

## **Introduction**

1. In a request under section 6 of the Law Reform Commission Act, dated 21 November 2006, the Honourable Attorney General informed the Commission that Government has decided to open Mauritius to international law firms by amending the Law Practitioners Act to allow the formation of law corporations. The Commission was asked to examine and review this aspect of the law and report thereon.
  
2. This Government policy was announced by the Honourable Deputy Prime Minister and Minister of Finance and Economic Development in his 2006-2007 Budget Speech as one amongst the fourteen measures for the opening up of the Mauritian economy in order to bring in global players.<sup>1</sup>

## **The Research and Consultation Process**

3. The Commission decided, pursuant to section 8 of the Law Reform Commission Act, to set up an Advisory Panel composed of members of the Commission and persons affected by the matter to be studied (namely the legal professions - the bar, attorneys, and notaries). The Chairperson of the Bar Council, the President of the Law Society, and the President of the Chamber of Notaries were asked to designate a representative on the Advisory Panel: Mr. Caboche-Adam represented the Chamber of Notaries, Mr. Pajanivel Mootoosamy represented the Law Society; Mr. R. Ramburn, and Mr. M. Gujadhur as from mid March 2007, represented the Mauritius Bar Association.
  
4. The Advisory Panel has had several meetings with the stakeholders [members of the profession, the Financial Services Commission and the Ministry of Finance].<sup>2</sup>

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<sup>1</sup> Paragraph 65 of Budget Speech 2006-2007.

<sup>2</sup> The following persons were heard by the Commission: (1) Mr. N. Appa Jala, Attorney-at-Law; (2) Mr. C. Benoit, Barrister-at-Law; (3) Mrs. U. Boolell Banymandhub-Boolell; (4) Mr. S. Ghurburrun, Barrister-at-Law; (5) Mr. M. Hein, Barrister-at-Law; (6) Mr. T. Koenig, Attorney-at-Law; (7) Mr. G. Noel, Attorney-at-Law; (8) Mr. I. Rajahbalee, Barrister-at-Law and former Chief Executive Officer of the Financial Services Commission; (9) Mr. M. Uteem, Barrister-at-Law; (10) Messrs. Chellapermal and Oozer from the Ministry of Finance and Economic Development; (11) Dr. M. Meetarbhan, Chief Executive of the Financial Services Commission.

Written submissions were also received from interested parties, following press notices issued in January 2007.<sup>3</sup> The 2004 Report of the Steering Committee on the Review of Legal Services to the Financial Services Sector<sup>4</sup> was also brought to the attention of the Advisory Panel.

5. We have examined the discussions at the World Trade Organization (WTO) on the liberalization of legal services and we have looked at the law and practice in other jurisdictions (in particular Singapore and Australia). We did not have the opportunity to carry out empirical research on the provision of legal services in Mauritius and in other jurisdictions.

## **Our Findings and Observations**

6. The Commission considers the issue of opening Mauritius to international law firms must be looked at in the context of the globalization of legal practice and the provision of legal services. There have been discussions at the level of WTO on the liberalization of legal services. Although Mauritius has so far not taken any specific commitment on the matter, it is useful to note that many Member States have identified specific legal services in order to qualify the scope of their commitments when retaining different levels of liberalization for the practice of domestic law and for the practice of international law and/or foreign law.<sup>5</sup>

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The Law Reform Commission wishes to put on record its gratitude to Mr. S. Ghurburrun, who readily made available to the Commission documentation relevant to this project. We are also grateful to Mrs Banymandhub-Boolell, Mr Hein, and Mr. Noel for remitting written submissions.

<sup>3</sup> Written submissions were received from Mr. Y. Varma, MP and Barrister-at-Law, Mr. G. Naiken, Mr. D.V. Gooneedry, and Mr. M. Oozeer, Senior State Counsel.

<sup>4</sup> This committee was chaired by Mr. G. Chung Tick Kan, then Chairman of the Financial Services Promotion Authority.

<sup>5</sup> Joint Statement on Legal Services (Communication from Australia, Canada, Chile, the European Communities, Japan, Korea, New Zealand, Singapore, Switzerland, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, and the United States) [S/CSC/W/46], dated 24 February 2005.

The following terminology is used when identifying specific legal services:

- (i) Legal advisory services: includes provision of advice to and consultation with clients in matters, including transactions, relationships and disputes, involving the application or interpretation of law; participation with or on behalf of clients in negotiations and other dealings with third parties in such matters; and preparation of documents governed in whole or in part by law, and the verification of documents of any kind for purposes of and in accordance with the requirements of law. Does not include advice, consultation and documentation services performed by service suppliers entrusted with public functions, such as notary services.
- (ii) Legal representational services: includes preparation of documents intended to be submitted to courts, administrative agencies, and other duly constituted official tribunals in matters involving the application and interpretation of law; and appearance before courts, administrative agencies, and other duly constituted official tribunals in matters involving the application and interpretation

7. We consider the practice of Mauritian law [that is the right of audience before our courts, notarial services, advice on Mauritian law] must still for some time remain the ‘reserved activity’ of our local law practitioners.<sup>6</sup> The ‘citizenship’ requirement for practice of Mauritian law should not be done away for the time being as it may open the floodgate to law practitioners from other jurisdictions. In a few years from now, however, this issue will have to be assessed anew in the light of the changes in the practice of law which the recommendations contained in this Report may have brought about.
8. The Commission views the current law and practice regarding the provision of legal services in Mauritius as deficient since it does not equip the Mauritian lawyer to face the challenges of globalization, such as an outdated code of ethics for barristers, the absence of law firms and restrictions in the formation of multidisciplinary practices (involving collaboration among the three branches of the profession).<sup>7</sup> The sole practice system is no longer appropriate. As pointed out to us, the goodwill of the sole practitioner generally dies with him or her unless his or her affairs have been well organized. Our local law practitioners should be allowed to team up and create law firms/corporations. The teaming up means addition of expertise and knowledge and the sharing of same, the possibility of being a legal entity allowing the professional to a better office organization with sophisticated IT systems, medical schemes, insurance, pension and retirement plans. The legal profession suffers from the fact that, unlike its accounting counterpart, it has had little, if any, international affiliations at a practice level. Lawyers may thus have been slower than accountants in reaping the benefits of

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- of the specified body of law [The inclusion of representational services before administrative agencies and other duly constituted official tribunals within the context of legal services does not necessarily mean that a licensed lawyer must supply such services in all cases. The precise scope of services subject to licensing requirements is subject to the discretion of the relevant regulatory authority.] Does not include documentation services performed by service suppliers entrusted with public functions, such as notary services.
- (iii) Legal arbitration and conciliation/mediation services: preparation of documents to be submitted to, preparation for and appearance before, arbitrators, or mediators in any dispute involving the application and interpretation of law. Does not include arbitration and conciliation/mediation services in disputes for which law has not a bearing which fall under services incidental to management consulting. As a sub-category, International legal arbitration and conciliation/mediation services refers to the same services when the dispute involves parties from two or more countries.
- (iv) Legal services: includes "legal advisory services" as defined in (i), "legal representational services" as defined in (ii), "arbitration and conciliation/mediation services" as defined in (iii) and legal advisory and legal documentation and certification services performed by service suppliers entrusted with public functions, such as notary services.

