

THE CONSTITUTION (AMENDMENT) BILL
(No. XXII of 2018)

Explanatory Memorandum

The main object of this Bill is to reform certain aspects of the electoral system of Mauritius.

2. The Bill, accordingly, amends the Constitution –
- (a) to provide, with a view to ensuring wider representation of parties in the National Assembly –
 - (i) for 63 seats in the Assembly for members representing constituencies, in lieu of 62; and
 - (ii) in addition to the 63 constituency seats, 12 proportional representation seats (PR seats) and a maximum of 10 additional seats;
 - (b) to do away with the requirement for the mandatory declaration as to the community to which a constituency candidate belongs to;
 - (c) to seek better gender representation in the National Assembly by providing that –
 - (i) every party or party alliance shall present not more than two thirds of constituency candidates of the same sex; and
 - (ii) every proportional representation list (PR list) submitted by a party or party alliance shall comprise not more than two thirds of persons of the same sex; and
 - (d) to provide for anti-defection measures to enhance stability.

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30 November 2018

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ARRANGEMENT OF CLAUSES

Clause

- | | |
|---------------------------------------|---|
| 1. Short title | 6. Section 111 of Constitution amended |
| 2. Section 16 of Constitution amended | 7. First Schedule to Constitution repealed and replaced |
| 3. Section 31 of Constitution amended | 8. Commencement |
| 4. Section 35 of Constitution amended | |
| 5. Section 52 of Constitution amended | |

A BILL

To amend the Constitution so as to reform certain aspects of the electoral system of Mauritius

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Constitution (Amendment) Act 2018.

2. Section 16 of Constitution amended

Section 16 of the Constitution is amended, in subsection (4), in paragraph (aa) –

- (a) by deleting the words “local authorities” and replacing them by the words “the Assembly or a local authority”;
- (b) by deleting the words “on a local authority” and replacing them by the words “in the Assembly or local authority”.

3. Section 31 of Constitution amended

Section 31 of the Constitution is amended by repealing subsection (2) and replacing it by the following subsection –

- (2) The Assembly shall consist of persons elected in accordance with the First Schedule, which makes provision for the election of a maximum of 85 members.

4. Section 35 of Constitution amended

Section 35 of the Constitution is amended, in subsection (1), by inserting, after paragraph (e), the following new paragraph –

- (ea) in the case of a member who was allocated a PR seat or an additional seat, where, subject to the First Schedule –
 - (i) he ceases to be a member of the party to which he belonged or, in the case of a party alliance, had been identified as belonging to the party alliance, at the time of the allocation of the seat; and
 - (ii) he so informs the Speaker or the Speaker is so informed by the Party Leader;

5. Section 52 of Constitution amended

Section 52 of the Constitution is amended, in subsection (2), by deleting the words “17 members” and replacing them by the words “21 members”.

6. Section 111 of Constitution amended

Section 111 of the Constitution is amended, in subsection (1), by inserting, in the appropriate alphabetical order, the following new definitions –

“additional seat” means a seat allocated pursuant to paragraph 8 of the First Schedule;

“constituency candidate” means a candidate for a constituency for election as a member of the Assembly;

“party” means a political party which is, on application made in such manner as may be prescribed, registered by the Electoral Supervisory Commission in accordance with the First Schedule;

“party alliance” means an alliance of 2 or more political parties which is, on application made in such manner as may be prescribed, registered by the Electoral Supervisory Commission in accordance with the First Schedule;

“Party Leader” means a person designated as such by a party or party alliance to discharge the functions and exercise the powers specified in this Constitution and such other functions and powers as may be prescribed;

“PR candidate” means a person whose name appears on a PR List;

“PR list” means a proportional representation list submitted in accordance with paragraph 6 of the First Schedule;

“PR seat” means a proportional representation seat allocated in accordance with paragraph 7 of the First Schedule;

7. First Schedule to Constitution repealed and replaced

The First Schedule to the Constitution is repealed and replaced by the First Schedule set out in the Schedule to this Act.

8. Commencement

This Act shall come into operation on a date to be fixed by Proclamation.

SCHEDULE

[Section 7]

FIRST SCHEDULE

[Sections 31(2) and 35]

GENERAL ELECTION OF MEMBERS OF THE NATIONAL ASSEMBLY

PART I – REGISTRATION OF POLITICAL PARTIES FOR GENERAL ELECTION

1. Registration

(1) (a) Every political party in Mauritius, being a lawful association, may, for the purposes of Parts III and IV and a general election of members of the Assembly, be registered by the Electoral Supervisory Commission as a party within 14 days before the day appointed for the nomination of candidates for that general election.

