

THE JUDICIAL AND LEGAL PROVISIONS BILL
(No. of 2010)

Explanatory Memorandum

1. The main object of this Bill is to amend a number of enactments to give effect to the proposed changes in the Constitution which purport to implement the recommendations made by the Presidential Commission to the effect that the Supreme Court shall consist of a Court of Appeal and a High Court.

2. The Bill also implements certain other recommendations of the Commission relating to proceedings before the Master's Court, divorce proceedings, service by registered post in civil proceedings, the composition and powers of the Rules Committee and the issuing of warrants of arrest against witnesses who fail to attend Court.

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ARRANGEMENT OF CLAUSES

Clause

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|---|--|
| 1. Short title | 10. Law Practitioners Act amended |
| 2. Code Civil Mauricien amended | 11. Registration Duty Act amended |
| 3. Courts Act amended | 12. Sale of Immovable Property Act amended |
| 4. Criminal Procedure Act amended | 13. Transcription and Mortgage Act amended |
| 5. District and Intermediate Courts (Civil Jurisdiction) Act amended | 14. Various enactments amended |
| 6. District and Intermediate Courts (Criminal Jurisdiction) Act amended | 15. Repeals |
| 7. Divorce and Judicial Separation Act amended | 16. Consequential amendment |
| 8. Insolvency Act 2009 amended | 17. Transitional provisions |
| 9. Interpretation and General Clauses Act amended | 18. Commencement |
| | SCHEDULE |

A BILL

**To amend various enactments to give effect to the recommendations
of the Presidential Commission**

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Judicial and Legal Provisions Act 2010.

2. Code Civil Mauricien amended

The Code Civil Mauricien is amended in article 784, by deleting the words “plus être faite qu’au greffe du tribunal de première instance dans l’arrondissement duquel la succession s’est ouverte sur un registre particulier tenu à cet effet” and replacing them by the words “être faite que devant notaire”.

3. Courts Act amended

The Courts Act is amended –

(a) in section 2 –

(i) in the definition of “prescribed amount”, by deleting the full stop;

(ii) by inserting, in the appropriate alphabetical order, the following new definitions –

“Civil Division” means the Civil Division of the High Court;

“Commercial Division” means the Commercial Division of the High Court;

“Criminal Division” means the Criminal Division of the High Court;

“Family Division” means the Family Division of the High Court;

“High Court” has the same meaning as in section 111 of the Constitution;

“subordinate Court” has the same meaning as in section 111 of the Constitution.

(b) by repealing Part II and replacing it by the following Part –

PART II – THE SUPREME COURT

Sub-Part I – Organisation of Supreme Court

3. Seal

(1) The Supreme Court shall have a seal bearing the Arms of Mauritius, with the words “Supreme Court, Mauritius”.

(2) The seal shall be kept by the Master or such other officer of the Court as the Chief Justice may designate.

4. Seat

(1) The sittings of the Supreme Court shall, subject to subsection (2), be held in such building as the Chief Justice may designate as the Court House for that purpose.

(2) Where the Court, on account of any emergency, sits in any other place for the transaction of judicial business, the proceedings shall be as valid as if they had taken place in the Court House.

5. Access to Supreme Court

(1) The Supreme Court shall be open throughout the year for the transaction of judicial business and may hear and determine any cause or matter pending before it, on giving to the parties such notice as may be prescribed or as may seem just.

(2) Where provision is made in any Rules of Court for a vacation period for the Court, the vacation shall only apply to the officers specified in the rules.

6. Language to be used

(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 English, he may address the Court or give evidence in the language with which he is best acquainted.

7. Right of audience

In any proceedings before the Supreme Court, any of the following persons may address the Court –

- (a) any party to the proceedings, with leave of the Court;
- (b) a barrister, and, in proceedings relating to bankruptcy, insolvency or the winding-up of a company before the

Commercial Division, an attorney retained by or on behalf of any party.

8. Court of Appeal

(1) There shall be a Court of Appeal which shall consist of the Chief Justice, the Senior Puisne Judge and 3 Justices of Appeal who shall take precedence after the Chief Justice and the Senior Puisne Judge in such order as the Judicial and Legal Service Commission may determine.

(2) The Court of Appeal may sit in one or more panels, composed of –

- (a) the Chief Justice and the Senior Puisne Judge;
- (b) the Chief Justice or the Senior Puisne Judge, and one Justice of Appeal,

as the Chief Justice may direct.

(3) Where, on the hearing of an appeal, the 2 Judges on a panel are not of the same opinion, the appeal shall be reheard by the panel sitting with the Chief Justice or Senior Puisne Judge, if not already on the panel, or one other Justice of Appeal designated by the Chief Justice.

9. High Court

(1) (a) There shall be 16 Puisne Judges, including the President of the High Court.

(b) The 15 other Puisne Judges shall take precedence after the President of the High Court in such order as the Judicial and Legal Service Commission may determine.

(2) The President of the High Court shall, subject to such directions as may be given by the Chief Justice, be responsible for the assignment of the Puisne Judges to each of the Divisions of the Court and for the organisation of judicial business at the Court.

(3) The assignment of a Puisne Judge to a Division of the High Court may be varied in a particular case where the interests of justice so require.

(4) (a) Subject to paragraphs (b) and (c), the proceedings in a case before the High Court shall be heard and disposed of by one Judge.

(b) The President of the High Court may, *proprio motu* or on the written and motivated request of a party to the case, direct that a case be heard by 3 Puisne Judges, depending on the magnitude of the interests at stake or the importance or the intricacy of the question of law or fact involved.

(c) Paragraphs (a) and (b) shall not apply to a matter referred to in section 45 of the Representation of the People Act or to such other matter as may be prescribed by Parliament.

(5) (a) Subject to such directions as the President of the High Court may give, a case shall be lodged in the appropriate Division of the High Court on the basis of the principal subject matter of the action as presented to the Court.

