.

(2) The declaration shall be received by the Master and Registrar who shall cause it to be posted up in the Court, for a period of 3 months, and to be published in the *Gazette* at the cost of the applicant.

(3) The period of 3 months shall be reckoned from the date of publication in the *Gazette*.

9. Opposition to application

(1) A person claiming a right under the security shall lodge his opposition to the declaration within the period of 3 months with the Master and Registrar, who shall affix his signature to the opposition.

(2) The opposition shall specify the grounds on which it is founded and the place of residence of the parties.

(3) Where any opposition is lodged, no certificate shall issue under section 10.

10. Where discharge granted

(1) Where, during the period of 3 months, no opposition has been lodged, the Master and Registrar shall issue a certificate to that effect and the security shall be discharged.

(2) Upon the issue of the certificate, the Ministère Public shall order the repayment of any sum of money deposited as security or the discharge of any mortgage taken on any immovable property appropriated to the security, as the case may be.

11. Disposal of opposition

(1) An application for the removal of an opposition or for the maintenance of its validity shall be determined by the Supreme Court.

(2) Notwithstanding the provisions of the Code de Procédure Civile relating to *saisies-arrêts*, in making an opposition, it shall be sufficient to comply with section 9 in order to preserve the rights of the opposing party.

12. Heirs of deceased and third party

Sections 8 to 11 shall apply to the heir of a deceased person who has furnished security, and to a third party who has furnished security by granting a mortgage on his property or otherwise, from which he desires to be discharged.

13. Saving

(1) Sections 8 to 12 shall not deprive any person of the right of proceeding against a public or ministerial officer on account of an act done in the discharge of his duties, after the expiry of the period of 3 months.

(2) The right of personal action under subsection (1) shall be subject to the prescription period fixed by the Code Civil Mauricien.

FIRST SCHEDULE

[Section 2]

Know all men by these presents that we ... of and of are held and firmly bound to the State in the sum of rupees, to be well and truly paid to the State, for which payment well and truly to be made we do hereby bind ourselves, jointly and severally, our heirs, executors and administrators and every of them firmly by these presents.

The conditions of the obligation are such that if is licensed (or appointed) under the Public Officers' Security Act do and shall so long as shall continue to be licensed (or appointed) to well and truly perform the duties prescribed to by the above mentioned Act and faithfully and honestly demean and conduct as such, then the above obligation to be void, otherwise to remain in full force and virtue.

Dated at on of

Approved for the sum of Signature of First Surety

Approved for the sum of Signature of Second Surety

(Where the personal bond is drawn up by a notary, add the notary's signature.)

[First Sch. amended by Act 48 of 1991]

SECOND SCHEDULE

[Section 5]

I,, Master and Registrar of the Supreme Court do hereby certify that this personal bond deposited at the Registry in pursuance of the Public Officers' Security Act was so deposited on and I further certify that and subscribers of the bond have declared to me on depositing the personal bond that it was their bond and that the signatures affixed to the bond were the genuine and true signatures of and respectively.

Date

(S)
Master and Registrar

THIRD SCHEDULE

[Section 7]

Form of Security

Know all men by these presents that I, of the District of, am held and firmly bound to the State (on behalf of any person or persons to whom the said may be duly or legally liable for failure of the conditions of this present bond, or one or any of them) in the sum of Rs, to be paid to the State (on behalf of any person or persons aforesaid) for which payment well and truly to be made I do hereby bind myself, my heirs, executors and administrators firmly by these presents and as a guarantee for the payment.

I do hereby mortgage and specially hypothecate up to the sum of Rs a property situate in the District of, of the extent of about arpents bounded The said is the owner of the property for having purchased it, etc.

Now the conditions of this obligation are such that if the said has, since the date of his appointment as of Mauritius, well and truly performed and executed his duties and functions of the office and trust according to law and has not committed any act contrary to the duties and functions and has faithfully and honestly demeaned and conducted himself in the office and charge and if and so long as he shall continue to be such of Mauritius he do well and truly perform and execute the duties and functions of the said office and trust according to law, and further if, during such time, he shall continue to be such of Mauritius as aforesaid, he does not commit any act contrary to the said duties and functions and shall faithfully and honestly demean and conduct himself in the said office and trust then this obligation to be null and void, otherwise to remain in full force and virtue.

(S)

Taken and acknowledged at the Registry, Supreme Court, on

Before me

(S)

Master and Registrar
Supreme Court

[Third Schedule amended by Act 48 of 1991]
