

THE CONSTITUTION (AMENDMENT) BILL

(No. of 2010)

Explanatory Memorandum

The object of this Bill is to amend the Constitution, in accordance with the recommendations of the Presidential Commission chaired by Lord Mackay of Clashfern, so as to –

- (a) provide that the Supreme Court shall consist of a Court of Appeal and a High Court (which shall comprise a Civil Division, a Commercial Division (which will replace the Bankruptcy Court), a Criminal Division and a Family Division);
 - (b) permit any person aggrieved by a decision of the Court of Appeal to appeal to the Judicial Committee of the Privy Council;
 - (c) do away with the archaic procedure of appeal by way of case stated;
 - (d) establish an Office of the Director of Public Prosecutions as a separate department; and
 - (e) alter the composition of the Judicial and Legal Service Commission.
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ARRANGEMENT OF CLAUSES

Clause

1. Short title
 2. Section 37 of Constitution amended
 3. Section 62 of Constitution amended
 4. Section 72 of Constitution amended
 5. Section 76 of Constitution repealed and replaced
 6. Section 77 of Constitution amended
 7. Section 78 of Constitution amended
 8. Section 80 of Constitution repealed and replaced
 9. Section 81 of Constitution repealed and replaced
 10. Section 82 of Constitution repealed
 11. Section 85 of Constitution amended
 12. Section 111 of Constitution amended
 13. Second Schedule to Constitution repealed and replaced
 14. Various sections of Constitution amended
 15. Consequential amendments
 16. Commencement
- FIRST SCHEDULE
SECOND SCHEDULE

A BILL

**To amend the Constitution so as to implement certain recommendations of
the Presidential Commission chaired by Lord Mackay of Clashfern**

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Constitution (Amendment) Act 2010.

2. Section 37 of Constitution amended

Section 37 of the Constitution is amended –

- (a) by deleting the words “Supreme Court” wherever they appear and replacing them by the words “High Court”;
- (b) by repealing subsection (6).

3. Section 62 of Constitution amended

Section 62 of the Constitution is amended by adding, after the words “department of Government”, the words “other than the Office of the Director of Public Prosecutions”.

4. Section 72 of Constitution amended

Section 72 of the Constitution is amended by repealing subsection (1) and replacing it by the following subsection –

(1) There shall be an Office of the Director of Public Prosecutions which shall consist of the Director of Public Prosecutions, the Deputy Director of Public Prosecutions, a Senior Assistant Director of Public Prosecutions, an Assistant Director of Public Prosecutions and such number of State Counsel and State Attorneys as may be prescribed and who shall be appointed by the Judicial and Legal Service Commission.

5. Section 76 of Constitution repealed and replaced

Section 76 of the Constitution is repealed and replaced by the following section –

76. Supreme Court

(1) There shall be a Supreme Court for Mauritius which shall consist of a Court of Appeal and a High Court.

(2) The Court of Appeal shall comprise the Court of Civil Appeal and the Court of Criminal Appeal.

(3) The High Court shall comprise a Civil Division, a Commercial Division, a Criminal Division and a Family Division.

(4) Subject to section 77 –

(a) the Judges of the Court of Appeal shall, subject to paragraph (c), be the Chief Justice, the Senior Puisne Judge and such number of Justices of Appeal, not being less than 3, as may be prescribed by Parliament;

(b) the Judges of the High Court shall, subject to paragraph (c), be such number of Puisne Judges, not being less than 16, as may be prescribed by Parliament, one of whom shall be designated as

President of the High Court by the Judicial and Legal Service Commission; and

- (c) the office of a Judge shall not be abolished while any person is holding that office, unless he consents to its abolition.

6. Section 77 of Constitution amended

Section 77 of the Constitution is amended –

- (a) in subsection (3), by inserting, before the words “Puisne Judges”, the words “Justices of Appeal and the”;
- (b) by repealing subsection (4) and replacing it by the following subsection –

(4) No person shall be qualified for appointment as a Judge of the High Court unless he is, and has been for at least 5 years, a Magistrate, a law officer or a practising barrister.