<sup>6</sup> The notion of ‘reserved legal activity’ is also to be found in the UK Legal Services Bill, currently before the House of Commons.

<sup>7</sup> As regards the current law and practice regarding the provision of legal services in Mauritius by the legal profession, vide Annex 3 to this Report.

operating in the global business sector. We note also that in other offshore jurisdictions, such as Jersey and the Cayman islands, law firms have been instrumental in the successful take off of their financial services sector.

9. Our legal system should expressly recognize the right of foreign lawyers and foreign law firms to practice foreign law and/or international law in Mauritius, and to be involved in international arbitration and conciliation/mediation services here. Mauritian law practitioners should also be permitted to team up with them in order to have the opportunity to engage in legal work, so far unknown to most of them, which globalization is bringing about.

## **Our Recommendations**

10. The amendments we recommend to the existing Law Practitioners Act (reproduced as Annex 2) are contained in Annex 1 [our proposed Law Practitioners (Amendment) Bill].

### **Setting-Up of Law firms by Local Law Practitioners**

11. Law practitioners, who so wish, should be allowed to provide legal services within the legal framework of a corporate entity, be it as an employee or an associate or partner/director/shareholder of the corporate entity [which is to be called law firm/corporation or legal practice corporation]. Of course a law practitioner wishing to practice law as a sole practitioner, as is currently the case, would retain this faculty.
12. The corporate entity shall, for the time being, take a legal form known to our law practitioners [company or société]; in the future the legislature may consider enacting legislation permitting law practitioners to establish the limited liability law partnerships, as is the case in Singapore.
13. The law firm/corporation will need to have a name, a constitution, and obtain the approval of the Attorney General before it is allowed to operate so as to ensure it meets the prescribed legal requirements. The shares shall be held by law

- practitioners. A register of law firms/corporations shall be kept by the Legal Secretary at the Attorney General's office. The list thereof, and of persons working for them, shall be publicized, time and again, and brought to the attention of the Chief Justice and other authorities.
14. A law practitioner should be free to associate with any other law practitioner. The law should leave to the law practitioner the choice with whom amongst the law practitioners he or she wishes to associate, and the law practitioners with whom he or she associates need not be members of the same branch of the profession. We reject the view put forward to us that notaries or attorneys should only team up with the members of the same branch of the profession. Where a law practitioner is a partner or employee of a law firm/corporation, he shall not have an interest as a shareholder or director of another law firm/corporation, nor shall he practice on his own account.
  15. The law firm/corporation shall be authorized to do anything that a law practitioner can do by law and be required to do all that a law practitioner is required to do by law, save the doing of anything that can only be done by a law practitioner as a natural person. The law firm/corporation would, however, only be able to provide legal services in respect of which it has a "signing practitioner", belonging to the appropriate branch of the profession, as one of its partners/directors.
  16. A law practitioner who provides legal services as employee or partner or a director of a law firm/corporation shall be subject to the rules of professional conduct as if he or she were personally providing legal services. Similarly with respect to clients, the law firm/corporation shall be subject to the same fiduciary, confidential and ethical requirements that exist between a law practitioner and a client.
  17. An attorney or barrister who becomes an employee, an associate, director/partner of the corporate entity should retain his or her right of audience before the Courts.

**Setting-Up of Joint Law Ventures, of local offices by Foreign Law Firms; Registration of Foreign Lawyers**

18. We recommend that foreign law firms and foreign lawyers should be permitted to team up with local law firms or law practitioners with a view to establishing a Joint Law Venture.
19. With a view not to defeat Government's policy of opening Mauritius to international law firms, which is prompted by economic imperatives, we also recommend that a foreign law firm willing to establish a local office in Mauritius should be permitted to do so with the possibility for a few local law practitioners to work for it.
20. A registered foreign lawyer shall practice foreign and/or international law in Mauritius only through the local office of a registered foreign law firm or a Joint Law Venture.
21. The view has been put forward before us that our local law firms or law practitioners should hold, if not a majority of the shares, a minimum shareholding in a Joint Law Venture. We have given considerable thought to this matter and we have reached the conclusion that this proposal is not pragmatic and would defeat Government's policy of opening up Mauritius to foreign law firms and opening new legal markets to our local lawyers. We therefore recommend that this is a matter best left to the partners in the venture.
22. With a view to ensuring legal requirements are complied with, a Joint Law Venture or the local office of a Foreign Law Firm shall operate after obtaining the approval of the Attorney General. We also recommend that there be appropriate safeguards in the event of the cancellation of the registration of a Joint law venture or a foreign law firm. The Legal Secretary at the Attorney General's Office shall keep a register of Joint Law Ventures and Foreign Law Firms; the list thereof and the persons working for them shall, time and again be publicized.
23. The registration of foreign lawyers shall be done by the Attorney General in accordance with prescribed requirements. Of course the Attorney General shall have the opportunity to consult such authorities as he may think fit with a view to ensuring the lawyers concerned display the required integrity (thereby eliminating any risk of involvement on their part, inter alia, in organized crime, money laundering or terrorism financing). Legal safeguards should be afforded to a

foreign lawyer as to the circumstances and the manner in which his registration may be suspended or cancelled. The register of foreign lawyers shall be kept by the Legal Secretary at the Attorney General's Office and would be publicized time and again.

24. The registered foreign lawyer though entitled to practice only foreign law and/or international law would be subjected to the same professional ethical and practice standards as are applicable to our local law practitioners.

### **Other related matters**

25. We recommend that a full time law academic at the University of Mauritius, with at least five years experience, be allowed to provide for a fee legal advice. This measure is in line with the university's policy, and was contemplated in the 1998 Report of Lord Mackay. It hangs together with our other law reform proposals and ensures society can benefit from the legal expertise of those law professors.

### **Concluding Remarks**

26. Our country and our law professionals must be fully equipped to meet the challenges of globalization. The legal education currently provided to our lawyers at the University of Mauritius and by the Council of Legal Education must, as a matter of urgency, be revisited with a view to imparting to them the knowledge, skills and attitude required of the new breed of transnational lawyers/global lawyers. The Ministerial Committee reviewing the structure and operation of the Council of Legal Education will, we trust, pay heed to this aspect. We are also alive that seminars on law practice management and on the globalization of legal services will have to be organized for our local law practitioners.
27. Should our proposals be implemented, the Code of Ethics of the branches of the legal profession would have to be revisited.

28. We are at the disposal of the Attorney General for any help in the drafting of regulations in relation to the provision of legal services by law firms, foreign law firms, joint law ventures and foreign lawyers.
29. We consider the time is ripe for Government to come forward with the appropriate legislative framework, which would enable Mauritius to emerge as an International Arbitration Centre.
30. We also consider that Government should strive to ensure that our lawyers would, on the basis of reciprocity, be allowed to practice law in foreign jurisdiction on same terms as foreign lawyers would be permitted to practice law in Mauritius.
31. We trust the proposals we have come forward with will open new opportunities for our global business sector, will help boost up our economy at this critical juncture, and will no doubt expand the practice of law by our lawyers in this country and beyond our shores.