(b) No party shall suffer any prejudice on the ground that the case has been lodged in the wrong Division of the High Court.

10. Judge in Chambers

Where any matter lies within the jurisdiction of the Judge in Chambers, the case shall, subject to section 9(5)(b), be lodged before a Puisne Judge who has been assigned to the appropriate Division of the Court.

11. Ministère Public

(1) Notwithstanding article 83 of the Code de Procédure Civile, the Court of Appeal, the High Court or a Judge in Chambers may, in its or his discretion, before making an order in any matter referred to in that article, refer the matter to the Ministère Public for its conclusions.

(2) Where the Court of Appeal, the High Court or a Judge in Chambers, in any matter, considers that the attendance of a law officer representing the Ministère Public is necessary for the proper administration of justice, a law officer designated by the Attorney-General shall appear as a party to the case and give his opinion or conclusions on the matter.

Sub-Part II – Officers of Supreme Court

12. Master and Registrar

(1) There shall be a Master and Registrar of the Supreme Court who shall be a person who has been a Magistrate, law officer or practising barrister for not less than 5 years.

(2) The duties of the Master shall include –

- (a) the conduct and hearing of all formal matters relating to cases pending before the Supreme Court, other than cases lodged before the Criminal Division, including the power to hold pre-trial conferences and make such orders or give such directions for the expeditious disposal of proceedings;
- (b) the taxation of costs, the conduct and management of judicial sales, probate of wills and related matters;
- (c) matters of credit, inquiry and accounts; and
- (d) such other matters as may be entrusted to him by law or by order of a Judge.

13. Delegation of Master's powers

The Chief Justice may, where the Master is unable to attend to any matter, authorise the Chief Registrar to –

- (a) tax costs;
- (b) administer an oath; or
- (c) exercise any powers of an administrative nature vested in the Master.

14. Minutes of proceedings

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

(2) The minute shall, together with the notes of evidence and submissions recorded in accordance with section 16, be preserved as a record of the Court.

(3) The record or a copy signed and certified by the Master or any Court Officer acting on his behalf, shall be admitted

in any proceedings before any Court as evidence of the proceedings and of the statement made by a witness.

15. Recording of evidence and submissions

The evidence of witnesses and the submissions of counsel or attorney in any case heard before the Supreme 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 Judicial Department; or
- (c) where no means referred to in paragraph (a) and no Shorthand Writer of the Judicial Department are available –
 - (i) at the trial of a criminal matter, in writing by the Judge presiding at the trial; or
 - (ii) where the presiding Judge is temporarily incapacitated or in any other case, in writing by the Master or any Court Officer acting on his behalf with the concurrence of the Chief Justice.

16. Other Court Officers

(1) There shall be such number of Court Officers, interpreters and shorthand writers as may be prescribed.

(2) Every person referred to in subsection (1) shall be –

- (a) attached to the Supreme Court but may be transferred to or from a District, the Intermediate or the Industrial Court at the discretion of the Chief Justice; and
- (b) under the administrative control of the Master.

Sub-Part III – Jurisdiction of Supreme Court

17. General jurisdiction

(1) The Supreme Court shall be a Superior Court of Record and shall have all the powers and jurisdiction necessary to administer the laws of Mauritius.

(2) The Supreme Court shall be a Court of Equity with power, authority and jurisdiction to administer justice and to do all acts for the due exercise of such equitable jurisdiction, in all cases where no legal remedy is provided by any enactment.

18. Jurisdiction of Court of Appeal

(1) Subject to subsection (2), the Court of Civil Appeal and the Court of Criminal Appeal shall exercise jurisdiction in accordance with section 80 of the Constitution.

(2) A Judge sitting alone in the Civil, Commercial or Family Division may, *proprio motu* or on the application of any party, reserve for consideration by the Court of Civil Appeal, a question of law, and the Judge shall give his judgment in the case subject to the opinion of the Court of Civil Appeal.

(3) The Court of Civil Appeal shall exercise general powers of supervision over all subordinate Courts in respect of all matters other than criminal proceedings.

(4) The Court of Criminal Appeal shall exercise general powers of supervision over all subordinate Courts in respect of criminal proceedings.

19. Jurisdiction of High Court

(1) The High Court shall have full original jurisdiction to hear, conduct and pass decisions in all civil and criminal suits and in all matters which may be brought and may be pending before the High Court.

(2) The High Court and the Puisne Judges shall, in civil matters, sit, proceed and carry on business in accordance with such rules as may be made by the Rules Committee.

(3) Where any question arises as to any procedure or conduct in or respecting any matter in the trial of a criminal case before the Criminal Division with or without a jury, which is not otherwise provided for in any enactment, the laws of England shall be followed and rule the point or question in issue.

(4) The High Court shall have the power and jurisdiction to conduct mediation in any suit, action, cause or matter which may be brought and may be pending before the Civil Division or Commercial Division.

(5) The President of the High Court may, before or at any stage of any proceedings, refer any suit, action, cause or matter to

a Judge for mediation with a view to disposing of that suit, action, cause or matter by agreement or narrowing down the issues therein.

(6) Where any suit, action, cause or matter is referred for mediation under subsection (5) –

- (a) the Judge to whom it is referred shall have such powers as may be prescribed for conducting mediation; and
- (b) the parties shall submit themselves to mediation and shall endeavour to dispose of the suit, action, cause or matter.

(7) Where any suit, action, cause or matter has not been disposed of through mediation, the Judge shall cause the case to be fixed for trial.

20. Jurisdiction of Civil Division

(1) The Civil Division shall be the principal Court of original civil jurisdiction, including jurisdiction in matters of constitutional and administrative law.

(2) The Civil Division may, on motion made to that effect supported by affidavit, hold that a person has committed a contempt of Court and –

- (a) sentence the person to a fine not exceeding 300,000 rupees and to imprisonment for a term not exceeding one year; and
- (b) make such other order as it thinks fit.

