

THE MAURITIUS LAW SOCIETY BILL
(No. of 2005)

Explanatory Memorandum

The main object of this Bill is to establish the Mauritius Law Society which will regulate the profession of attorney and uphold the integrity and independence of its members.

The Bill also provides for the Society to be managed by a Council which shall consist of a State Attorney designated by the Solicitor-General and seven other members elected at a General Meeting of the Society.

The Bill further provides for the establishment and publication of a Code of Ethics for Attorneys by the Council and for the setting up of a Register of Attorneys and for the payment of a membership fee.

..... 2005

J. Valayden
*Attorney-General and Minister
of Justice and Human Rights*

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ARRANGEMENT OF CLAUSES

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A BILL

To establish the Mauritius Law Society and to provide for its management by a Council

ENACTED by the Parliament of Mauritius, as follows -

PART I - PRELIMINARY

1. Short title

This Act may be cited as the Mauritius Law Society Act 2005.

2. Interpretation

In this Act –

“attorney” means a law practitioner who is entitled to practise as an attorney under the Law Practitioners Act;

“Code” means the Code of Ethics for Attorneys established under section 17;

“Council” means the Mauritius Law Society Council constituted under section 6;

“exempt member” means a member specified in the Schedule;

“financial year” means calendar year;

“law practitioner” has the same meaning as in the Law Practitioners Act;

“licensed auditor” means an auditor licensed to practise as an auditor under the Financial Reporting Act 2004;

“member” means a member of the Society;

“President” means the President of the Council elected under section 7;

“Register” means the Register of Attorneys kept under section 9;

“Roll” has the same meaning as in the Law Practitioners Act;

“Rules” means the Rules made under section 16;

“Secretary” means the Secretary of the Council elected under section 7;

“Society” means the Mauritius Law Society established under section 3;

“Treasurer” means the Treasurer of the Council elected under section 7;

“Vice-President” means the Vice-President of the Council elected under section 7.

PART II - THE MAURITIUS LAW SOCIETY

3. The Society

There shall be established, for the purposes of this Act, the Mauritius Law Society which shall be a body corporate.

4. Membership

- (1) Every attorney shall be a member of the Society.
- (2) Every member of the Society other than an exempt member shall pay such a membership fee as may be prescribed by the Rules.
- (3) The Secretary shall enter the name of an attorney and such particulars as are provided for under section 9 on the Register, on payment of the membership fee.

5. Objects of the Society

- (1) The objects of the Society shall be to -
 - (a) safeguard and promote the interests of its members;
 - (b) uphold the honour, dignity, reputation and independence of its members;
 - (c) further the interests of its members in connection with the practice of their profession;
 - (d) regulate the profession of attorney and ensure compliance with the Code; and

- (e) uphold standards for the education, continued education and professional responsibility of its members.

(2) In pursuance of its objects, the Society may consider all matters generally concerning the profession of attorney and take such measures as it thinks fit in relation thereto and, in particular, -

- (a) the encouragement of the study of law;
- (b) the improvement of the administration of justice in Mauritius;
- (c) the promotion and support of law reform;
- (d) the maintenance and observance of professional conduct and etiquette;
- (e) the furtherance of good relations between law practitioners in Mauritius and in other jurisdictions;
- (f) the safeguard of the right of access to the Courts and tribunals for members of the public and their representation by counsel and attorney before such Courts and tribunals;
- (g) the affiliation of the Society to any similar association or society in other jurisdictions and the delegation of representatives of the Society thereto; and
- (h) any action to be taken against an attorney for a breach of the Code.

6. The Council

(1) The affairs of the Society in the furtherance of its objects and any of the powers conferred on the Society under this Act shall be managed by a Council which shall consist of -

- (a) a State Attorney designated by the Solicitor-General; and
- (b) 7 other members elected at a General Meeting of the Society specially convened for that purpose, 2 of whom shall be attorneys of not less than 15 years' standing.

(2) Subject to subsections (3) and (4), an attorney elected to serve on the Council shall remain in office for a term of 2 years as from the date of his election.

(3) The tenure of office of any attorney designated or elected to serve on the Council shall terminate on the resignation of the member, or the removal of the member, from the Register.

(4) Where an elected member has resigned or has been removed from the Register, the Council shall appoint an attorney to fill the vacancy.

(5) The Council shall convene a General Meeting for the election of the Council members, as specified in subsection (1), not later than 2 years after the preceding General Meeting convened for the election of the Council members.

