



LAW REFORM COMMISSION

Issue Paper

Law as to Publicity for the Appointment and Revocation of Agent and Proxy

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LAW REFORM COMMISSION

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About the Commission

THE LAW REFORM COMMISSION OF MAURITIUS consists of –

- (a) a Chairperson, appointed by the Attorney-General;
- (b) a representative of the Judiciary appointed by the Chief Justice;
- (c) the Solicitor-General or his representative;
- (d) the Director of Public Prosecutions or his representative;
- (e) a barrister, appointed by the Attorney-General after consultation with the Mauritius Bar Council;
- (f) an attorney, appointed by the Attorney-General after consultation with the Mauritius Law Society;
- (g) a notary, appointed by the Attorney-General after consultation with the Chambre des Notaires;
- (h) a full-time member of the Department of Law of the University of Mauritius, appointed by the Attorney-General after consultation with the Vice-Chancellor of the University of Mauritius; and
- (i) two members of the civil society, appointed by the Attorney-General.

Under the direction of the Chairperson, the Chief Executive Officer is responsible for all research to be done by the Commission in the discharge of its functions, for the drafting of all reports to be made by the Commission and, generally, for the day-to-day supervision of the staff and work of the Commission.

The Secretary to the Commission is responsible for taking the minutes of all the proceedings of the Commission and is also responsible, under the supervision of the Chief Executive Officer, for the administration of the Commission.

(A)Introductory Note: Background

1. The Hon. Attorney-General has requested the Commission to review the law as to publicity for the appointment and revocation of agent and proxy, and report thereon.
2. The request stems from a proposal made in writing by Attorney-at-Law, Me. H. Gunesh [letter dated 16 August 2010].

According to Me. H. Gunesh, the notary in charge of the drafting of the deed for the appointment of the power of attorney has to file a copy in the Registry of the Supreme Court and seemingly when revocation is drawn up, no one is made aware.

It is suggested by Me. H. Gunesh that the law should be amended so that the notary who prepares the deed for the appointment and revocation of an agent and proxy be required to transcribe same at the Mortgage Office.

(B)Views of the Commission

3. The Transcription and Mortgage Act deals with transactions related to immovable property. It would not be appropriate therefore to have the appointment and revocation of an agent and proxy transcribed at the Mortgage Office
4. Under section 2(1) of the Deposit of Powers of Attorney Act, it is a legal requirement – where any person who has left or leaves Mauritius has appointed or appoints an attorney or agent in Mauritius to represent him in any capacity in any proceedings before a Court - to file in the Registry of the Supreme Court, within 15 days of the date of such power of

attorney, an extract from such power of attorney relative to such powers of agency and to the names of such agents.

5. We understand from information gathered from the Chamber of Notaries that although the law does not provide for publicity as regards revocation of powers of attorney, most Notaries do file such revocations in the Registry of the Supreme Court within the same time limit.

The Commission therefore recommends that section 2(1) of Deposit of Powers of Attorney Act be amended to include publicity in respect of revocation of power of attorney so that notaries' practice in the matter becomes a legal requirement.