(3) (a) A person shall not commit a contempt of Court on the ground that he has published any matter calculated to interfere with the course of justice in connection with any proceedings pending or imminent at the time of publication if, at that time, having taken reasonable care, he did not know and had no reason to suspect that the proceedings were pending or that such proceedings were imminent, as the case may be.

(b) A person shall not commit a contempt of Court on the ground that he has distributed a publication containing such matter as is mentioned in paragraph (a) if, at the time of distribution, having taken all reasonable care, he did not know that it contained any such matter and had no reason to suspect that it was likely to do so.

(c) Where there are proceedings against a person for contempt of Court, the proof of any fact tending to establish a defence afforded by this subsection shall lie upon that person.

(4) (a) The publication of information relating to proceedings before a Court sitting in private shall not of itself amount to contempt of Court except where –

- (i) the proceedings relate to the guardianship, custody, maintenance or upbringing of a minor or rights of access to a minor;
- (ii) the Court sits in private for reasons of national security during that part of the proceedings about which the information in question is published;
- (iii) the information relates to a secret process, discovery or invention which is in issue in the proceedings; or
- (iv) the Court, having power to do so, expressly prohibits the publication of any information relating to the proceedings.

(b) Without prejudice to paragraph (a), the publication of the text of a summary of the whole or part of an order made by a Court sitting in private shall not of itself be contempt of Court except where the Court, having power to do so, expressly prohibits the publication.

(c) In this subsection, references to a Court include references to a Judge, a tribunal and to any person exercising the functions of a Court, a Judge or a tribunal, and references to a Court sitting in private include references to a Court sitting in camera or in Chambers.

(5) (a) Notwithstanding any other enactment, the Civil Division shall have power and jurisdiction to hear and determine any complaint of a disciplinary nature in respect of the professional conduct of a law practitioner or a ministerial officer, including a land surveyor.

(b) For the purposes of paragraph (a), “complaint” includes a motion by the Attorney-General or a law officer on his behalf, or a written report by or on behalf of the Chief Justice, the Master and Registrar, the Bar Council or any other body or

authority exercising powers of supervision over the conduct of a person referred to in paragraph (a).

(c) The Court may require the Ministère Public to intervene in any matter and in such manner as it thinks fit.

(d) A hearing under this subsection shall be governed by section 14 of the Law Practitioners Act.

(e) An appeal shall lie to the Judicial Committee, with the leave of the High Court, against a final decision arrived at following a hearing under this subsection.

21. Jurisdiction of Commercial Division

The Commercial Division shall have jurisdiction in matters of bankruptcy and insolvency, matters arising under the Companies Act, disputes relating to banking, bills of exchange, offshore business, patents, trademarks or passing off, disputes between traders and related matters and generally anything which is of a commercial nature.

22. Jurisdiction of Criminal Division

(1) The Criminal Division shall be the principal Court of original criminal jurisdiction, other than in matters of criminal contempt.

(2) The Criminal Division shall have jurisdiction to try any person charged with having committed a crime or a misdemeanour.

23. Jurisdiction of Family Division

The Family Division shall exercise the jurisdiction of the High Court in any matter arising under the Divorce and Judicial Separation Act or under any other enactment which relates to alimony, maintenance or the custody or guardianship of minors, other than a matter which is, under an enactment, within the exclusive jurisdiction of the Judge in Chambers or a Magistrate.

24. Jurisdiction of Judge in Chambers

(1) The Judge in Chambers may exercise jurisdiction –

(a) in such matters as may be specified in the Code Civil Mauricien and the Code de Procédure Civile; and

(b) in accordance with this section.

(2) The Judge in Chambers shall have exclusive jurisdiction to hear and determine an application for leave to apply for judicial review.

(3) The Judge in Chambers may –

- (a) grant an injunction;
- (b) decide on any rule or summons to show cause that may be issued to a party by the Master and made returnable before him;
- (c) issue a summons or a warrant of arrest in the case of an offence committed within the jurisdiction of the Supreme Court and order the offender to appear before a Magistrate;
- (d) subject to subsection (4), grant an application –
 - (i) for the cancellation or reduction of a mortgage inscription;
 - (ii) for the removal of a seizure;
 - (iii) for the validity or nullity of an attachment;
 - (iv) for the partition of property;
 - (v) to be let into possession of the unadministered property and rights of a person who is deceased or absent;
 - (vi) for an affirmative declaration;
 - (vii) for the admission of a relinquishment of immovable property;
 - (viii) relating to an absent person under article 115 of the Code Civil Mauricien;
 - (ix) for the homologation of a compromise (“*transaction*”) under article 441 of the Code Civil Mauricien;
 - (x) for the appointment of a surveyor, an appraiser or such other expert witness as may be required.

(4) (a) The Civil Division may, on motion made, set aside or modify an injunction granted by the Judge in Chambers.

(b) Subsection (3)(d)(iv) shall be without prejudice to the powers of the Master specified in section 25.

(c) Where an application under subsection (3)(d)(i),(ii),(iii) or (iv) is resisted on reasonable grounds, the Judge in Chambers shall refer the matter to the Civil Division for determination.

(5) Every order made by a Judge in Chambers shall –

(a) be dated and set out the nature of the order;

(b) be recorded in a book kept for that purpose at the Judge's office; and

(c) be exempt from registration and registration duty.

(6) Any person wishing to appeal against an order, decision or judgment of a Judge in Chambers in any matter in which an appeal lies may do so in accordance with section 26.

25. Jurisdiction of Master and Registrar

The Master shall, in addition to the duties exercisable by him under section 12, exercise the jurisdiction conferred upon him by the Code Civil Mauricien in relation to the partition of immovable property and by the Sale of Immovable Property Act.