# **Annex 1**

## **THE LAW PRACTITIONERS (AMENDMENT) BILL**

**(No                      of                      2007)**

### **Explanatory Memorandum**

The object of this Bill is to amend the Law Practitioners Act to make provision for –

- (a) the establishment of law firms/corporations by law practitioners, being associations of law practitioners, and for the modalities of their functioning;
- (b) the registration of Foreign Law Firms, Joint Law Ventures and foreign lawyers, and provide the framework for the regulation of the practice of foreign law and international law in Mauritius; and
- (c) other related matters.

May 2007

(sd) Jayarama Valayden

Attorney-General and

Minister of Justice and Human Rights

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# THE LAW PRACTITIONERS (AMENDMENT) BILL

(No.                      of                      2007)

## ARRANGEMENT OF CLAUSES

### Clause

1. Short title.
2. Interpretation.
3. Section 2 of the principal Act amended.
4. Section 3 of the principal Act amended.
5. New sections 3A to 3L inserted in the principal Act.
6. New sections 12A to 12E inserted in the principal Act.
7. Section 13 of the principal Act amended.
8. Section 17 of the principal Act amended.
9. New section 21A inserted in the principal Act.
10. Section 22 of the principal Act amended.
11. Commencement

**A BILL**

To amend the Law Practitioners Act with the object of making provision for the setting up and functioning of law firms/corporations, being associations of law practitioners, to regulate the practice in Mauritius of foreign law and international law by foreign lawyers through a Joint Law Venture or a local office, and to provide for other related matters.

ENACTED by the Parliament of Mauritius, as follows –

1. **Short title.**

This Act may be cited as the Law Practitioners (Amendment) Act 2007.

2. **Interpretation**

In this Act –

“principal Act” means the Law Practitioners Act.

**3. Section 2 of the principal Act amended.**

Section 2 of the principal Act is amended by inserting the following definitions in their appropriate alphabetical place –

“director” in relation to a law firm/corporation or a Joint Law Venture–

- (a) shall have, in the case of a company, the same meaning as in the Companies Act 2001; and
- (b) includes, in any other case, any person having responsibility of managing the day to day affairs of that body, whether acting individually or collectively;

“foreign law firm” means a corporate entity that is entitled to engage in legal practice in a foreign country;

“foreign lawyer” means a natural person who is duly authorized or registered to engage in legal practice in a foreign country;

“international law” includes law established by international treaties and conventions, as well as international customary law;

“Joint law venture” means the joint law venture established under section 12A;

“law firm/corporation” means a company or ‘société’ which has been approved in accordance with section 3A;

“legal consultant” means a person who has been a Judge of the Supreme Court or a person who has, for a period of not less than 5 years in the aggregate, been –

- (a) a practicing law practitioner;
- (b) a law officer;
- (c) a magistrate;

- (d) a full-time member of the academic staff of the Department of Law of the University of Mauritius or any recognized university; or
- (e) holding any combination of occupations referred to in paragraphs (a), (b), (c) and (d).

“legal services” means any service which a law practitioner may lawfully provide, including foreign and international law;

“local office” in relation to a foreign law firm means the office set up in accordance with section 12A;

“register” means the register of firms/corporations, the register of foreign law firms, the register of Joint law ventures, and the register of foreign lawyers required to be kept by the Legal Secretary respectively under sections 3K, 12A, and 12C;

“signing practitioner” means a law practitioner having the status of legal consultant;

#### **4. Section 3 of the principal Act amended.**

- (a) Subsection (1) is amended by adding the following words after the word “Roll” –  
“as a barrister, an attorney or a notary”.

- (b) A new subsection (3) is added

(3) Nothing in this Act shall be deemed to prevent a legal consultant working as a full-time academic at the University of Mauritius from giving, for a fee or reward, legal advice to any other person.

**5. New sections 3A to 3L inserted in the principal Act.**

The principal Act is amended by inserting, immediately after section 3, the following new sections –

**3A. Approval of law firm/corporation**

(1) Two or more law practitioners may apply to the Attorney General for approval:-

(a) of a limited company or a 'société' as a law firm/corporation;  
and

(b) of the name or proposed name of the law firm/corporation.

(2) An application under subsection (1) shall be made in such manner as may be prescribed.

(3) Subject to this section, the Attorney General may, on receiving an application under subsection (1), approve the company or 'société' as a law firm/corporation where -

(a) the constitution of the proposed firm/corporation provides that its primary object is to supply legal services and satisfies the requirements of this Act; and

(b) the proposed firm/corporation comprises at least one law practitioner qualifying as legal consultant.

- (4) The Attorney General shall not grant approval under subsection (3) unless the applicant gives a written undertaking that no person other than a law practitioner shall be permitted to bind the firm/corporation in any manner.
- (5) The approval under subsection (3) shall not take effect until the firm/corporation is registered or incorporated, as the case may be.

**3B. Name of law firm/corporation**

- (1) The Attorney General shall not approve the name or proposed name of a law firm/corporation which, in its opinion, is -
  - (a) misleading or detracts from the dignity of the legal profession;
  - (b) so similar to that of an existing law firm/corporation or foreign law firm or Joint Law Venture or law practitioner as likely to be confused with it or him, as the case may be; or
  - (c) inconsistent with section 35 of the Companies Act 2001.
- (2) Notwithstanding sections 32 and 33 of the Companies Act 2001, a law firm/corporation which is a company need not have the word "Limited" as part of its name.
- (3) Every law firm/corporation shall have the words "Law Firm" or "Legal Practice Corporation" or the acronyms "LPC" or "SCP" ["Société Civile Professionnelle"] as part of its name and no law practitioner or unincorporated group of law practitioners shall have such words or letters as part of his or its name.

- (4) The directors of a law firm/corporation shall ensure that every invoice or official correspondence of the law firm/corporation bears the statement that it is registered or, as the case may be, incorporated with limited liability.
- (5) The name of a law firm/corporation shall not be changed without the prior approval in writing of the Attorney General.
- (6) Where the Attorney General is satisfied that the name or a change of name of a law firm/corporation has been approved, through inadvertence or otherwise, in contravention of subsection (1), the Attorney General may direct the law firm/corporation to change its name, and the law firm/corporation shall comply with the direction within 6 weeks from the date of the direction or such longer period as the Attorney General may appoint.

### **3C. Acts of Law Firms/Corporations**

- (1) Subject to subsection (2), a law firm/corporation -
  - (a) may perform all such acts that a law practitioner can legally perform; and
  - (b) shall do all acts that a law practitioner is legally required to do.
- (2) Subsection (1) shall not apply to the doing of anything that can only be done by—
  - (a) a law practitioner as a natural person; or
  - (b) a barrister or an attorney or a notary where, as the case may be, the law firm/corporation does not comprise a barrister or an attorney or a notary designated as a signing practitioner.

- (3) A law practitioner who provides legal services as a partner, director or an employee of a law firm/corporation shall be subject to the same rules of professional conduct and competence in respect of such services as if he were personally providing the legal services as a law practitioner in the law firm/corporation.

