

THE PREVENTION OF CORRUPTION (AMENDMENT) BILL

(No. III of 2006)

Explanatory Memorandum

The main object of this Bill is to amend the Prevention of Corruption Act 2002 in order to provide for –

- (a) the Courts to have jurisdiction to try offenders for corruption offences committed overseas;
- (b) alternative qualifications for appointment as Director-General;
- (c) the manner in which certain statutory powers of the Parliamentary Committee should be exercised during any period when the Committee is not constituted;
- (d) the specific period during which a public officer may be granted leave to take up contractual employment in the Commission;
- (e) the Commission or the Police to have power to enquire into money laundering offences disclosed during an investigation into other offences, subject to the FIU being kept informed;
- (f) the protection of the Commission, the Board and staff of the Commission from liability;
- (g) additional powers to the Director-General in relation to the documents and articles produced to him during an investigation,

and for matters connected therewith or incidental thereto.

14 April 2006

DR. N. RAMGOOLAM

Prime Minister,

Minister of Defence and Home Affairs

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ARRANGEMENT OF CLAUSES

Clause

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| <ol style="list-style-type: none"> 1. Short title 2. Interpretation 3. Section 3 of principal Act amended 4. Section 13 of principal Act amended 5. Section 19 of principal Act amended 6. Section 22 of principal Act amended 7. Section 24 of principal Act amended 8. New section 38A inserted in principal Act | <ol style="list-style-type: none"> 9. Section 45 of principal Act amended 10. Section 46 of principal Act amended 11. Section 50 of principal Act amended 12. Section 56 of principal Act amended 13. Section 61 of principal Act amended 14. Section 82 of principal Act amended 15. New section 82A inserted in principal Act 16. Commencement |
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A BILL

To amend the Prevention of Corruption Act 2002

ENACTED by the Parliament of Mauritius, as follows -

1. Short title

This Act may be cited as the Prevention of Corruption (Amendment) Act 2006.

2. Interpretation

“principal Act” means the Prevention of Corruption Act 2002.

3. Section 3 of principal Act amended

Section 3 of the principal Act is amended in paragraph (a), by deleting the words “elsewhere than in Mauritius” and replacing them by the words “in Mauritius or outside Mauritius”.

4. Section 13 of principal Act amended

Section 13 of the principal Act is amended -

(a) in subsection (1) -

(i) in paragraph (a), by deleting the words “of him” and replacing them by the words “of his”;

(ii) in paragraph (b), by deleting the words “of him”;

- (b) in subsection (2), by deleting the word “relation” and replacing it by the word “relative”.

5. Section 19 of principal Act amended

Section 19 of the principal Act is amended in subsection (4) –

- (a) in paragraph (c), by deleting the word “or” appearing at the end; and
- (b) by inserting immediately after paragraph (c), the following new paragraph -
 - (ca) for an aggregate period of not less than 10 years, has served as a Magistrate in Mauritius and been either a practising barrister or a law officer, or both a practising barrister and a law officer; or

6. Section 22 of principal Act amended

Section 22 of the principal Act is amended in subsection (2), by deleting the words “3 months” and replacing them by the words “9 months”.

7. Section 24 of principal Act amended

Section 24 of the principal Act is amended in subsection (6), by adding immediately after the words “employment with the Commission”, the words “but shall not be granted any further leave, with or without pay, for the purposes of any extension or renewal of such contract of employment”.

8. New section 38A inserted in principal Act

The principal Act is amended by inserting immediately after section 38, the following new section –

38A. Protection from liability of Commission, Board and officers

No action shall lie against the Commission, the Board, any member of the Board or any officer of the Commission, as the case may be, in respect of any act done or omission made by it or him in good faith, in the performance of its or his functions under this Act or any other enactment.

9. Section 45 of principal Act amended

Section 45 of the principal Act is amended –

- (a) in subsection (2) –
 - (i) in paragraph (a), by inserting immediately after the words “an act of corruption”, the words “or a money laundering offence”;
 - (ii) by inserting immediately after the words “the Commissioner of Police may”, the words “, notwithstanding the Financial Intelligence and Anti-Money Laundering Act 2002 and subject to subsection (3),”;
- (b) by adding immediately after subsection (2), the following new subsection –
 - (3) The Commissioner of Police shall forthwith notify the FIU of the nature of the money laundering offence referred to in subsection (2)(a).