Sub-Part IV – Proceedings before Supreme Court

26. Proceedings on appeal to Court of Appeal

(1) Any person wishing to appeal to the Court of Civil Appeal or the Court of Criminal Appeal shall serve a notice of appeal on any other party to the case and lodge his appeal in the Registry of the Supreme Court within 21 days of the date of the judgment or order appealed against.

(2) (a) The notice shall distinctly set out the grounds of appeal and, subject to paragraph (b), no ground other than those specified in the notice shall be brought forward at the hearing of the appeal.

(b) The Court may, *proprio motu* or on the application of a party to the case, consider a ground not specified in

the notice where, in its opinion, it is necessary to do so in the interests of justice.

(3) (a) Every appellant shall, not less than 45 days before the date of the hearing of the appeal, serve on any other party to the case and lodge in the Registry, in such form and manner as may be prescribed, skeleton arguments and submissions on the grounds of appeal.

(b) Every other party to the appeal shall, not less than 30 days before the date of the hearing of the appeal, serve on any other party, in such form and manner as may be prescribed, skeleton arguments and submissions on the grounds of appeal.

(c) Where a party to an appeal does not comply with paragraph (a) or (b), as the case may be, the Court may make a wasted costs order under section 197D or such other order as to costs as it thinks fit.

(4) (a) Every person who is served with a notice of appeal pursuant to subsection (1) and who wishes to resist the appeal shall, not later than 21 days after the date of service, serve on the appellant and file in the Registry, a notice of his intention to do so.

(b) Any person who fails to comply with paragraph (a) shall, except with leave of the Court in special circumstances, be deemed to have elected not to resist the appeal.

(5) The Court may, following the hearing of an appeal, make such order as it thinks fit, including –

(a) an order that the judgment, order or sentence appealed against be set aside and that a new trial shall take place;

(b) an order as to the costs of the appeal and the costs in the subordinate court or other body the decision of which is appealed against.

27. Proceedings regarding appeals to Court of Civil Appeal

(1) Any person who wishes to appeal to the Court of Civil Appeal shall, in addition to the formalities set out in section 26, give notice of appeal, within 21 days of the date of the judgment or order, to the subordinate Court or other body the decision of which is appealed against.

(2) A notice under subsection (1) shall operate as a stay of execution of the judgment or order appealed against.

(3) Unless otherwise expressly provided, a subordinate Court, the decision of which is being appealed against, shall bind the appellant, with one or more sureties, by recognisance in favour of the other party, in such sum as it thinks sufficient to cover the costs of the appeal.

(4) Where an appeal is dismissed or no appeal was lodged in accordance with section 26 –

(a) the subordinate Court or other body shall, on production of a certificate to that effect from the Master, issue execution of the judgment or order appealed against;

(b) the subordinate Court shall estreat the recognisance for the purpose of recovering any costs due by the appellant.

28. Proceedings regarding appeals to Court of Criminal Appeal

(1) Any person who wishes to appeal to the Court of Criminal Appeal shall, in addition to the formalities set out in section 26, give notice of appeal within 21 days of the date of the judgment or order, to the subordinate Court the decision of which is appealed against.

(2) (a) Subject to paragraph (b), a notice under subsection (1) shall operate as a stay of execution of the judgment, order or sentence appealed against.

(b) Subject to paragraph (c), where following a conviction an accused person is sentenced to imprisonment or penal servitude, the subordinate Court may order that he shall, pending the determination of the appeal, be remanded in custody and treated like a prisoner awaiting trial.

(c) The Court of Criminal Appeal may, on motion made, admit the convicted person to bail.

(3) The subordinate Court shall bind every appellant, other than the Director of Public Prosecutions or such other public officer as may be prescribed, with one or more sureties, by recognisance in favour of the other party in such sum as it thinks sufficient to cover the costs of the appeal.

(4) On an appeal, the Court may –

- (a) affirm, reverse or amend any judgment, order or sentence and, where a person was charged with alternative counts and the subordinate Court erroneously dismissed a count and convicted on another, substitute the proper conviction; and
- (b) notwithstanding that it is of opinion that a point raised in the grounds of appeal may be decided in favour of the appellant, dismiss the appeal where it considers that no substantial miscarriage of justice has occurred.

(5) Where an appeal is dismissed or no appeal was lodged in accordance with section 26, the subordinate Court shall, on production of a certificate to that effect from the Master, issue execution of the judgment, order or sentence appealed against and estreat the recognisance for the purpose of recovering any fine or costs due by the appellant.

29. Proceedings before Civil or Commercial Division

(1) Subject to this section and any other enactment, a case before the Civil or Commercial Division shall be proceeded with in the manner set out in the Supreme Court Rules 2000.

(2) (a) Subject to paragraph (e), any summons or other process initiating any procedure before the Court shall be sent by registered post, with a request for advice of delivery, to the address of the person to be summoned.

(b) The document shall be posted in an envelope on which there shall be a notice to the effect that if the envelope is not delivered at the given address, it shall be returned to the Court.

(c) The Court Officer responsible for the service shall cause a certificate stating the date and place of posting of the envelope, together with the advice of delivery to be filed on record not less than 7 days before the returnable date.

(d) Where paragraphs (a) to (c) have been complied with, it shall be presumed that service of the document has been effected, unless the person named on the envelope proves that through no fault of his he has not received the document.

(e) Where the document has been returned undelivered or the Court orders otherwise, service shall be effected by an usher.

(3) Where a matter lodged before the Court is undefended, the plaintiff may, except where the Court orders otherwise, move for judgment without the need to adduce any evidence to make out his case.

30. Proceedings before Criminal Division

(1) Subject to section 10 of the Criminal Procedure Act and to any other enactment relating to a trial by a Judge sitting without a jury, a trial before the Criminal Division shall be held before a Judge and a jury of 9 persons.

(2) (a) Subject to subsection (3), every citizen of Mauritius who is –

- (i) registered as an elector for an electoral area;
- (ii) resident in the Island of Mauritius; and
- (iii) not above the age of 70 years,

shall be qualified to serve as a juror.