### **3D. Relationship with Clients**

- (1) A law firm/corporation shall, with respect to its clients, have the same rights and shall be subject to the same fiduciary, confidential and ethical requirements that exist at law with respect to a law practitioner and his client.
- (2) The law practitioner – client privilege shall exist between a law firm/corporation and its clients in the same way as it exists between a law practitioner and his client and extends to every law practitioner who is a partner, director or employee of the law firm/corporation.

### **3E. Conflict of Interest**

- (1) Subject to subsection (2), it shall not be permissible for law practitioners who are partners, directors, legal consultants or employees of the same law firm/corporation to appear for different parties in any litigation or transaction except where the different interests involved are not in manifest conflict.
- (2) It shall be possible for such law practitioners to appear for a party to a litigation or transaction having a conflicting interest where a waiver in writing is obtained from all the parties involved prior their acting.

**3F. Professional Misconduct**

- (1) An act or omission of a law practitioner may constitute professional misconduct even where it is only done or occurs while the law practitioner provides legal services through a law firm/corporation.
- (2) The partners, directors or employees of a law firm/corporation shall be jointly liable to disciplinary proceedings if the business of the law firm/corporation is conducted in a manner unbecoming the legal profession, and such conduct cannot be attributed to the act or omission of a particular law practitioner who can be identified.
- (3) A partner, director, employee or legal consultant of a law firm/corporation who is a law practitioner shall not -
  - (a) hold shares in any other law firm/corporation;
  - (b) be a partner, director, employee or legal consultant of any other law firm/corporation; or
  - (c) practice as a law practitioner on his own account.
- (4) Where the directors of a law firm/corporation have reasonable ground to believe that an act or omission of a law practitioner who is a partner, director or employee of the firm/corporation constitutes a breach of the relevant Code of Ethics or the rules of professional practice, they shall forthwith report the matter -
  - (a) in the case of an attorney, to the Law Society Council;
  - (b) in the case of a barrister, to the Bar Council; or
  - (c) in the case of a notary, to the Chamber of Notaries.

**3G. Alteration of Constitution**

The directors of a law firm/corporation shall at all times ensure that any alteration to its constitution complies with the requirements of this Act.

**3H. Shares of Law Firms/Corporations**

- (1) No person shall transfer or dispose of any shares in a law firm/corporation except in accordance with this section and any regulations made under section 22.
- (2) The shares in a law firm/corporation shall be held by law practitioners subject to any regulations made under section 22 as to any shares or proportion of shares which may be held by such other persons or class of persons as may be prescribed.
- (3) No shares in a law firm/corporation may be held by a person as nominee for other person.
- (4) Except with the prior approval of the Attorney General and in such circumstances as may be prescribed, any person who holds shares in a law firm/corporation shall not -
  - (a) hold shares in any other law firm/corporation;
  - (b) be a partner, director, employee or legal consultant of any other law firm/corporation; or
  - (c) practice as a law practitioner on his own account.
- (5) No security may be created over any share in a law firm/corporation.

- (6) A law practitioner who, pursuant to disciplinary proceedings, is suspended from practice or struck off the Roll, shall not hold any shares in a law firm/corporation unless the Attorney General, on the law practitioner's application or that of the law firm/corporation, grants him a grace period of not more than 6 months to transfer or dispose of his shares in the law firm/corporation.
- (7) Any transfer or disposal of shares made in contravention of subsections (1) to (6) shall be null and void.
- (8) Where a law practitioner has been suspended from practice or struck off the Roll pursuant to disciplinary proceedings, he shall not, directly or indirectly, exercise any voting rights attached to his shares or take part or be concerned in the management or practice of a law firm/corporation.

### **31. Winding up of Law firms/Corporations**

- (1) A law firm/corporation may, on application made by the Legal Secretary, be wound up under the Companies Act or the Civil Code, as the case may be, where -
  - (a) the law firm/corporation ceases to satisfy the requirements of this Act relating to law firms/corporations; or
  - (b) the business of the law firm/corporation has been conducted in a manner unbecoming the profession.
- (2) The grounds for winding up referred to in subsection (1) are in addition to those specified in the Companies Act or the Civil Code, as the case may be.

**3J. Right of appeal against decisions of the Attorney General regarding approval of Law Firm/Corporation**

- (1) An applicant for the approval by the Attorney General of -
- (a) a company or 'société' as a law firm/corporation;
  - (b) an amendment or alteration to the constitution of a law firm/corporation; or
  - (c) a change in the name of a law firm/corporation,
- may appeal to the Supreme Court against a decision of the Attorney General in such manner as may be prescribed.
- (2) On the hearing of an appeal under this section, the Supreme Court may-
- (a) confirm the decision of the Attorney General; or
  - (b) direct the Attorney General to grant the application for approval, either unconditionally or subject to such conditions as may be specified by the Court,
- and may make such order as to the payment of costs as it thinks fit.

**3K. Register of law firms/corporations**

- (1) The Legal Secretary shall -
- (a) keep a register of all the law firms/corporations and have custody of the register and all documents relating to it; and
  - (b) allow any person to inspect the register.

- (2) The Legal Secretary may remove from the register the particulars of a law firm/ corporation which -
  - (a) has ceased to provide legal services;
  - (b) has been wound up; or
  - (c) contravenes the undertaking given in accordance with section 3A (4).
  
- (3) The Legal Secretary shall annually in June cause to be published in the Government Gazette a list of law firms/corporations and of the persons working for them.

### **3L. References in Other Enactments**

In any enactment other than this Act, a reference to a barrister, or an attorney or a notary shall, with necessary modifications or adaptations, be construed as including a reference to a law firm/corporation.

### **6. New sections 12A to 12E inserted in the principal Act.**

The principal Act is amended by inserting, immediately after section 12, the following new sections –

#### **12A. Registration of Foreign Law Firm and Joint Law Venture**

- (1) The Attorney General may, as may be prescribed, approve an application by-
  - (a) a foreign law firm jointly made with a Mauritius law firm/corporation, established under section 3A, to be registered as a Joint Law Venture,

- (b) a foreign law firm jointly with one or more law practitioners (at least one of whom shall have the status of legal consultant) to be registered as a Joint Law Venture,
- (c) one or more registered foreign lawyers (at least one of whom shall have five years legal practice) and one or more law practitioners (at least one of whom shall have the status of legal consultant) to be registered as a Joint Law Venture

on such terms and conditions and for such period as the Attorney General may think fit.

(2) A Joint Law Venture may be constituted —

- (a) by a partnership between a foreign law firm and a Mauritius law firm/corporation or law practitioners, or between one or more registered foreign lawyers and one or more law practitioners;
- (b) by the incorporation of a company under the laws of Mauritius with shares in the company held by a foreign law firm and a Mauritius law firm/corporation or law practitioners, or by one or more registered foreign lawyers and one or more law practitioners; or
- (c) by any other arrangements as may be prescribed.

(3) A foreign law firm and a Mauritius law firm/corporation, or one or more registered foreign lawyers and one or more law practitioners, are eligible to make an application jointly under subsection (1) if they satisfy the prescribed conditions.

(4) The Attorney General may, if he is satisfied that it is in the public interest to do so, by notice in writing, vary or revoke any term or condition imposed on the approval given under subsection (1).

