

THE DECLARATION OF ASSETS BILL
(No. XXIII of 2018)

Explanatory Memorandum

The object of this Bill is to make better and more comprehensive provisions for the declaration of assets by holders of important offices in the public sector.

2. Accordingly, the Bill –

- (a) repeals the Declaration of Assets Act;
- (b) extends the scope of assets to be declared;
- (c) extends the categories of persons, in addition to Ministers, members of the National Assembly, Commissioners for the Island of Rodrigues, members of the Rodrigues Regional Assembly and Councillors of a Municipal City Council, Municipal Town Council or District Council, who shall be required to make a declaration of their assets and liabilities, to –
 - (i) judicial officers and senior public officers;
 - (ii) the Chief Executives of a Municipal City Council, Municipal Town Council or District Council, and officers of such Councils drawing salary at the level of Deputy Permanent Secretary and above;
 - (iii) Chairpersons and Chief Executive Officers of State-owned enterprises and statutory bodies, and officers of such enterprises and statutory bodies drawing salary at the level of Deputy Permanent Secretary and above;
 - (iv) advisers and officers employed on a contractual basis in Ministries, drawing salary at the level of Deputy Permanent Secretary and above;

- (d) provides that the Independent Commission against Corruption shall be the depository of every declaration,

and for matters related thereto.

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A BILL

To provide for a new legal framework governing the declaration of assets in the public sector in Mauritius, and for matters related thereto

ENACTED by the Parliament of Mauritius, as follows –

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Declaration of Assets Act 2018.

2. Interpretation

In this Act –

"adviser" means the holder of an office referred to in section 89(3)(h) of the Constitution;

"assets" –

(a) means –

- (i) money, in any currency, in local banks and foreign banks;
- (ii) cash in hand exceeding one million rupees in any currency accepted as legal tender in any country;
- (iii) securities, including stocks, bonds, treasury bills or other units held in Mauritius or abroad;
- (iv) shares or any interest in a company, *société* or partnership;
- (v) any item of jewellery, precious stone or metal, or watch exceeding 500,000 rupees in value;
- (vi) any freehold or leasehold immovable property –
 - (A) registered in Mauritius or abroad;
 - (B) which, at the time of declaration, has been purchased but is still subject to registration in Mauritius or abroad;
- (vii) motor vehicles, boats, ships or aircrafts;

- (viii) assets held by a person for and on behalf of the declarant in the declarant's capacity as ultimate beneficiary;

"Commissioner" has the same meaning as in the Rodrigues Regional Assembly Act;

"declarant" means a person who is required to make a declaration under this Act;

"declaration" means a declaration of assets and liabilities referred to in section 4;

"ICAC" means the Independent Commission Against Corruption established under the Prevention of Corruption Act;

"judicial officer" means a judicial officer in the grade of District Magistrate and above;

"Minister" means a person appointed as such under section 59 of the Constitution;

"public officer" has the same meaning as in the Constitution;

"senior public officer" means a public officer of the grade of, or drawing salary at the level of, Deputy Permanent Secretary and above.

3. Application of Act

- (1) Subject to subsection (2), this Act shall apply to –
 - (a) every member of the National Assembly, including the Speaker of the National Assembly, and every Minister;
 - (b) every member of the Rodrigues Regional Assembly, including the Chairperson of the Rodrigues Regional Assembly, and every Commissioner;
 - (c) every Councillor of a Municipal City Council, Municipal Town Council or District Council;

- (d) every Lord Mayor, Deputy Lord Mayor, Mayor, Deputy Mayor, Chairperson and Vice-Chairperson of a Municipal City Council, Municipal Town Council or District Council, as the case may be;
- (e) every judicial officer and senior public officer;
- (f) every Chief Executive of a Municipal City Council, Municipal Town Council or District Council, and every officer of such Councils drawing salary at the level of Deputy Permanent Secretary and above;
- (g) every Chairperson and Chief Executive Officer of State-owned enterprises and statutory bodies, and every officer of such enterprises and statutory bodies drawing salary at the level of Deputy Permanent Secretary and above;
- (h) every adviser and officer employed on a contractual basis in Ministries, drawing salary at the level of Deputy Permanent Secretary and above; and
- (i) such other persons as may be prescribed.