(b) For the purposes of paragraph (a), “electoral area” has the same meaning as in the Representation of the People Act.

(3) No person who –

- (i) has been convicted for an offence and sentenced to penal servitude or imprisonment; or
- (ii) is on bail pending criminal proceedings taken against him,

shall be qualified to act as a juror.

(4) (a) A Judge may, on the trial of any matter before him, excuse a person summoned as a juror from serving on the jury where he is satisfied that the person –

- (i) is not qualified to act as a juror;
- (ii) ought to be excused on account of a serious physical disability or a mental impairment;

- (iii) being a woman, ought to be excused for a medical reason or any other reason which the Judge considers to be reasonable having regard to her family life; or
- (iv) is not sufficiently conversant with the English language.

(b) For the purposes of paragraph (a), “mental impairment” includes insufficient ability to understand the proceedings at the trial.

(5) (a) The Master shall, for every trial, summon a panel comprising of such number of jurors as he thinks fit.

(b) The Court Officer designated for that purpose shall, at the start of a trial, draw by lot the names of those who shall comprise the jury until 9 persons who are not excused or challenged can be found.

(c) The State and each person charged shall be entitled to challenge 7 persons on good cause shown.

(d) Where it is not possible to find 9 persons from the panel to comprise a jury, the trial shall be adjourned.

(6) The members of the jury shall elect a foreman and each of them shall take an oath to the effect that he will try the case fairly and according to his conscience.

(7) After the evidence and the submissions have been heard, the Judge shall sum up the case for the benefit of the jury and give his opinion on any matter of law arising in the case.

(8) The jury shall then give its verdict by a majority of not less than 7.

(9) The Judge may, where he considers it necessary, give directions, at any stage of a trial or on an adjournment, for the jury to be kept together or for their accommodation or sustenance.

(10) The Judge may adjourn a trial or discharge a jury on good grounds, including the illness or absence, for any other cause, of a juror, a witness or a person charged.

31. Proceedings before Family Division

The proceedings in any matter to be determined by the Family Division shall be conducted in accordance with such

procedure as is set out in the enactment which confers jurisdiction upon it.

32. Proceedings before Judge in Chambers

Subject to any other enactment, proceedings before the Judge in Chambers shall be commenced by lodging a praecipe with supporting affidavit.

33. Proceedings before Master

The Master and Registrar shall conduct any proceedings commenced before him in such manner as may be prescribed or as he considers appropriate, having regard to the subject matter of the proceedings.

- (c) in section 128, by repealing subsection (3) and replacing it by the following subsection –

(3) Where a witness duly served with a summons or warned personally to attend Court fails, without any valid reason, to do so on a second or subsequent occasion, the Magistrate may issue a warrant of arrest against that witness.

- (d) by repealing section 161C and replacing it by the following section –

161C. Summons with leave of Judge

Notwithstanding any other enactment, no summons shall be issued calling –

- (a) a judicial officer;
- (b) a Minister;
- (c) a law officer;
- (d) a State Attorney; or
- (e) the Commissioner of Police,

as a witness before any Court in any matter, except by leave of a Judge in Chambers and on satisfying the Judge that such person has some material or relevant evidence to give in the matter.

- (e) by repealing section 177;
- (f) by repealing section 197A and replacing it by the following section –

197A. Interest on judgment debt

- (1) Notwithstanding any other enactment –
 - (a) where any person is found by a Court to be liable in damages in tort in respect of a road accident or an accident at work, the Court may order that he shall pay interest on the judgment debt from the day on which the case was entered up to the date of judgment, unless the Court holds, on good cause shown, that payment should run from the date on which the pleadings were closed;
 - (b) where, in any case in which the appellant has been ordered to pay a sum of money to another person, the Court of Civil Appeal is of opinion that the appeal is frivolous or an abuse of its process, the Court may order that the appellant shall pay interest on the judgment debt from the day on which the appeal was lodged up to the date of the Court's judgment.

(2) Interest ordered to be paid under subsection (1) shall be at the rate of 15 per cent or such other rate as may be prescribed by Rules of Court.

- (g) by repealing sections 198 to 201 and replacing them by the following sections –

198. Rules Committee

- (1) There shall be a Rules Committee which shall consist of –
 - (a) 2 Judges, one of whom shall be the Chairperson of the Committee, and one Magistrate of the Intermediate Court, designated by the Chief Justice;
 - (b) one barrister of not less than 15 years' standing, nominated by the Bar Council;
 - (c) one attorney of not less than 15 years' standing, nominated by the Mauritius Law Society; and
 - (d) a law officer or State Attorney and a person with experience in family law matters, designated by the Attorney-General.

- (2) The members of the Rules Committee shall –
 - (a) hold office for 2 years and be eligible for reappointment; and
 - (b) be paid such allowance as the Chief Justice may determine.

199. Rules of Court

(1) The Rules Committee may make such rules as it thinks fit for the purposes of this Act.

(2) Without prejudice to the generality of the power of the Rules Committee under subsection (1), the rules may provide for –

- (a) the practice and procedure before any Court;
- (b) the electronic filing of documents and management of cases;
- (c) the practice and procedure for mediation before a Judge;
- (d) the means by which a fact may be proved, and the manner in which evidence of that fact may be given, in civil proceedings before any Court;
- (e) the forms, books and registers that may be required to be kept for the transaction of the business of the Courts;
- (f) the fees to be charged in respect of any proceedings before the Courts;
- (g) the sums allowable on taxation in respect of fees and costs in any proceeding before any Court; and
- (h) such other matters as it considers appropriate to administer justice.

(3) The Rules Committee shall, before making any rules, endeavour to have as wide a consultation with all interested parties as possible.

(4) Rules made under subsection (1) shall not require to be approved by a Minister.