- (c) by inserting, after subsection (4), the following new subsection –

(4A) A person may, irrespective of his age, be appointed as a Justice of Appeal, but no person shall be qualified for appointment unless –

- (a) he has been a law officer or holds or has held judicial office in Mauritius or in any other part of the Commonwealth for not less than 5 years; or
- (b) for an aggregate period of not less than 5 years, he has been a law officer and holds or has held judicial office in Mauritius or in any other part of the Commonwealth.

- (d) in subsection (7) –
 - (i) by deleting the words “or as Senior Puisne Judge” and replacing them by the words “, as Senior Puisne Judge or as Justice of Appeal”; and
 - (ii) by deleting the word “request” and replacing it by the word “requests”.

7. Section 78 of Constitution amended

Section 78 of the Constitution is amended –

- (a) in subsection (7), by deleting the words “The retiring age for the purposes of subsection (1) shall be the age of 62 years” and replacing them by the words “Subject to subsection (8) and to section 113, the retiring age for the purposes of subsection (1) shall be the age of 67 years”;
- (b) by adding, after subsection (7), the following new subsection –

(8) Where a person is first appointed to the office of Justice of Appeal after he has reached the age of 67 years, he shall be appointed for a term of 4 years and shall not be eligible for re-appointment.

8. Section 80 of Constitution repealed and replaced

Section 80 of the Constitution is repealed and replaced by the following section –

80. Jurisdiction of Supreme Court

(1) (a) The Court of Civil Appeal shall, subject to paragraph (b) and subsection (3), have exclusive jurisdiction to hear and determine appeals in every matter, other than a criminal matter, from any final decision of a subordinate Court and of such tribunals or other bodies or persons as may be prescribed by Parliament.

(b) Paragraph (a) shall not apply to –

- (i) a matter referred to in paragraph 2(5), 3(2) or 4(4) of the First Schedule or section 45 of the Representation of the People Act; or
- (ii) any other matter which may be prescribed by Parliament.

(2) The Court of Criminal Appeal shall, subject to subsection (3), have exclusive jurisdiction to hear and determine appeals from any final decision of a subordinate court in criminal proceedings whereby a person is adjudged to pay a fine of such amount as may be prescribed or to be imprisoned with or without the option of a fine, and of such tribunals or other bodies or persons as may be prescribed by Parliament.

(3) An appeal shall not lie to the Court of Appeal from any decision given by a subordinate Court in any case where, under an enactment –

- (a) an appeal lies as of right from that decision to another subordinate Court; or
- (b) an appeal lies from that decision to another subordinate Court with leave and that leave has not been withheld.

(4) Subject to subsections (1) and (2), the High Court shall have unlimited jurisdiction to hear and determine any civil or criminal matter under any law other than a disciplinary law, including jurisdiction to hear applications for judicial review, and such jurisdiction and powers as may be conferred upon it by this Constitution or any other enactment.

9. Section 81 of Constitution repealed and replaced

Section 81 of the Constitution is repealed and replaced by the following section –

81. Appeals to the Judicial Committee

(1) Subject to this section, an appeal shall lie to the Judicial Committee from any final decision of –

- (a) the Court of Civil Appeal;
- (b) the Court of Criminal Appeal;
- (c) the High Court in a matter referred to in section 45 of the Representation of the People Act or in such other matter as may be prescribed by Parliament.

(2) Any person wishing to make an appeal under subsection (1) shall apply for leave to do so in accordance with the Mauritius (Appeals to Judicial Committee) Order 1968.

(3) In subsection (1), the reference to a final decision does not include a decision in relation to which, in the opinion of the Court to which an application under subsection (2) is made, the application is merely frivolous or vexatious.

10. Section 82 of Constitution repealed

Section 82 of the Constitution is repealed.

11. Section 85 of Constitution amended

Section 85 of the Constitution is amended –

- (a) in subsection (1) –
 - (i) in paragraph (b), by deleting the word “and”;
 - (ii) by repealing paragraph (c) and replacing it by the following paragraph –
 - (c) the Solicitor-General;
 - (iii) by adding, after paragraph (c), the following new paragraphs –
 - (d) a person who is or has been a Judge of a Court having unlimited jurisdiction in any part of the Commonwealth, appointed by the President, acting in accordance with the advice of the Chief Justice;
 - (e) a barrister of not less than 15 years’ standing appointed by the President, acting in accordance with the advice of the Bar Council; and
 - (f) a representative of the private sector who has proven experience in matters of appointment, promotion and discipline, appointed by the President, acting in his own deliberate judgment.
- (b) by repealing subsection (2) and replacing it by the following subsection –
 - (2) (a) The members of the Commission listed in subsection (1)(d) to (f) shall hold office for a term of 3 years.
 - (b) Where a member referred to in paragraph (a) is temporarily unable to perform the duties of his office, the President may appoint an appropriate person to replace him in accordance with subsection (1).
- (c) by repealing subsection (3).