(5) A Joint Law Venture which feels aggrieved by a decision of the Attorney General under subsection (4) may appeal, in such manner as may be prescribed, to the Supreme Court against the decision of the Attorney General.

- (6) A foreign law firm may, as may be prescribed, apply to the Attorney General to operate a local office in Mauritius.
- (7) The Attorney General shall, as may be prescribed, impose conditions for the opening of a local office by a foreign law firm, including the requirement that at least two law practitioners work for the office.
- (8) Foreign lawyers who are employed by, or who are partners or directors of, a registered foreign law firm or Joint Law Venture may practice law only in accordance with section 12D.
- (9) The registered Joint Law Venture may bill its clients as if it were a single law firm.
- (10) Nothing in this Act shall prevent the constituent law firms, or law practitioners and registered foreign lawyers, in the Joint Law Venture from sharing office premises, profits or client information with respect to the legal practice of the Joint Law Venture.
- (11) A foreign law firm which constitutes part of a Joint Law Venture, or a foreign registered lawyer who forms part of the local office of a foreign law firm or a Joint Law Venture, shall not practice foreign law and international law in Mauritius except through the local office of the foreign law firm or through the Joint Law Venture.
- (12) The directors of a Joint Law Venture which is a limited company shall ensure that every invoice or official correspondence of the Joint Law Venture bears the statement that it is incorporated with limited liability.
- (13) The legal Secretary shall make available for public inspection the register of foreign law firms and Joint Law Ventures with particulars thereof, and shall cause to be published annually in June in the Government Gazette a list thereof and the persons working for them.

**12B. Cancellation of Registration of Foreign Law Firm and Joint Law Venture**

- (1) The Attorney General may, by notice in writing to a foreign law firm or Joint Law Venture cancel its registration under section 12A if the Attorney General is satisfied that there is sufficient reason for doing so.

- (2) Without limiting the grounds for cancellation, the registration may be cancelled if:-
- (a) the foreign law firm's home registration authority cancels its registration as a result of criminal, civil or disciplinary proceedings;
  - (b) the Joint Law Venture fails to comply with any requirement;
  - (c) the registration or authorization of the foreign law firm by its home registration authority has lapsed;
  - (d) the foreign law firm has been dissolved or is in liquidation;
  - (e) the foreign law firm or Joint Law Venture fails to comply with any condition imposed on its registration;
  - (f) the Joint Law Venture has been dissolved and reconstituted without the approval of the Attorney General; or
  - (g) the Attorney General is satisfied that it is in the public interest to do so.
- (3) Registration may not be cancelled on any of the grounds specified in subsection (1) or (2) unless the foreign law firm or Joint Law Venture, or its shareholders, are given a reasonable opportunity to make written representations to the Attorney General.
- (4) A foreign law firm or Joint Law Venture, or its shareholders, who feels aggrieved by a decision of the Attorney General under subsections (1) and (2) may appeal, in such manner as may be prescribed, to the Supreme Court against the decision of the Attorney General.

#### **12C. Registration of Foreign Lawyer**

- (1) A foreign lawyer may, in the manner as may be prescribed, apply to the Attorney General for registration to practice law in Mauritius.
- (2) No foreign lawyer shall be entitled to practice law unless he has been registered.

- (3) A foreign lawyer shall practice law in Mauritius through a Joint Law venture or the local office of a foreign law firm.
- (4) A foreign lawyer must not engage in any conduct in practicing foreign law and/or international law that would, if the conduct were engaged in by a Mauritian law practitioner in practicing Mauritian law in this jurisdiction, be capable of being professional misconduct or unsatisfactory professional conduct.
- (5) The Legal Secretary shall annually in June cause to be published in the Government Gazette the list of registered foreign lawyers.

**12D. Scope of Practice of Registered Foreign Lawyer**

- (1) A registered foreign lawyer may provide only the following services in Mauritius –
  - (a) doing work, or transacting business, concerning the law of a foreign country where the lawyer is entitled to practice;
  - (b) legal services (including appearances) in relation to arbitration proceedings of a kind prescribed;
  - (c) legal services (including appearances) in relation to proceedings before bodies other than courts, being proceedings in which the body concerned is not required to apply the rules of evidence and in which knowledge of the foreign law of a country referred to in paragraph (a) is essential;
  - (d) legal services for conciliation, mediation and other forms of consensual dispute resolution of a kind prescribed;
  - (e) legal advice in relation to aspects of international law.
- (2) Nothing in this Act authorizes a registered foreign lawyer to appear in any court (except on the lawyer's own behalf) or to practice Mauritian law in this jurisdiction.

- (3) Despite subsection (2), a registered foreign lawyer may advise on the effect of a Mauritian law if:
- (a) the giving of advice on Mauritian law is necessarily incidental to the practice of foreign law, and
  - (b) the advice is expressly based on advice given on the Mauritian law by a Mauritian law practitioner.

**12E. Suspension or Cancellation of Registration of Foreign Lawyer**

- (1) The Attorney General may, in accordance with prescribed procedures, suspend or cancel the registration of a foreign lawyer.
- (2) The registration of a foreign lawyer may be suspended or cancelled on reasonable grounds such as –
- (a) The registration was obtained because of incorrect or misleading information;
  - (b) Failure to comply with the requirements of this Act;
  - (c) Failure to comply with a condition imposed on the person's registration;
  - (d) the person becomes the subject of disciplinary proceedings in Mauritius or a foreign country (including any preliminary investigations or action that might lead to disciplinary proceedings);
  - (e) the person has been convicted in Mauritius or a foreign jurisdiction of an offence involving fraud or dishonesty;
  - (f) the person's registration is cancelled or currently suspended in any place as a result of any disciplinary action in Mauritius or a foreign country.
- (3) A foreign lawyer whose registration has been suspended or cancelled under subsection (1) may appeal, in such manner as may be prescribed, to the Supreme Court against the decision of the Attorney General.

**7. Section 13 of the Principal Act Amended.**

Section 13 of the principal Act is amended by adding after the words ‘law practitioner’ wherever they appear the words “or a registered foreign lawyer”.

**8. Section 17 of the Principal Act Amended.**

Section 17 of the principal Act is amended by adding after the words “law practitioner” wherever they appear the words “or law firm/corporation or foreign law firm or joint law venture”

**9. New section 21A Inserted in the Principal Act.**

The principal Act is amended by inserting, immediately after section 21, the following new section –

**21A. Consultation by Attorney General**

On receipt of an application under sections 3A, 12A or 12C, the Attorney General shall consult the Chief Justice and such other authorities as he may think fit, and shall keep the Chief Justice and such other authorities as he may think fit informed of the outcome of the application.

**10. Section 22 of the Principal Act Amended.**

Section 22 of the principal Act is amended by repealing subsection (1) and replacing it by the following subsection –

- (1) Regulations may be made under this Act –
  - (a) by the Attorney General in relation to law practice by law firms/corporations, foreign law firms, Joint Law Ventures and foreign lawyers;
  - (b) by the Council with the approval of the Prime Minister for any other purpose.