(5) The following enactments shall be deemed to have been made pursuant to subsection (1) –

- (a) Appeals (Skeleton Arguments) Rules 1994;
- (b) Bankruptcy Rules 1888;
- (c) District Courts (Execution of Judgments) Regulations 1947;
- (d) District Courts (State Proceedings) Rules 1954;
- (e) District, Industrial and Intermediate Courts Rules 1992;
- (f) Divorce and Judicial Separation (Absent Respondents) Regulations 1984;
- (g) Divorce and Judicial Separation Regulations 1981;
- (h) Legal Fees and Costs Rules 2000;
- (i) Letters of Request Rules 1985;
- (j) River Rules of 12 June 1885;
- (k) River Rules of 22 October 1886;
- (l) Rules of the Supreme Court (State Proceedings) 1954;
- (m) Sale of Immovable Property Rules 1889;
- (n) Supreme Court (Constitutional Relief) Rules;
- (o) Supreme Court (Jury Lists and Panels) Rules 1992; and
- (p) Supreme Court Rules 2000.

200. Practice Directions

The Chief Justice may give such Practice Directions, not inconsistent with any rules made pursuant to section 199, as he thinks fit to regulate the practice and procedure before any Court.

- (h) by repealing the First and Second Schedules.

4. Criminal Procedure Act amended

The Criminal Procedure Act is amended by repealing sections 102 and 104.

5. District and Intermediate Courts (Civil Jurisdiction) Act amended

The District and Intermediate Courts (Civil Jurisdiction) Act is amended –

(a) in section 6 –

(i) in subsection (1), by deleting the words “The clerk” and replacing them by the words “Subject to section 7, the clerk”;

(ii) by adding, after subsection (3), the following new subsection –

(4) Where subsections (1) to (3) have been complied with, it shall be presumed that service has been effected unless the person named on the envelope proves that, through no fault of his, he has not received the summons or other process.

(b) in section 7(1), by inserting, after the words “returned undelivered”, the words “or the Court orders otherwise”;

(c) in section 21P, by repealing subsection (2);

(d) by repealing Part IV.

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

The District and Intermediate Courts (Criminal Jurisdiction) Act is amended –

(a) in section 75, by repealing subsection (4);

(b) by repealing sections 93, 94, 95, 96 and 100.

7. Divorce and Judicial Separation Act amended

The Divorce and Judicial Separation Act is amended –

(a) in section 2, in the definition of “Court”, by deleting the words “Supreme Court” and replacing them by the words “High Court”;

(b) by repealing sections 9, 10 and 11 and replacing them by the following sections –

9. Trial by Court

The Court shall, after hearing the parties and their witnesses, determine whether or not the petitioner has established his case.

10. Financial arrangements

Where the Court has determined that the petitioner has established his case, it shall make such enquiry as it thinks necessary so as to be satisfied that –

- (a) there is no child in relation to whom financial arrangements should be made; or
- (b) unless it is impracticable for such arrangements to be made, satisfactory arrangements have been made or they are the best that can be devised in the circumstances.

11. Decree

The Court shall, where it is satisfied that the requirements of section 10 have been complied with, grant a decree to the petitioner.

- (c) in section 21, by deleting the words “the Court” wherever they appear and replacing them by the words “the Rules Committee”.

8. Insolvency Act 2009 amended

The Insolvency Act 2009 is amended, in section 2(1), by deleting the definition of “Court” and replacing it by the following definition –

“Court” means the Commercial Division of the High Court;

9. Interpretation and General Clauses Act amended

The Interpretation and General Clauses Act is amended –

- (a) in section 2, by inserting, in the appropriate alphabetical order, the following new definition –

“Rules Committee” means the Rules Committee set up under section 198 of the Courts Act;

- (b) in section 40, by inserting, after the word “enactment”, the words “other than section 28 of the Courts Act or section 6 of the District and Intermediate Courts (Civil Jurisdiction) Act”;

- (c) in section 40A, by inserting, after the words “required to be served”, the words “, other than a service under section 6 of the District and Intermediate Courts (Civil Jurisdiction) Act,”.

10. Law Practitioners Act amended

The Law Practitioners Act is amended in section 14 –

- (a) by inserting, after subsection (2), the following new subsection –

(2A) Where the act complained of constitutes an offence, proof of the fact that the law practitioner has been convicted of the offence and that he has not appealed or his appeal has been dismissed shall be conclusive evidence of the fact that he committed the act.

- (b) by adding, after subsection (3), the following new subsection –

(4) An appeal shall lie to the Judicial Committee with the leave of the High Court against a final decision arrived at, following proceedings under this section.

11. Registration Duty Act amended

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

12. Sale of Immovable Property Act amended

The Sale of Immovable Property Act is amended –

- (a) in section 110 –

- (i) in subsection (5), by deleting the words “as may be fixed by him” and replacing them by the words “not exceeding 3 months as he may determine, and where the decision has not been made within that time, the relevant clearance, approval or permit shall be deemed to have been obtained”;

- (ii) by adding, after subsection (6), the following new subsection –

(7) The Master shall not appoint as an appraiser any person who has previously failed to comply with subsection (2).

- (b) by inserting, after section 170, the following new section –

170A. Certificate issued by notary

Where the Conservator of Mortgages has not issued the certificate within the period of 180 days referred to in section 170, the notary designated under section 169 may, notwithstanding article 2201 of the Code Civil Mauricien, issue the certificate of inscription burdening the property sold.

- (c) in section 171, by adding, after subsection (2), the following new subsection –

(3) Where the certificate of inscription is issued by the notary pursuant to section 170A, the Master may require the creditor who is to receive the benefit of the sale to undertake to compensate any creditor omitted by error from the certificate and, if need be, to furnish security in such sum as the Master thinks fit.

13. Transcription and Mortgage Act amended

The Transcription and Mortgage Act is amended, in section 3(k), by deleting the words “made before the Master and Registrar”.