(6) Notwithstanding subsection (5), where, in a case of *force majeure*, the General Meeting referred to in subsection (5) cannot be held, the existing members shall continue to remain in office until a new Council is elected.

7. Office bearers

The Council shall, within the next 7 working days after it is constituted, meet and elect a President, a Vice-President, a Secretary, an Assistant-Secretary, a Treasurer and an Assistant-Treasurer.

8. Annual and Special General Meetings

(1) The Council shall convene an Annual General Meeting of the members not later than 3 months after the close of each financial year for the purpose of -

- (a) receiving the President's report on the activities of the Society during the preceding financial year;
- (b) considering and approving the audited accounts of the Society for the preceding financial year;
- (c) appointing a licensed auditor.

(2) The Council may, at any time, and shall, on the written request of not less than 10 of its members, specifying the purpose of the request, convene a Special General Meeting of the members for the purpose of discussing any matter other than those specified in subsection (1).

9. Register of Attorneys

The Secretary shall keep a Register of Attorneys in which shall be entered -

- (a) the names, professional and home addresses, qualifications and other particulars of every member; and
- (b) any alteration in the particulars referred to in paragraph (a).

10. Removal from Register

- (1) The Council shall remove from the Register the name of an attorney -
 - (a) who has died;
 - (b) who is provided with a guardian or curator in accordance with the Civil Code or section 27 of the Mental Health Care Act;
 - (c) where it is required to do so by the Supreme Court; or
 - (d) where the attorney gives written notice to the Council that he has ceased to practise.
- (2) Where the name of an attorney, other than an exempt member, is removed from the Register under subsection (1), the Council -
 - (a) shall ensure that all files and documents in his possession, other than personal papers, are transferred to another attorney approved by it;
 - (b) may, for the purposes of paragraph (a), request assistance from an usher or a police officer.
- (3) (a) Notwithstanding subsection(1), the Council may temporarily remove the name of an attorney, other than an exempt member, from the Register where the attorney –
 - (i) is charged with a serious offence involving fraud or dishonesty before a Court of law;
 - (ii) is subject to an investigation for a serious breach of the Code; or
 - (iii) has failed to pay the annual subscription fee in arrears.
- (b) The Council shall, prior to exercising its discretion under paragraph (a)(ii), give an opportunity to the attorney to make representations as to why his name should not be temporarily removed from the Register.

- (c) The Council, on good cause shown, may reinstate the name of an attorney, whose name has been removed under paragraph (a), in the Register.

(4) Any decision of the Council to remove the name of an attorney from the Register either temporarily or permanently shall be communicated to the Registrar of the Supreme Court for any amendment or erasure of the Roll as he thinks fit.

11. Accounts of the Society

(1) The Treasurer shall keep the accounts of the Society which shall, at all reasonable times, be open to inspection by any member.

(2) The Treasurer shall, not later than one month after the close of the financial year, prepare and submit to the auditor a statement of accounts for the preceding financial year.

12. Audit

All accounts and books of the Society shall be audited at least once a year not later than 2 months after the end of the financial year by a licensed auditor appointed by the members at the Annual General Meeting.

13. Legal proceedings

In any proceedings, including proceedings for judicial review, or in any prosecution by or against the Society, the Society shall appear and be represented by the Secretary and service of any judicial or extra-judicial process served on the Secretary shall be good and sufficient service on the Society.

14. Execution of documents

(1) Subject to subsection (2), every document to be executed by or on behalf of the Society shall be signed by the President or the Vice-President and the Secretary or the Treasurer.

(2) Every cheque issued from a current or savings bank account or other negotiable instrument of the Society shall be signed by the President or the Vice-President and the Secretary or the Treasurer.

15. Donations and legacies

(1) Article 910 of the Code Civil shall not apply to the Society.

(2) The Society shall be exempt from payment of any duty or tax on donations or legacies received by it.

(3) Notwithstanding the Income Tax Act, a member shall be entitled to deduct from the tax payable by him in respect of an assessment year the amount of any donation made by him to the Society in the previous income year.

16. Rules

(1) The Council may make such rules as it thinks fit for the purposes of this Act and in particular for -

- (a) regulating the general management and affairs of the Society, including the conditions of employment of staff;
- (b) regulating the admission and removal of members from the Register;
- (c) the election of members to serve on the Council;
- (d) the raising of funds for the objects of the Society and the charging of subscription fees for membership fees;
- (e) the opening of an account at a bank and the investment of any of its funds;
- (f) regulating the proceedings of the Council;
- (g) the disposal of any funds of the Society towards the payment of any expenses which may have been incurred in promoting any object of the Society;
- (h) the holding of meetings of the Society and of the Council and the transaction of business at such meetings; and
- (i) providing for the functions and duties of the President, the Vice-President, the Secretary, the Assistant Secretary, the Treasurer and the Assistant Treasurer of the Society.