**11. 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 different provisions.

## Annex 2

# Law Practitioners Act

Act 55 of 1984 – 1 April 1985

Amended 33/05

### ARRANGEMENT OF SECTIONS

- 1 Short title
- 2 Interpretation
- 3 Practice of law and legal advice
- 4 Qualifications of law practitioner
- 5 Pupillage or articleship in special cases
- 6 Application for admission
- 7 Objection to application
- 8 Order for admission
- 9 Admission
- 9A Senior barristers and attorneys
- 10 Roll
- 11 Establishment of Council
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- 13 Disciplinary proceedings
- 14 Procedure at disciplinary proceedings
- 15 Licence and security
- 16 Touting
- 17 Inducing clients to abandon their law practitioners
- 18 Documents
- 19 Employment of persons by law practitioners
- 20 Publication of names of law practitioners
- 21 Right of audience
- 22 Regulations
- 23 Offence
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**1 Short title**

This Act may be cited as the Law Practitioners Act.

**2 Interpretation**

In this Act –

“certificate of competency” means a certificate issued under section 4;

“Chairman” means the Chairman of the Council;

“Council” means the Council of Legal Education established under section 11;

“law practitioner” means a barrister, an attorney or a notary whose name has been entered on the Roll;

“member” means a member of the Council and includes the Chairman;

“Registrar” means the Judge in Bankruptcy and Master and Registrar;

“Roll” means the roll established under section 10.  
[Amended 29/92]

**3 Practice of law and legal advice**

(1) Subject to this Act, no person shall practise law in Mauritius unless his name has been entered on the Roll.

(2) Nothing in this Act shall be deemed to prevent a person who has been a Judge from giving, for a fee or reward, legal advice to any other person.

**4 Qualifications of law practitioner**

(1) (a) Subject to paragraph (b), any citizen of Mauritius who has been called to the Bar of England and Wales may apply for admission to practise as a barrister.

(b) No person shall be admitted to practise as a barrister under paragraph (a) unless he has served a period of pupillage of–

(i) not less than one year with a barrister of at least 10 years’ standing at the Bar of England and Wales; or

(ii) not less than one year consisting of –

- (A) 3 or more consecutive months of pupillage with a practising attorney of at least 5 years' standing in Mauritius; and
  - (B) an aggregate of 9 or more months of pupillage, whether consecutive or not, with one or more practising barristers of at least 10 years' standing in Mauritius, France or at the Bar of England and Wales.
- (2) Subject to subsection (1), no person shall be admitted as a law practitioner unless –
- (a) he is –
    - (i) the holder of a degree in law awarded by the University of Mauritius of such level as the Council may prescribe; or
    - (ii) the holder of any other degree in law which the Council considers to be of an acceptable level and satisfies the Council of his proficiency in such areas of Mauritian law as the Council may, having regard to the subjects covered in his degree, determine;
  - (b) he has passed the appropriate vocational examinations prescribed by the Council;
  - (c) he has, subject to subsection (3) –
    - (i) in the case of a prospective barrister, served a period of pupillage of not less than one year consisting of –
      - (A) not less than 3 consecutive months of pupillage with a practising attorney of at least 5 years' standing in Mauritius; and
      - (B) not less than 9 months of pupillage, whether consecutive or not, with one or more practising barristers of at least 10 years' standing either in Mauritius or, with the approval of the Council, at the Bar of England and Wales or in France;
    - (ii) in the case of a prospective attorney, been articled to an attorney who has been in practice for at least 10 years in Mauritius, for a period of not less than one year or in such manner as may be approved by the Council; and
    - (iii) in the case of a prospective notary –
      - (A) been articled to a notary for a period of not less than 2 years; and
      - (B) attained the age of 25 and been issued with a certificate of good conduct (certificat de moralité) delivered by the Chamber of Notaries; and
  - (d) he has been issued with a certificate of competency after serving his period of pupillage or articleship or completing his alternative training, as the case may be.

- (3) Where the Council is satisfied that facilities do not exist for a prospective law practitioner to serve a period of pupillage or to be articled, as the case may be, the Council may approve such alternative training as it considers appropriate and may, on being satisfied that the prospective law practitioner has successfully completed the alternative training, issue a certificate of competency to him.

[Amended 20/93; 6/95; 23/96]

## **5 Pupillage or articleship in special cases**

The period of employment of a prospective attorney in the Attorney-General's Office as a Law Clerk, or in the Judicial Department as clerk to a Judge or clerk in the Registry of the Supreme Court shall, for the purposes of section 4(2)(c), be reckoned to be service under articleship.

## **6 Application for admission**

- (1) Any person who wishes to be admitted to practise law in Mauritius shall make a written application addressed to the Chief Justice and lodged with the Registrar.
- (2) An application under subsection (1) shall be accompanied by evidence such as to satisfy the Chief Justice that the applicant –
- (a) is a citizen of Mauritius;
  - (b) is of good character; and
  - (c) holds the qualifications specified in section 4.
- (3) The Registrar shall forward a copy of the application to the Attorney-General and to the Council.
- (4) On receipt of an application under subsection (1), the Registrar shall cause a copy of the application to be posted up at the Supreme Court.

## **7 Objection to application**

- (1) Any person who wishes to object to an application under section 6 shall, within 15 days of the posting up of the copy of the application under section 6(4), give a written notice of his objection to the Chief Justice by lodging the notice of objection with the Registrar.
- (2) Where an objection is made under subsection (1), the Chief Justice or a Judge designated by him for the purpose shall –
- (a) appoint a day for the hearing of the objection; and
  - (b) issue a summons to any interested party to appear before him on the day so appointed.
- (3) An objection under subsection (1) shall be heard and determined in Chambers.

## 8 Order for admission

- (1) Where the Chief Justice is satisfied that an applicant for admission as a law practitioner qualifies for admission, he shall make an Order for the admission of the applicant and appoint a day for the applicant to appear before the Supreme Court or the Registrar, as the case may be.
- (2) The Registrar shall transmit a copy of the Order under subsection (1) to the applicant, and shall notify him of the day appointed for his appearance before the Supreme Court or the Registrar, as the case may be.

## 9 Admission

- (1) On the day appointed under section 8, the applicant shall be presented by a Law Officer—
  - (a) in the case of a barrister, to the Supreme Court;
  - (b) in the case of an attorney or notary, to the Registrar.
- (2) After presentation of the applicant and after the applicant takes such oath of office as may be prescribed by the Chief Justice, the Registrar shall enter his name on the Roll.
- (3) The rank and standing of a law practitioner, and his authority to practise law, shall take effect from the day on which his name has been entered on the Roll.

### 9A Senior barristers and attorneys

The President of the Republic may, on the recommendation of the Chief Justice, by letters Patent, appoint –

- (a) a barrister to be Senior Counsel for the Republic of Mauritius (SC); and
  - (b) an attorney to be Senior Attorney for the Republic of Mauritius (SA).
- [Added 29/92; amended 6/95]

## 10 Roll

- (1) The Registrar shall, for the purposes of this Act, keep a Roll of law practitioners in such form as the Chief Justice may approve.
- (2) The names and addresses of all law practitioners admitted to practise in Mauritius shall be entered on the Roll.
- (3) The Supreme Court may cause any entry on the Roll to be amended or erased.