14. Various enactments amended

(1) The enactments listed in the first column of Part I of the Schedule are amended in the corresponding provision specified in the second column of that Schedule, by deleting the words “Supreme Court” or “Cour Suprême”, as the case may be, wherever they appear and replacing them by the words “Court of Appeal”.

(2) The enactments listed in the first column of Part II of the Schedule are amended in the corresponding provision specified in the second column of that Schedule, by deleting the words “Supreme Court” or “Cour Suprême”, as the case may be, wherever they appear and replacing them by the words “High Court”.

(3) The enactments listed in the first column of Part III of the Schedule are amended in the corresponding provision in the manner specified in the second column of that Schedule.

15. Repeals

The following enactments are repealed –

- (a) Court of Civil Appeal Act;
- (b) Criminal Appeal Act;
- (c) Assessment Review Committee (Appeal) Rules 2007;
- (d) Bankruptcy Court Rules 1899;

- (e) Capital Punishment Instructions 1946;
- (f) Court of Civil Appeal Rules 1965;
- (g) Criminal Appeal Rules 1954;
- (h) Information and Communication Technologies Appeal Tribunal Rules 2004;
- (i) Land Acquisition (Appeal) Rules 1974;
- (j) Patents, Industrial Designs and Trademarks (Industrial Property Tribunal) Appeal Rules 2007;
- (k) Three–Judge Cases Rules 1906;
- (l) Trade Marks (Appeals) Rules 1955.

16. Consequential amendment

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

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

3. The Master 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 for an electoral area may, on good cause shown, apply to a Magistrate to have his name removed from the list of persons qualified to serve as jurors.

(2) Where a Magistrate grants an application under paragraph (1), he shall inform the Master 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 deleting the Schedule.

17. Transitional provisions

(1) Subject to subsection (2), where any proceedings which have, before the commencement of this Act, been lodged before the Supreme Court should, pursuant to this Act, be dealt with by the Court of Appeal or a Division of the High Court, the Master shall arrange for the case to be placed on the list of the appropriate Court.

(2) Where the proceedings referred to in subsection (1) are appellate proceedings and have started to be heard, the hearing shall be started anew before the Court of Appeal.

18. Commencement

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

SCHEDULE
[Section 14]

PART I

Enactment	Provision to be amended
Agalega (Administrative and Judicial Provisions) Act	section 6
Ayurvedic and Other Traditional Medicines Act	section 22
Bail Act	section 4
Bankruptcy Rules 1888	rule 84
Building Act	section 62
Bus Industry Property Acquisition Act	section 19
Cane Planters and Millers Arbitration and Control Board	section 41
Code de Procédure Civile	Articles 1027-2, 1027-5, 1027-6, 1027-7, 1027-8 and 1027-9
Competition Act 2007	Sections 67 and 68
Co-operatives Act	section 93
Court of Rodrigues Jurisdiction Act	section 11
Criminal Procedure Act	section 201
District, Industrial and Intermediate Courts Rules 1992	rules 99, 100, 101 and 102
Environment Protection Act	section 57
Excise Act	section 14
Food Act	section 10
Forests and Reserves Act	section 6
Gambling Regulatory Authority Act	section 132
Ground Water Act	section 8

Income Tax Act	section 140
Information and Communication Technologies Act	sections 43 and 44
Insolvency Act	sections 2 and 43
Juvenile Offenders Act	section 23
Land Acquisition Act	sections 10 and 24
Landlord and Tenant Act	sections 15 and 32
Mauritius Council of Registered Librarians Act	section 20
Mauritius Revenue Authority Act	section 21
Nursing Council Act	section 17(6)
Patents, Industrial Designs and Trade Marks Act	section 50
Probation of Offenders Act	section 9
Professional Architects Council Act	section 17
Public Health Act	sections 23, 39, 137 and 148
Registered Professional Engineers Council Act	section 17
Rivers and Canals Act	section 89
Roads Act	section 65
Sale of Immovable Property Act	section 204
Sale of Immovable Property Rules 1889	rule 9
Sugar Insurance Fund Act	section 52
Tea Industry Control Act	section 10
Value Added Tax Act	section 47
Veterinary Council Act	section 24
<i>Waqf Act</i>	section 34
Waste Water Management Authority Act	section 7

PART II

Enactment	Provision to be amended
Bus Industry Property Acquisition Act	section 8
Civil Aviation Act	section 7
Civil Status Act	section 31
Code Civil Mauricien	articles 261, 342, 373-2, 376, 398, 501, 1844-7, 1844-11, 1844-13, 1846-1, 2173, 2198-8, 2202-15 and 2202-49
Code de Commerce	articles 193, 194, 207 and 226
Code de Procédure Civile	articles 1028-3, 1028-4, 1028-5, 1028-6, 1028-7, 1028-10
Convention on the Civil Aspects of International Child Abduction Act	section 2
Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act	section 2
Companies Act	section 2
Copyright Act	section 41
Courts (Civil Procedure) Act	sections 26, 56 and 60
Criminal Procedure Act	sections 8, 9, 10, 17, 27, 58 and 148
Curatelle Act	section 25
Dangerous Drugs Act	section 2
Deposits (Supreme Court) Act	sections 8 and 9
Districts Act	section 6
Emergency Powers Act	section 3

Extradition Act	sections 12 and 13
Financial Reporting Act	section 82
Foreign Judgments (Reciprocal Enforcement) Act	sections 4, 10 and 13
Investment Disputes (Enforcement of Awards) Act	section 4
Law Practitioners Act	section 13
Legal Aid Act	section 2
Local Government Act	section 42
Local Government Act 2003	section 18
Medical Council Act	section 36(1)
Mutual Assistance in Criminal and Related Matters Act	sections 12, 13 and 14
National Assembly (Vacation of Office and Membership) Act	sections 2 and 4
Notaries Act 2008	section 36
Nursing Council Act	sections 17(6) and 36(1)
Patents, Industrial Designs and Trademarks Act	section 23
Prevention of Corruption Act	sections 62, 63 and 64
Public Health Act	sections 57 and 58
Representation of the People Act	section 2
Rivers and Canals Act	sections 12, 14, 17, 22, 25, 26, 29, 33, 37, 80, 81, 82 and 97
Rodrigues Regional Assembly Act	section 20
Sale of Immovable Property Act	sections 129 and 130
State Proceedings Act	sections 12, 16, 19, 20, 21 and 27
Succession and Wills Act	section 2