(2) Notwithstanding the Interpretation and General Clauses Act, any rules made under subsection (1) shall not be required to be -

- (a) approved by a Minister;
- (b) laid before the Assembly; or
- (c) published in the *Gazette*.

PART III – PROFESSIONAL CONDUCT

17. Code of Ethics

(1) Notwithstanding section 12(d) of the Law Practitioners Act, the Council shall, within 4 months of the coming into operation of this Act, establish and cause to be published in the *Gazette* a Code of Ethics for Attorneys.

- (2) (a) The Society may amend the Code at a general meeting.
- (b) The Council shall cause a notice of every amendment made under paragraph (a) to be published in the *Gazette*.

18. Breach of the Code

(1) The Council may investigate any report made to it regarding an alleged breach of the Code by an attorney, other than an exempt member, and may, subject to subsections (2) and (3), determine that the attorney shall be reprimanded or severely reprimanded.

- (2) The Council shall -
 - (a) attempt to reach an amicable solution between the parties concerned by a report under subsection (1); and
 - (b) afford any attorney who is the subject of such a report an opportunity to be heard.

(3) Where it appears to the Council, after such preliminary investigation as it thinks fit, that there is a *prima facie* case of a serious breach of the Code by an attorney, it shall refer the matter to the Supreme Court for determination under section 18 of the Courts Act.

(4) The Council may determine that a member who has been sanctioned under subsection (1) shall be suspended from membership for a period of not more than 3 months, during which he shall not be entitled to practise.

(5) An attorney may, within 21 days of the date on which a decision under subsection (1) or (4) is communicated to him, by written notice addressed to the Secretary, appeal against the decision at a Special General Meeting of the Society to be convened for that purpose by the Secretary within 21 days.

(6) Any party aggrieved by a decision under subparagraph (5) may appeal to the Supreme Court by way of judicial review.

19. Account by attorney

(1) Where a relationship of attorney and client exists, or has existed, a summons may be issued by the client to the attorney for the delivery of a cash account, or the payment of moneys, or the delivery of securities.

(2) A Judge may order the attorney to deliver to the applicant a list of moneys or securities which he has in his custody or control on behalf of the applicant, or to bring the moneys or securities into Court, within such time as the Judge orders.

(3) Where the attorney alleges that he has a claim for costs against a client, the Judge may make such provision for the payment or security thereof or the protection of the attorney's lien, if any, as the Judge thinks fit.

PART IV - MISCELLANEOUS

20. Regulations

The Minister may, by regulations, amend the Schedule.

21. Consequential amendments

(1) The Local Government Act 2003 is amended in the Eighth Schedule, in Part I, by deleting the following item –

“Attorney”

(2) The Law Practitioners Act is amended in section 15(1) by deleting paragraph (a) and replacing it by the following new paragraph -

- (a) (i) in case of an attorney, he is a member of the Mauritius Law Society and his name is on the Register of Attorneys; and
- (ii) in case of a notary, he holds the prescribed licence.

22. Savings and Transitional provisions

(1) Notwithstanding section 7(1), the Law Society registered under the Registration of Associations Act, shall, within 3 months of the coming into operation of this Act, convene the first Annual General Meeting of the Society for the purpose of -

- (i) electing 7 other members to serve on the Council; and
- (ii) appointing an licensed auditor in accordance with section 11.

(2) Upon the constitution of the first Council the Law Society referred to under subsection (1) shall transfer all its documents, records and assets to the newly constituted Council.

(3) All attorneys whose names are on the Roll on the coming into operation of this Act shall be deemed to be in the Register of Attorneys.

(4) An attorney who has, before the commencement of this Act, paid a fee for a licence to practise in a local government area, shall not be required to pay a licence fee to the society before the expiry of the period for which the licence to practise in the local area is valid.

23. Commencement

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

SCHEDULE
(sections 2 and 20)

Exempt member

Chief State Attorney
Principal State Attorney
Senior State Attorney
State Attorney
Curator of Vacant Estates
Legal Secretary
Assistant Legal Secretary
Any other attorney employed in the public service or a local authority