## 11 Establishment of Council

- (1) There is established for the purposes of this Act a Council of Legal Education which shall be a body corporate.
- (2) The Council shall consist of –
  - (a) a person who holds or has held office as a Judge, designated by the Chief Justice, as Chairman;
  - (b) the Registrar;
  - (c) the Solicitor-General or, in his absence, a Law Officer designated by the Attorney-General;
  - (d) the Vice-Chancellor of the University of Mauritius or his representative;
  - (e) a barrister designated by the Mauritius Bar Council;
  - (f) an attorney designated by the Law Society;
  - (g) a notary designated by the Chamber of Notaries; and
  - (h) such other persons not exceeding 2 as the Chief Justice may, after consultation with the Chairman, co-opt on the Council either generally or for any specific purpose.
- (3)
  - (a) The members designated under subsection (2)(e) to (g) shall –
    - (i) have at least 10 years standing in their respective professions; and
    - (ii) hold office for 3 years but shall be eligible for reappointment.
  - (b) A co-opted member shall hold office for the period or for the purpose for which he has been co-opted but shall be eligible for reappointment.
  - (c) The Chairman and 4 other members shall constitute a quorum.
- (4) The Council shall meet at such time and place as the Chairman may approve.
- (5) Every member may be paid such remuneration or allowance as the Prime Minister may approve.
- (6) The Council may appoint, on such terms and conditions as it thinks fit, a Secretary and such other staff as may be necessary for the proper discharge of its functions under this Act.
- (7) The staff of the Council shall be under the administrative control of the Secretary.

- (8) Service of process on or on behalf of the Council shall be made on or on behalf of the Secretary.  
[Amended 20/93]

## 12 Functions of the Council

### The Council shall –

- (a) conduct or cause to be conducted vocational or training courses for prospective law practitioners and for legal and judicial officers;
- (b) approve courses of study for the purposes of paragraph (a);
- (c) issue certificates of competency; and
- (d) establish and cause to be published in the *Gazette* a Code of Ethics for law practitioners.  
[Amended 20/93; 23/96]

## 13 Disciplinary proceedings

- (1) The Attorney-General may, either proprio motu or on receipt of a complaint under subsection (2), enquire into any act done by a law practitioner.
- (2) Any person who is aggrieved by an act done by a law practitioner in the exercise of his profession may report the matter to the Attorney-General.
- (3) Where the Attorney-General is of opinion that an act done by a law practitioner, whether or not an enquiry under subsection (1) has been made, is of such a nature as to call for the institution of disciplinary proceedings, he shall submit a detailed report on the matter to the Chief Justice and a copy of the report to the person against whom the proceedings are to be taken.
- (4) The Chief Justice shall, on receipt of a report under subsection (3), appoint a day for the hearing of the matter.
- (5) The Registrar shall cause notice of the day appointed for the hearing, together with a copy of the report, to be communicated to the law practitioner.
- (6) Nothing in this section shall be construed as limiting the inherent powers of the Supreme Court to deal with matters of professional discipline of law practitioners.

#### 14 Procedure at disciplinary proceedings

- (1) Any proceedings under section 13 shall take place –
- (a) before at least 3 Judges; and
  - (b) unless the Court otherwise directs, in public.
- (2) Any witness for proceedings under subsection (1) shall be examined on oath.
- (3) The Court may, after considering the evidence laid before it –
- (a) suspend the law practitioner for such period as it thinks fit;
  - (b) order that the name of the law practitioner be erased from the Roll; or
  - (c) make such other order as it thinks fit.
- [Amended 20/93]

#### 15 Licence and security

- (1) No attorney or notary, other than an attorney or a notary in the public service, shall practise law in Mauritius unless –
- (a) (i) in case of an attorney, he is a member of the Mauritius Law Society of Attorneys; and
  - (ii) in case of a notary, he holds the prescribed licence.
- [Repealed and replaced 33/05]
- (b) he furnishes to, and maintains with, the Accountant-General, security during the period he is in practice in accordance with this section.
- (2) The security shall be in the sum of 100,000 rupees in the case of an attorney and 500,000 rupees in the case of a notary and shall be furnished –
- (a) by deposit in cash;
  - (b) by the subscription of a bond by the law practitioner together with 2 sureties approved by the Chief Justice;
  - (c) by a guarantee issued by any bank or insurance company registered in Mauritius; or
  - (d) in such other form as may be approved by the Chief Justice.
- (3) The security shall be applied towards the satisfaction of any liability incurred by an attorney or a notary in respect of a client.

- (4) Subject to subsection (5), the security shall be refunded to the law practitioner or, as the case may be, shall lapse at the expiry of the period of 1 year after –
- (a) he has ceased to practise law; or
  - (b) his name has been erased from the Roll.
- (5) Where judicial proceedings have been instituted against a law practitioner in connection with any act done or omitted to be done in his professional capacity, the security required under this section shall not be refunded or lapse, as the case may be, until the conclusion of the proceedings.  
[Amended 31/94]

## 16 Touting

No person, other than a law practitioner, shall –

- (a) hold himself out to be, or to be qualified to perform any of the functions of, a law practitioner;
- (b) permit his name to be so used as to suggest that he is, or is qualified to perform any of the functions of, a law practitioner;
- (c) for any fee or reward, draft or prepare an affidavit, deed of sale, lease, conveyance, transfer, compromise or any other document under private signature, plaint or pleading, or any other judicial or extra judicial document;
- (d) for any fee or reward, give legal advice to any person;
- (e) for any fee or reward, find clients for a law practitioner; or
- (f) use such words as “barrister-at-law”, “attorney-at-law”, “solicitor”, “notary”, ‘avocat’, ‘avoué’, ‘notaire’ or any other term in such a way as to suggest that he is a law practitioner.

## 17 Inducing clients to abandon their law practitioners

No person shall induce or seek to induce a client of a law practitioner to cease to be the client of that law practitioner or not to become a client and become the client of any other law practitioner.

## 18 Documents

Where a law practitioner draws up or prepares a document in the exercise of his profession, he shall sign and date the document.

**19 Employment of persons by law practitioners**

- (1) Every law practitioner shall, at the beginning of every year, submit to the Attorney-General and the Registrar a list stating –
- (a) the names and addresses of persons employed by him in his professional capacity; and
  - (b) the capacity in which those persons are employed.
- (2) A nil return shall, where appropriate, be submitted under subsection (1).
- (3) Every law practitioner shall, within 8 days of any change in the list of persons employed by him, notify the Attorney-General and the Registrar accordingly.

**20 Publication of names of law practitioners**

The Registrar shall, not later than 30 September in every year and at such other time as he thinks fit, give public notice of the names of all law practitioners.