Town and Country Planning Act	section 21
Trusts Act	section 2
<i>Waqf Act</i>	section 2
River Rules 1885	rules 1 and 16
River Rules 1886	rule 9
Bankruptcy Rules 1888	rules 25 and 26
Rules of the Supreme Court (State Proceedings) 1954	rules 1 to 4, 7, 13 and 15
Supreme Court Rules 2000	The whole

PART III

Enactment	Amendment to be made
Ayurvedic and Other Traditional Medicines Act	In section 22, by repealing subsection (2)
Bail Act	By repealing section 25
Bus Industry Property Acquisition Act	In section 19, by deleting the words “and in such manner as may be provided by rules made by the Supreme Court for the purpose”
Cane Planters and Millers Arbitration and Control Board Act	In section 41, by deleting the words “in such manner as may be provided by rules made by the Supreme Court”
Consumer Protection (Price and Supplies Control) Act	By repealing section 34
Co-operatives Act	In section 93 – <ul style="list-style-type: none"> (a) in subsection (1), by deleting the words “as erroneous in law” (b) by repealing subsections

(2) and (3)

Courts (Civil Procedure) Act

In section 40, by deleting the words “Bankruptcy Court” and replacing them by the words “High Court”

Environment Protection Act

In section 57 –

(a) in subsection (1), by deleting the words “as being erroneous in point of law”

(b) by repealing subsections (2) and (3)

Foreign Judgments (Reciprocal Enforcement) Act

In section 5, by deleting the words “Supreme Court” and replacing them by the words “Rules Committee”

Forests and Reserves Act

In section 6, in subsection (1), by deleting the words “within such time and in such manner as may be provided by rules made by the Supreme Court for the purpose”

Ground Water Act

In section 8, by repealing subsections (2) and (4)

Immigration Act

In section 13(6)(b), by deleting all the words appearing after the words “resident,” and replacing them by the words “he may apply to the High Court for a judicial review of his decision”.

Industrial Court Act

By repealing section 18

Information and Communication Technologies Act

In section 43, by repealing subsection (3)

Land Acquisition Act

In sections 10 and 24, by deleting the words “within such time and in such manner as may be provided by Rules made by the Supreme Court for the purpose”

Landlord and Tenant Act

In section 15 –

- (a) in subsection (1), by deleting the words “on a point of law”
- (b) by repealing subsections (2) and (3)

Local Government Act

In section 93 –

- (a) by repealing the heading and replacing it by the following heading –

“Appeal to the Court of Appeal”

- (b) in subsection (1), by deleting the words “as being erroneous in point of law”
- (c) in subsection (2), by deleting the words “require the Tribunal to state and sign a case for the opinion of the Supreme Court” and replacing them by the words “appeal to the Court of Civil Appeal”
- (d) by repealing subsection (3)

Mauritius Council of Registered Librarians Act

In section 20, by deleting the words “by way of motion”

Mauritius Revenue Authority Act

In section 21 –

- (a) in subsection (1), by deleting the words “, as being erroneous in law,”
- (b) by repealing subsection (2)

National Assembly (Vacation of Office and Membership) Act

By repealing section 5

Patents, Industrial Designs and Trademarks Act	In section 50 – (a) in subsection (1), by deleting the words “as being erroneous in law” (b) by repealing subsection (2)
Planning and Development Act	In section 60 – (a) in subsection (1), by deleting the words “on a question of law” and replacing them by the words “to the Court of Appeal” (b) by repealing subsections (2) and (3)
Probation of Offenders Act	In section 9, in subsection (1), by deleting the words “, other than the Supreme Court,”
Professional Architects Council Act	In section 17, in subsection (1), by deleting the words “by way of motion”
Public Health Act	By repealing section 192
Registered Professional Engineers Council Act	In section 17, in subsection (1), by deleting the words “by way of motion”
Representation of the People Act	By repealing section 37
State Proceedings Act	By repealing sections 8 and 25
Sugar Insurance Fund Act	In section 52, by deleting the words “in such manner as may be provided by rules made by the Supreme Court”

Tea Industry Control Act	In section 10, by deleting the words “in such manner as provided by rules made by the Supreme Court”
Trusts Act	By repealing section 69
Veterinary Council Act	In section 24, by repealing subsection (2)
Workmen’s Compensation Act	In section 17A, by repealing subsection (5)
Bankruptcy Rules 1888	<p>(a) In rule 11, by deleting the words “Bankruptcy Court” and replacing them by the words “High Court”</p> <p>(b) By deleting rule 92</p> <p>(c) In Form Nos. 1, 4, 19, 34 by deleting the words “Bankruptcy Court” and replacing them by the words “High Court”</p> <p>(d) In Form No. 14, by deleting the words “Judge in Bankruptcy” and replacing them by the word “Judge”;</p> <p>(e) In Form No. 74, by deleting the words “COURT OF BANKRUPTCY” and replacing them by the words “HIGH COURT”</p>
Legal Fees and Costs Rules 2000	<p>(a) In rule 2(b)(i), by deleting the words “the Bankruptcy Court” and replacing them by the words “, the Commercial Division of the High Court”;</p> <p>(b) in the Schedule, in Part A, in paragraph I, in the title and in subparagraph (a), by deleting the words “Bankruptcy Court” and replacing them by the words</p>

“Commercial Division of the
High Court”

Supreme Court (Jury Lists and Panels)
Rules 1992

By repealing rule 5