(b) Two or more political parties may be registered as a party alliance for the purposes referred to in sub subparagraph (a), in which case they shall be regarded as a single party for those purposes, and this Schedule shall be construed accordingly.

(2) (a) An application for registration as a party shall be made to the Electoral Supervisory Commission in such form and manner as may be prescribed.

(b) There shall be such provision as may be prescribed requiring persons who make applications or declarations for the purposes of this paragraph to furnish to the Electoral Supervisory Commission such evidence with respect to the matters stated in such applications or declarations and to their authority to make such applications or declarations.

(3) Where any party is registered under this paragraph, the Electoral Supervisory Commission shall, from time to time, be furnished, in such manner as may be prescribed, with the name of the Party Leader of that party or the names of such other persons, as may be prescribed, of that party for the purposes of this Schedule.

(4) There shall be such provision as may be prescribed for the determination, by a Judge of the Supreme Court before the day appointed for the nomination of candidates at a general election, of any question incidental to any such application or declaration made in relation to that general election, and the determination of the Judge shall not be subject to appeal.

**PART II – MEMBERS TO BE RETURNED BY CONSTITUENCIES
AT GENERAL ELECTION**

2. Returned members

(1) There shall be 63 seats in the Assembly for members representing constituencies and, accordingly, each constituency shall return 3 members to the Assembly in such manner as may be prescribed.

(2) Every member returned by a constituency shall be directly elected in accordance with this Constitution at a general election or by-election held in such manner as may be prescribed.

(3) (a) Every vote cast by an elector at any election shall be given by means of a ballot which, except in so far as may be otherwise prescribed in relation to the casting of votes by electors who are incapacitated by blindness or other physical cause or unable to read or understand any symbols on the ballot paper, shall be taken so as not to disclose how any vote is cast.

(b) No vote cast by any elector at any general election shall be counted unless he cast valid votes for 3 candidates in the constituency in which he is registered.

3. Constituency candidates of party not to be of same sex

(1) Every party presenting more than 2 candidates at a general election shall ensure that not more than two thirds of the total number of candidates sponsored by that party are of the same sex.

(2) Where, at the prescribed time, a party does not comply with subparagraph (1), all the candidates of that party shall be considered not to belong to any party and their nomination papers shall have effect accordingly.

4. Nominations of constituency candidates

(1) Every constituency candidate shall, at his nomination, make a declaration in such manner as may be prescribed concerning his qualifications for election as such.

(2) (a) Every constituency candidate may, at his nomination, declare in such manner as may be prescribed that he belongs to a party and, if he does so, he shall be regarded as a member of that party, while if he does not do so, he shall not be regarded as a member of any party.

(b) Where any candidate is regarded as a member of a party, the name of that party shall be stated on any ballot paper prepared for those purposes upon which his name appears.

(3) (a) There shall be such provision as may be prescribed for the determination by a returning officer of questions concerning the validity of any nomination of a constituency candidate.

(b) Where a returning officer decides that a nomination is valid, his decision shall not be questioned in any proceedings, other than proceedings under section 37.

(c) Where a returning officer decides that a nomination is invalid, his decision may be questioned on an application to a Judge of the Supreme Court made within such time and in such manner as may be prescribed, and the determination of the Judge shall not be subject to appeal.

PART III – ALLOCATION OF PR SEATS AND ADDITIONAL SEATS

Sub-Part A – PR Seats and Additional Seats

5. PR seats and additional seats

There shall be, in addition to the 63 constituency seats for members representing constituencies, 12 PR seats and between 6 and 10 additional seats in the Assembly, each of which shall be allocated in accordance with paragraphs 7 and 8, respectively, as soon as is practicable after all the returns have been made of persons elected as members to represent constituencies.

Sub-Part B – Allocation of PR Seats

6. PR list

(1) Every party wishing to be allocated PR seats shall, not later than the prescribed time, submit to the Electoral Commissioner, in such form and manner as may be prescribed, a closed PR list –

(a) which shall contain the relevant particulars of not more than 24 PR candidates, who belong to the party and whom the party sponsors;

(b) which shall not contain the name of a person –

(i) who is a constituency candidate;

(ii) whose name appears on any other PR list, submitted by another party;

(c) which shall not comprise more than two thirds of persons of the same sex; and

(d) which shall indicate the order of precedence of each of the PR candidates appearing on the list, provided that not more than 2 consecutive candidates on the list shall be of the same sex.