**21 Right of audience**

- (1) Subject to subsection (2), every law practitioner, other than a notary, shall have a right of audience before any Court.
- (2) No attorney shall appear before –
- (a) the Supreme Court, other than in Chambers, the Bankruptcy Division or the Master's Court; or
  - (b) the Intermediate Court, except in formal matters.
- (2A) Notwithstanding subsection (2), where an attorney appears for a plaintiff in a civil suit before the Intermediate Court, and the defendant does not appear or admits the claim, the attorney may proceed to conduct the case until judgment.
- (3) Notwithstanding sections 3 and 6, the Chief Justice may, in specific cases where the special nature or circumstances of proceedings before the Supreme Court so require, grant to a barrister entitled to practise law before any Court in a country, other than Mauritius, a right of audience before the Supreme Court on such terms and conditions as he thinks fit to impose.
- [Amended 29/92]

**22 Regulations**

- (1) The Council may, with the approval of the Prime Minister, make such regulations as it thinks fit for the purposes of this Act.
- (2) Any regulations made under subsection (1) may provide for the taking of fees and the levying of charges.

**23 Offence**

Any person who wilfully contravenes this Act or any regulations made under it shall commit an offence and shall, on conviction, be liable to a fine not exceeding 2,000 rupees and to imprisonment not exceeding 2 years.

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### Annex 3

## The Current Law and Practice regarding Provision of Legal Services by the Legal Profession

Under the current law, legal services are provided by natural persons, who must be citizens of Mauritius possessing the prescribed qualifications and admitted to practice law as law practitioners [whether as barrister or attorney or notary] after their names have been entered on the roll.<sup>8</sup>

In the case of a practicing attorney he or she needs to be a member of the Mauritius Law Society and to have his or her name on the Register of Attorneys kept by the Mauritius Law Society. In the case of a practicing notary, he or she must hold the prescribed licence.<sup>9</sup>

There are a number of restrictions [whether by statute or as laid down in the Codes of Practice<sup>10</sup>] on the service that can be provided by law practitioners:

- (1) Only barristers and attorneys have a right of audience before the Courts;<sup>11</sup>
- (2) Attorneys have a limited audience before the courts [an attorney can only appear before the Supreme Court in Chambers, before the Bankruptcy Division or the Master's Court; an attorney can only appear before the Intermediate Court in formal matters or to make out a case where the defendant does not appear or admits the claim];<sup>12</sup>
- (3) A barrister in independent practice may supply legal services in civil or commercial matters only if he or she is briefed or instructed by an attorney-at-law;<sup>13</sup>

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<sup>8</sup> Vide sections 3(1), 4, 6, 8, 9 and 10 of the Law Practitioners Act.

<sup>9</sup> Section 15(1)(a) of the Law Practitioners Act.

<sup>10</sup> The Code of Ethics for Barristers has been established by the Council of Legal Education and was caused to be published in the Government Gazette [GN No 1702 of 1997], pursuant to section 12(d) of the Law Practitioners Act. Under section 17(1) of the Mauritius Law Society Act, the Code of Ethics for Attorneys was established by the Mauritius Law Society and was published in the issue of the Government Gazette on 27 May 2006. No Code of Ethics for Notaries has so far been established.

<sup>11</sup> Section 21(1) of the Law Practitioners Act.

<sup>12</sup> Section 21(2) and (2A) of the Law Practitioners Act.

<sup>13</sup> Para. 3.6 of the Code of Ethics for Barristers. Para. 8.2 of the Code further lays down that a barrister shall not appear, except where otherwise provided by statute, in a civil or commercial case before any Court unless instructed by an attorney-at-law.

- (4) An employed barrister [that is a barrister who after being called to the bar is engaged to provide legal advice or services either for his employer under a contract of employment or by virtue of an office] or a non-practising barrister [that is a barrister who after being called has taken up employment or an office other than for the provision of legal advice or services] cannot, without the permission of the Bar Council, act as judge's clerk or barrister's clerk, or in any capacity whereby directly or indirectly he or she supplies legal advice or services to the public or a section of the public;<sup>14</sup>
- (5) A person who has been a Judge [appointed amongst barristers of at least five years standing] is entitled to give, for a fee or reward, legal advice to any other person;<sup>15</sup>
- (6) A barrister who is an employee of a firm or company may supply legal advice or services to his employer or to a holding, subsidiary or associated company of his employer, provided that –
- (a) He or she does not himself supply legal advice or services to the public or a section of the public; and
- (b) The firm or company is not wholly or in part a device whereby the barrister himself or herself (with or without others) is intended directly or indirectly to supply legal advice or services to the public or a section of the public;<sup>16</sup>
- (7) Neither an employed barrister nor a non-practising barrister shall appear before a Court as counsel, but an employed barrister, that is a barrister who after being called to the bar is engaged to provide legal advice or services either for his employer under a contract of employment or by virtue of an office, may appear before a Court on behalf of his employer in his capacity as a legally-qualified employee or as a legally-qualified holder of an office;<sup>17</sup>
- (8) All deeds and contracts which parties are required by law to invest with the character of authenticity attaching to the deeds of a public authority, of establishing the date thereof, of having the custody of the originals and of furnishing copies thereof, must be drawn up by notaries, who are *officiers ministériels* appointed by the Prime Minister, after consultation with the Attorney-General.<sup>18</sup>

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<sup>14</sup> Para. 3.14 of the Code of Ethics for Barristers.

<sup>15</sup> Section 3(2) of the Law Practitioners Act.

<sup>16</sup> Para. 3.15 of the Code of Ethics for Barristers.

<sup>17</sup> Para. 3.18(a) of the Code of Ethics for Barristers.

<sup>18</sup> Section 3 of the Notaries Act.

There are some differences as regards the ethical rules applicable respectively to barristers and attorneys in connection with their ability to work together with other law practitioners and to share fees.

An attorney is entitled to hold out any other person who is an attorney as a partner, practicing in collaboration or in joint practice.

An attorney is also permitted to enter into a fee-sharing or other financial arrangement in kind or cash concerning the practice of law with a person who is a law practitioner.<sup>19</sup>

A barrister may, without the intervention of the instructing attorney, accept a brief or instructions in civil and commercial matters directly from and represent another barrister with the consent of the litigant.<sup>20</sup> A barrister may handle a criminal case for a party, with the party's consent, on the instructions of another barrister who himself or herself acts for the party.<sup>21</sup> A barrister in independent practice who receives fees in respect of work done by another barrister shall himself and without delegating the responsibility to anyone else, forthwith pay the whole of the fee in respect of that work to that other barrister.<sup>22</sup>

A barrister in independent practice may arrange for another barrister to undertake work on his or her behalf (other than a person who has asked to do the work in order to increase his own skill or experience) and he or she shall himself or herself and without delegating the responsibility to anyone else pay proper financial remuneration for the work done.<sup>23</sup>

A barrister cannot share his fees with any person other than a barrister.<sup>24</sup>

The law is currently silent as to whether a notary can enter into any form of partnership or fee-sharing arrangement in relation to the exercise of his or her profession with a notary or another law practitioner.

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<sup>19</sup> Para 13(1) and (2) of the Code of Ethics for Attorneys.

<sup>20</sup> Para. 3.6 of the Code of Ethics for Barristers.

<sup>21</sup> Para. 8.1 of the Code of Ethics for Barristers.

<sup>22</sup> Para. 19.3 of the Code of Ethics for Barristers.

<sup>23</sup> Para. 19.4 of the Code of Ethics for Barristers.

<sup>24</sup> Para. 21.1 of the Code of Ethics for Barristers.