10. Section 46 of principal Act amended

Section 46 of the principal Act is amended –

- (a) in subsection (1) –
 - (i) in paragraph (a) –
 - (A) by deleting the words “sections 43, 44 and 45” and replacing them by the words “section 43, 44 or 45”;
 - (B) by inserting immediately after the words “a corruption offence”, the words “or a money laundering offence”;
 - (C) by inserting immediately after the words “it shall”, the words “, notwithstanding the Financial Intelligence and Anti-Money Laundering Act 2002 and subject to subsection (4),”;

- (ii) in paragraph (b) -
 - (A) by deleting the words “7 days” and replacing them by the words “21 days”;
 - (B) by deleting the words “subsection (1)” and replacing them by the words “paragraph (a)”;
- (b) in subsection (2), by deleting the words “7 days” and replacing them by the words “14 days”;
- (c) by adding immediately after subsection (3), the following new subsection –
 - (4) The Commission shall forthwith notify the FIU of the nature of every case relating to a money laundering offence investigated on its own initiative.

11. Section 50 of principal Act amended

Section 50 of the principal Act is amended –

- (a) in subsection (2)(d), by inserting immediately after the word “statements”, the words “, including certified copies thereof,”;
- (b) by inserting immediately after subsection (2), the following new subsection -
 - (2A) Where the Director-General has reasonable grounds to believe that any book, document, record or article produced under subsection (1)(b) may provide evidence relevant to an investigation being conducted by the Commission, he may –
 - (a) where the book, document, record or article is not reasonably required for the purpose of performing any duty under any enactment, retain the book, document, record or article, as the case may be, until its production in Court or until such earlier time as may be required; or
 - (b) make certified copies of, or take records from, the book, document or record.

12. Section 56 of principal Act amended

Section 56 of the principal Act is amended in subsection (2)(a), by inserting immediately after the words "in the order", the words ", whether that person is himself the suspect or not,".

13. Section 61 of principal Act amended

Section 61 of the principal Act is amended by adding immediately after subsection (5), the following new subsections -

(6) Where, as the result of the dissolution of Parliament or for any other reason, the Parliamentary Committee is not constituted, or is unable to perform its functions or exercise its powers under this Act -

(a) its functions under section 24(3) may be performed by the Commission itself;

(b) its functions under subsection (1)(b) and (c) and section 36 may be performed by, and its powers under subsection (2)(c), section 32 or section 35(2), may be exercised by the Financial Secretary.

(7) The powers exercised by the Commission under section 24(3) pursuant to subsection (6)(a) shall be subject to approval or review by the Parliamentary Committee, once it is constituted.

14. Section 82 of principal Act amended

Section 82 of the principal Act is amended by inserting immediately after the words "under this Act", wherever they appear, the words "or Part II of the Financial Intelligence and Anti-Money Laundering Act 2002".

15. New section 82A inserted in principal Act

The principal Act is amended by inserting immediately after section 82, the following new section -

82A. Jurisdiction

(1) Where the act alleged to constitute an offence under this Act, or a money laundering offence, occurred outside Mauritius, a court in Mauritius shall, regardless of whether or not the act constitutes an offence

at the place of its commission, have jurisdiction in respect of that offence if the person to be charged –

- (a) is a citizen of Mauritius;
- (b) is ordinarily resident in Mauritius;
- (c) was arrested in Mauritius or in its territorial waters or on board a ship or aircraft registered or required to be registered in Mauritius at the time the offence was committed;
- (d) is a company incorporated, or registered as such under any law, in Mauritius;
- (e) is a body of persons incorporated in Mauritius, or an unincorporated body operating in Mauritius.

(2) Any act alleged to constitute an offence under this Act or a money laundering offence and which is committed outside Mauritius by a person, other than a person contemplated in subsection (1), shall, regardless of whether or not the act constitutes an offence or not at the place of its commission, be deemed to have been committed also in Mauritius if that -

- (a) act affects or is intended to affect a public body, a business or any other person in Mauritius;
- (b) person is found to be in Mauritius;
- (c) person is, for any reason, not extradited by Mauritius, or if there is no application to extradite that person.

(3) Any offence committed in a country outside Mauritius as contemplated in subsection (1) or (2) is, for the purpose of determining the jurisdiction of a court to try the offence, deemed to have been committed –

- (a) at the place where the accused is ordinarily resident;
or
- (b) at the accused person's principal place of business.

(4) Where a person is charged with conspiracy or giving instructions to commit an offence, the offence shall be deemed to have been committed not only at a place where the act was committed, but also at every place where the conspirator or the person giving instructions acted or, in case of an omission, should have acted.

16. Commencement

(1) Subject to subsections (2) and (3), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections.

(3) Section 3 shall be deemed to have come into operation on 1 April 2002.