(2) (a) Where, at the prescribed time, a PR list does not comply with subparagraph (1), the list shall be declared to be invalid by the Electoral Supervisory Commission.

(3) In this paragraph –

“relevant particulars”, in relation to a PR candidate, means his surname, name, sex, National Identity Card number and such other particulars as may be prescribed.

7. Mode of allocation of PR seats

(1) Every PR seat shall be allocated by the parallel mode and the highest remainder formula.

(2) (a) No party shall be eligible to be allocated PR seats unless the constituency candidates sponsored by that party have, in the aggregate, polled at least 10 per cent of the total votes polled by all the candidates, including candidates not belonging to any party, in all the 20 constituencies in Mauritius, other than in Rodrigues.

(b) Any party which is, pursuant to sub subparagraph (a), eligible to be allocated PR seats shall, for the purposes of this paragraph, be regarded as a qualifying party.

(3) The Electoral Supervisory Commission shall, in order to determine the number of PR seats that may be allocated to each qualifying party –

(a) firstly, calculate the percentage of the eligible votes of a qualifying party polled by all its candidates in the 20 constituencies in Mauritius, other than in Rodrigues, out of

the votes polled by all the candidates of all qualifying parties in such constituencies;

- (b) secondly, apply the percentage of eligible votes so calculated under sub subparagraph (a) to the figure 12, the number being calculated to not more than 3 places of decimals where it cannot be expressed as a whole number only.

(4) (a) Where, pursuant to subparagraph (3)(b), the number so calculated in relation to a qualifying party –

- (i) is a whole number only, that whole number shall represent the number of PR seats to be allocated to the qualifying party; or

- (ii) is a whole number with decimals –

- (A) that whole number shall, subject to sub subparagraph (b), represent the number of PR seats to be allocated to the qualifying party; and

- (B) the decimals shall initially be disregarded but shall be treated as a remainder for the application of sub subparagraph (b).

(b) Where, on the application of the formula under sub subparagraph (a)(ii), the total number of PR seats falls short of 12, the number of PR seats represented by the shortfall shall be allocated as follows –

- (i) the party with the highest remainder shall first be entitled to a PR seat, the party with the second highest remainder shall next be entitled to a PR seat, and so on, until the total number of PR seats reaches 12;

- (ii) where the shortfall is still not eliminated, the exercise shall be repeated, starting again with the party with the highest remainder until the shortfall is eliminated.

(5) The Electoral Supervisory Commission shall, after determining the number of PR seats that shall be allocated to each qualifying party, determine the names of the PR candidates of each qualifying party entitled to be allocated PR seats in the order in which their names appear on that party's PR list.

Sub-Part C – Allocation of Additional Seats

8. Mode of allocation of additional seats

(1) (a) No party shall be eligible to be allocated additional seats unless –

- (i) that party has obtained the highest number of constituency seats (winning party);
- (ii) that party has obtained the second highest number of constituency seats;
- (iii) in case the winning party has obtained all the 60 seats in the 20 constituencies in Mauritius, other than in Rodrigues, that party has polled the second highest percentage of votes in the 20 constituencies in Mauritius, other than in Rodrigues, provided that the percentage is at least 10 per cent; or
- (iv) that party which is ranked after the first 2 parties has obtained at least one constituency seat and has polled at least 10 per cent of votes in the 20 constituencies in Mauritius, other than in Rodrigues.

(b) Any party which is, pursuant to sub subparagraph (a), eligible to be allocated additional seats shall, for the purposes of this paragraph, be regarded as a qualifying party.

(2) Where the initial difference between the number of constituency seats obtained –

- (a) by the winning party and the number obtained by another party (in case there are only 2 parties); or
- (b) by the winning party and the number obtained by the other parties grouped together (in case there are more than 2 parties),

has, after the allocation of PR seats, been increased or decreased, the Electoral Supervisory Commission shall, in order to restore mathematically that difference, allocate, in accordance with this paragraph, 6 additional seats amongst those parties.