12. Section 111 of Constitution amended

Section 111 of the Constitution is amended in subsection (1) –

- (a) in the definition of “subordinate Court”, by deleting the words “Supreme Court” and replacing them by the words “Court of Appeal”;
- (b) by inserting, in the appropriate alphabetical order, the following definitions –

“High Court” –

- (a) means the High Court referred to in section 76; and

- (b) includes any Division of the High Court;

“Magistrate” means –

- (a) in relation to the Island of Mauritius, a President, a Vice-President or a Magistrate of the Intermediate Court or of the Industrial Court, a Senior District Magistrate, or a District Magistrate; and

- (b) in relation to any other island, the Magistrate for that island;

“State Attorney” includes the Chief State Attorney, a Principal State Attorney and a Senior State Attorney;

“State Counsel” includes a Principal State Counsel and a Senior State Counsel”.

13. Second Schedule to Constitution repealed and replaced

The Second Schedule to the Constitution is repealed and replaced by the Second Schedule specified in the First Schedule to this Act.

14. Various sections of Constitution amended

The sections of the Constitution listed in the first column of the Second Schedule are amended in the corresponding manner specified in the second column of that Schedule.

15. Consequential amendments

(1) The Interpretation and General Clauses Act is amended, in section 2 –

- (a) in paragraph (a), by inserting, in the appropriate alphabetical order, the words “Court of Appeal” and “High Court”; and

(b) in the definition of “Master”, by deleting the words “Judge in Bankruptcy and”.

(2) The Representation of the People Act is amended in section 2, in the definition of “Court”, by deleting the words “Supreme Court” and replacing them by the words “High Court”.

(3) The Mauritius (Appeals to Privy Council) Order 1968 is amended –

(a) by deleting the words “Privy Council” wherever they appear and replacing them by the words “Judicial Committee”; and

(b) in paragraph 2, in subparagraph (1), in the definition of “Court”, by deleting the words “or the Supreme Court”.

(4) The Supreme Court (Constitutional Relief) Rules are amended by deleting the words “Supreme Court” wherever they appear and replacing them by the words “High Court”.

16. Commencement

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

FIRST SCHEDULE

[Section 13]

SECOND SCHEDULE

[Section 86]

PART 1

Master and Registrar
Deputy Master and Registrar
President of the Industrial Court
President of the Intermediate Court
Vice-President of the Industrial Court
Vice-President of the Intermediate Court
Magistrate of the Intermediate Court
Senior District Magistrate
District Magistrate

PART II

Solicitor-General
Parliamentary Counsel
Deputy Solicitor-General
Deputy Director of Public Prosecutions
Assistant Solicitor-General
Senior Assistant Director of Public Prosecutions
Assistant Parliamentary Counsel
Assistant Director of Public Prosecutions
Principal State Counsel
Senior State Counsel
State Counsel
Chief State Attorney
Principal State Attorney
Senior State Attorney
State Attorney

SECOND SCHEDULE

[Section 14]

Provisions to be amended	Amendment
1. Sections 8, 15, 17, 64, 83, 84, 99 and 118 and paragraphs 2, 3 and 4 of the First Schedule	Delete the words “Supreme Court” wherever they appear and replace them by the words “High Court”
2. Section 84(2)	Delete the words “or, where the decision is the subject of an appeal to the Court of Appeal or the Judicial Committee, in accordance with the decision of the Court of Appeal or, as the case may be, of the Judicial Committee”
3. Section 93(8)	Delete the figure “60” and replace it by the figure “65”
4. Section 108(5)	Delete the words “Puisne Judge” and replace them by the words “Justice of Appeal or Judge of the High Court”
