

THE JUDICIAL AND LEGAL PROVISIONS (No. 2) BILL
(No. XVI of 2018)

Explanatory Memorandum

The main objects of the Bill are to provide for –

- (a) the use of modern technology in recording evidence;
 - (b) the correction of errors in sentencing; and
 - (c) certain procedural matters in civil cases.
2. The Criminal Code is also being amended to provide for the offence of perverting the course of justice.
3. Various other enactments are being amended to, inter alia –
- (a) clarify some provisions of the Mauritius Bar Association Act;
 - (b) bring improvements to the Information and Communication Technologies Act;
 - (c) empower the Attorney-General to obtain the evidence of a witness in another State, in any proceedings, other than criminal proceedings pending before a Court in Mauritius; and
 - (d) provide for a better mechanism to update the list of jurors.

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19 October 2018

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ARRANGEMENT OF CLAUSES

Clause

- | | |
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| 1. Short title | 8. Law Reform Commission Act amended |
| 2. Courts Act amended | 9. Mauritius Bar Association Act amended |
| 3. Criminal Code amended | 10. Registration Duty Act amended |
| 4. District and Intermediate Courts
(Criminal Jurisdiction) Act amended | 11. Courts (Determination of Prescribed
Amount) Regulations 1995 amended |
| 5. Information and Communication
Technologies Act amended | 12. Letters of Request Rules 1985 amended |
| 6. Institute for Judicial and Legal
Studies Act amended | 13. Supreme Court (Jury Lists and Panels)
Rules 1992 amended |
| 7. Interpretation and General Clauses Act
amended | 14. Commencement |

A BILL

**To amend various enactments for the enhancement of the administration
of justice in Mauritius, and for matters related thereto**

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Judicial and Legal Provisions (No. 2) Act 2018.

2. Courts Act amended

The Courts Act is amended –

- (a) in section 2, by deleting the word “President” and replacing it by the word “Attorney-General”;
- (b) by repealing section 14 and replacing it by the following section –

14. Language to be used in Supreme Court

(1) The language to be used in the Supreme Court shall, subject to subsection (2), be English.

(2) Where a party or a witness in a case satisfies the Court that he does not possess sufficient knowledge of the English language, he may address the Court or give evidence in the language with which he is best acquainted.

(c) by repealing section 23 and replacing it by the following section –

23. Minutes of proceedings

(1) In every case heard before the Supreme Court, minutes of the proceedings shall be drawn up and signed by the Registrar or any Court Officer acting on behalf of the Master and Registrar with the authority of the Chief Justice.

(2) The minutes of proceedings shall, together with the notes of evidence and submissions recorded in accordance with section 177, be preserved as a record of the Court.

(3) The record or a copy, signed and certified by the Registrar or any Court Officer acting on behalf of the Master and Registrar, shall, without further proof, be admitted in any proceedings before any Court as evidence of the proceedings and of the statement made by a witness.

(d) in section 161C, by inserting, after the words “a judicial officer” and “the judicial officer”, the words “or legal officer as defined in the Law Practitioners Act” and “legal officer”, respectively;

(e) by repealing section 177 and replacing it by the following section –

177. Recording of evidence and submissions

(1) The evidence of witnesses and the submissions of counsel or attorney in any case heard before a Court shall be recorded –

(a) by tape or other technological means;

(b) where no such means is available, by shorthand notes taken down by a shorthand writer of the Judiciary; or

- (c) where no means referred to in paragraph (a) and (b) are available –
 - (i) at the trial of a criminal matter, in writing by the Judge presiding at the trial or any Magistrate hearing the case; or
 - (i) where the Judge or Magistrate is temporarily incapacitated in a criminal matter or in any other case, in writing by a Court Officer with the approval of the Master and Registrar.

(2) The Master and Registrar shall, subject to such directions as may be given by the Chief Justice, set up and maintain an Archives Section, an Exhibits Section and a Records Section for the proper preservation of the records of the Supreme Court.

3. Criminal Code amended

The Criminal Code is amended by inserting, after section 298, the following new section –

298A. Perverting the course of justice

Any person who does any act, or makes any omission, intending in any way to pervert the course of justice, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 10 years.

4. District and Intermediate Courts (Criminal Jurisdiction) Act amended

The District and Intermediate Courts (Criminal Jurisdiction) Act is amended by inserting, after section 72, the following new section –

72A. Error in sentence

(1) The Court may, not later than 7 days after sentence has been passed, amend the sentence passed to correct an error of law in the sentence after giving the parties the right to make submissions on the proposed amendment.

(2) Where a sentence passed by the Court is amended pursuant to subsection (1), the time within which a party may appeal against the judgment shall, notwithstanding any other enactment, be extended by 7 days.

5. Information and Communication Technologies Act amended

The Information and Communication Technologies Act is amended –

(a) in section 2 –

(i) by deleting the definition of “message” and replacing it by the following definition –

“message” includes any communication whether in the form of speech or other sound, data, text, writings, images, signs, signals or code, or in any other form or combination of forms;

(ii) in the definition of “telecommunication”, by deleting the words “signs, signals, writing, images, sounds” and replacing them by the words “any message”;

(b) in section 46 –

(i) in paragraph (ga), by deleting the words “or is likely to cause distress or anxiety” and replacing them by the words “which is likely to cause or cause annoyance, humiliation, inconvenience, distress or anxiety to any person”;

(ii) in paragraph (h), by repealing subparagraph (ii) and replacing it by the following subparagraph –

(ii) which is likely to cause or causes annoyance, humiliation, inconvenience, distress or anxiety to that person;

(iii) by inserting, after paragraph (h), the following new paragraph –

(ha) uses an information and communication service, including telecommunication service, to impersonate, or by any other means impersonates, another person which is likely to

cause or causes annoyance, humiliation, inconvenience, distress or anxiety to that person;

- (c) in section 47(1), by deleting the words "imprisonment for a term not exceeding 5 years" and replacing them by the words "penal servitude for a term not exceeding 10 years".