(3) Where there are 2 qualifying parties, the Electoral Supervisory Commission shall, where the winning party has been allocated –

- (a) a number of PR seats equal to that allocated to the other party, allocate, out of the 6 additional seats, 3 additional seats to the winning party and 3 additional seats to the other party;
- (b) more PR seats than the other party –
 - (i) firstly, allocate to the other party, out of the 6 additional seats, such number of additional seats that represent such increase; and
 - (ii) secondly, allocate equally the remaining of the 6 additional seats to both the winning party and the other party; or
- (c) less PR seats than the other party –
 - (i) firstly, allocate to the winning party, out of the 6 additional seats, such number of additional seats that represent such decrease; and
 - (ii) secondly, allocate equally the remaining of the 6 additional seats to both the winning party and the other party.

(4) (a) Where there are more than 2 qualifying parties, the Electoral Supervisory Commission shall, where the winning party has been allocated –

- (i) a number of PR seats equal to that allocated to the other parties grouped together, allocate, out of the 6 additional seats, 3 additional seats to the winning party and 3 additional seats to the other parties grouped together;
- (ii) more PR seats than the other parties grouped together –
 - (A) firstly, allocate to the other parties grouped together, out of the 6 additional seats, such

number of additional seats that represent such increase; and

- (B) secondly, allocate equally the remaining of the 6 additional seats to both the winning party and the other parties grouped together; or
- (iii) less PR seats than the other parties grouped together –
 - (A) firstly, allocate to the winning party, out of the 6 additional seats, such number of additional seats that represent such decrease; and
 - (B) secondly, allocate equally the remaining of the 6 additional seats to both the winning party and the other parties grouped together.

(b) Where, pursuant to sub subparagraph (a)(i), (a)(ii)(A) or (a)(iii)(B), the Electoral Supervisory Commission has determined the number of additional seats to be allocated to the other parties grouped together, the Electoral Supervisory Commission shall thereafter determine the number of additional seats to be allocated to each of those parties, as follows –

- (i) firstly, allocate, to each of the parties ranking after the 2 parties having the highest number of constituency seats, one additional seat for every 10 per cent of votes polled in all the 20 constituencies in Mauritius, other than in Rodrigues;
- (ii) secondly, allocate the remaining additional seats to the party which has the second highest number of constituency seats.

(5) Where, following the allocation of additional seats pursuant to subparagraphs (3) and (4), the initial difference referred to in subparagraph (2) is still not restored, such further number of additional seats, as may be necessary, shall be allocated in order to restore that difference, provided that the total number of additional seats shall not exceed 10.

(6) After the computation by the Electoral Supervisory Commission of the number of additional seats to be allocated to each qualifying party, the Party Leader of such party shall nominate the person to whom any additional seat be allocated from –

- (a) the unreturned constituency candidates of that party; or
- (b) the unreturned candidates on that party's PR list, irrespective of the order of precedence in that list.

Sub-Part D – Vacancy in PR and Additional Seats

9. Filling of vacant PR and additional seats

Where, at any time before the next dissolution of Parliament, a PR seat or an additional seat becomes vacant, the seat shall, as soon as practicable after the occurrence of the vacancy, be allocated by the Electoral Supervisory Commission –

- (a) in the case of a vacant PR seat, to the first PR candidate who is available in the order of precedence in which his name appears on the PR list submitted by the party to which belonged the member whose seat has become vacant; or
- (b) in the case of a vacant additional seat, to the candidate selected in the manner described in paragraph 8(6) by the Party Leader of the party to which belonged the member whose seat has become vacant.

PART IV – ANTI-DEFECTION PROVISIONS

10. Anti-defection provisions

(1) Subject to this paragraph, where a member of the Assembly who was allocated a PR seat or an additional seat leaves the party to which he belonged when he was so allocated that seat, that member's seat shall become vacant.

(2) Where a member referred to in subparagraph (1) claims that he and other members, whether a returned member or a member elected from the PR list or has been allocated an additional seat, of the party to which he belongs or they belong constitute a group representing a faction which has arisen as a result of a split in the party and such group consists of not less than 5 members of such party –

- (a) his seat shall not become vacant on the ground of defection; and

(b) from the time of such split, such faction shall be deemed to be the party to which he belongs.

(3) (a) The seat of a member referred to in subparagraph (1) shall not become vacant where the party to which he belongs forms an alliance with another party and such decision is supported by not less than 5 members of his party.

(b) Where there is an alliance pursuant to paragraph (a), the seat of any member referred to in subparagraph (1) who does not join that alliance and opt to function as a separate group in the Assembly shall not become vacant, whatever may be the numerical strength of that group.