6. Institute for Judicial and Legal Studies Act amended

The Institute for Judicial and Legal Studies Act is amended –

- (a) in section 4(d), by inserting, after the words "making recommendations", the words ", annually,";
- (b) by inserting, after section 4, the following new section –

4A. Sentencing guidelines and award of civil damages

The Board shall, within 6 months of the coming into operation of this section, make recommendations to the Chief Justice to give effect to its object under section 4(d).

- (c) in section 17 –
 - (i) in subsection (1), by deleting the words "Chief Justice" and replacing them by the word "Attorney-General";
 - (ii) by adding the following new subsection –

(3) Any regulations made by the Board and approved by the Chief Justice prior to the commencement of this subsection shall, on the commencement of this subsection, be deemed to have been made by the Board and approved by the Attorney-General.

7. Interpretation and General Clauses Act amended

The Interpretation and General Clauses Act is amended, in section 2, by inserting, in the appropriate alphabetical order, the following new definition –

"Rules Committee" means the Rules Committee referred to in section 199 of the Courts Act;

8. Law Reform Commission Act amended

The Law Reform Commission Act is amended –

- (a) in section 7(2) –
 - (i) by deleting the words “appointed under subsection (1)(b) and (c)” and replacing them by the words “referred to in subsection (1)(b), (c) and (ca)”;
 - (ii) by deleting the words “5 years” and replacing them by the words “2 years”;
- (b) by repealing subsection (4) and replacing it by the following subsection –
 - (4) The Attorney-General may, at any time, terminate the appointment of a member, other than a member referred to in subsection (1)(b), (c) and (ca).
- (c) by adding the following new subsection –
 - (5) Every member appointed under section 7(1)(d), (e), (f) and (g) who is in office immediately before the commencement of this subsection shall cease to hold such office on the commencement of this subsection.

9. Mauritius Bar Association Act amended

The Mauritius Bar Association Act is amended –

- (a) in section 5(1) –
 - (i) by deleting the words “the Attorney-General and”;
 - (ii) by deleting the words “5 other members” and replacing them by the words “7 members”;
- (b) in section 13, by adding the following new subsection –
 - (6) For the avoidance of doubt, this section shall, pursuant to section 86 of the Constitution, not apply to a law officer under the Law Officers Act.

10. Registration Duty Act amended

The Registration Duty Act is amended, in section 14, by deleting the words "the original or" wherever they appear.

11. Courts (Determination of Prescribed Amount) Regulations 1995 amended

The Courts (Determination of Prescribed Amount) Regulations 1995 are amended –

- (a) in regulation 2 –
 - (i) in paragraph (a), by deleting the words "500,000 rupees" and replacing them by the words "2 million rupees";
 - (ii) in paragraph (b), by deleting the words "50,000 rupees" and replacing them by the words "250,000 rupees";

- (b) by adding the following new regulation –

3. (1) Where, before the coming into operation of this regulation, proceedings involving a claim for an amount not exceeding 2 million rupees have been lodged before the Supreme Court, the Master and Registrar shall, except where the trial has started, transfer the case to the Intermediate Court as soon as practicable after the coming into operation of this regulation.

(2) Where, before the coming into operation of this regulation, proceedings involving a claim for an amount not exceeding 250,000 rupees have been lodged before the Intermediate Court, the Master and Registrar shall, except where the trial has started, transfer the case to the appropriate District Court as soon as practicable after the coming into operation of this regulation.

12. Letters of Request Rules 1985 amended

The Letters of Request Rules 1985 are amended by adding the following new rule –

- 4.** (1) Where, in relation to any proceedings, other than criminal proceedings pending before a Court in Mauritius, the Attorney-General considers it desirable to obtain the evidence of a witness in another

State, he may make a written request to the Central Authority of that State –

- (a) to have evidence taken or documents or other articles produced; and
- (b) to transmit to Mauritius any evidence, document or article taken or produced.

(2) A request made under paragraph (1) shall –

- (a) specify the Court before which proceedings are pending;
- (b) give a succinct description of the nature of the proceedings;
- (c) briefly explain the purpose of the request;
- (d) give details of any procedure which is required to be followed to comply with Mauritius laws;
- (e) indicate any time limit within which compliance with the request is expected, by stating reasons;
- (f) be supplemented with such other procedures, formalities and information as may be required by the foreign State to give effect to the request; and
- (g) where necessary, be accompanied by a translation into the official language of the foreign State.

13. Supreme Court (Jury Lists and Panels) Rules 1992 amended

The Supreme Court (Jury Lists and Panels) Rules 1992 are amended –

- (a) by revoking rules 3 and 4 and replacing them by the following rules –

3. The Master and Registrar shall, with the assistance of the Electoral Commissioner, the Registrar of Civil Status and the Commissioner of Police, draw up a list of persons qualified to serve as jurors.

4. (1) Any person who is registered as an elector of an electoral area may, on good cause shown, apply, in such form and manner as the Chief Justice may approve, to the Magistrate of the district in which he resides to have his name removed from the list of persons qualified to serve as juror.

(2) Where the Magistrate grants an application under paragraph (1), he shall inform the Master and Registrar of his decision, and the latter shall remove the person's name from the list permanently or for such period as the Magistrate may determine.

(b) by revoking rule 5;

(c) by revoking the Schedule.

14. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.