(2) Where a person referred to in subsection (1) is required to make a declaration of his assets and liabilities under any other enactment –

- (a) he shall, notwithstanding that other enactment, not be required to make a declaration of his assets and liabilities under that enactment; but
- (b) he shall make a declaration of his assets and liabilities under this Act; and
- (c) any declaration made under paragraph (b) shall be deemed to meet the requirements of that other enactment.

(3) In this section –

“statutory body” –

- (a) means a body incorporated by an Act; but
- (b) does not include such body as may be prescribed.

PART II – DECLARATION OF ASSETS AND LIABILITIES

4. Obligation to make declaration of assets and liabilities

(1) Every member of the National Assembly, every member of the Rodrigues Regional Assembly and every Councillor of a Municipal City Council, Municipal Town Council or District Council shall, not later than 30 days –

- (a) after the first sitting of the National Assembly, the Rodrigues Regional Assembly, or any Municipal City Council, Municipal Town Council or District Council, as the case may be; or
- (b) after being elected to the National Assembly, the Rodrigues Regional Assembly, or a Municipal City Council, Municipal Town Council or District Council, following a by-election, as the case may be; and
- (c) after his seat becomes vacant pursuant to section 35 of the Constitution, section 19 of the Rodrigues Regional Assembly Act or section 40 of the Local Government Act, as the case may be,

make a declaration of his assets and liabilities with ICAC, including the assets and liabilities of his spouse and his minor children.

(2) Where a person is appointed a Minister or a Commissioner or is elected as Lord Mayor, Deputy Lord Mayor, Mayor, Deputy Mayor, Chairperson or Vice-Chairperson of a Municipal City Council, Municipal Town Council or District Council, as the case may be, he shall, not later than 30 days after –

- (a) being appointed a Minister or a Commissioner or being elected a Lord Mayor, Deputy Lord Mayor, Mayor, Deputy Mayor, Chairperson or Vice-Chairperson; and
- (b) his office becomes vacant pursuant to section 60 of the Constitution, section 37 of the Rodrigues Regional Assembly Act or section 41 of the Local Government Act,

make a declaration of his assets and liabilities with ICAC, including the assets and liabilities of his spouse and his minor children.

(3) Every person referred to in section 3(1)(e) to (i) shall, not later than 30 days after –

- (a) being appointed; and
- (b) his office becomes vacant,

make a declaration of his assets and liabilities with ICAC, including the assets and liabilities of his spouse and his minor children.

(4) Where a person makes a declaration under this section, he shall specify any property sold, transferred or donated to his children of age and grandchildren, in any form or manner whatsoever, including income or benefits from any account, partnership or trust.

(5) Where a person simultaneously holds different positions in relation to which he is required to make a declaration under this section, he shall make only one declaration with ICAC.

5. Form and content of declaration

- (1) A declaration referred to in –
 - (a) section 4(1) and (2) shall be made by way of affidavit, in such form as may be prescribed, sworn before the Supreme Court or, in the case of a Commissioner or member of the Rodrigues Regional Assembly, before the Magistrate for Rodrigues; or
 - (b) section 4(3) shall be made in such form as may be prescribed.
- (2) A declarant shall, in relation to a declaration made under section 4 –
 - (a) not be required to specify the value of any asset included in the declaration, except where such asset consists of cash;
 - (b) specify the nature of his interests in the assets, including any joint ownership; and
 - (c) specify the nature of –
 - (i) any liabilities in relation to those assets, including any joint liability; and
 - (ii) any other liabilities which are not in relation to those assets.

6. Fresh declaration

Every person referred to –

- (a) in section 3(1)(a), (b), (c), (d), (g), (h) and (i) shall, within a period of 30 days, inform ICAC, in writing, where he acquires or disposes of –
 - (i) any freehold or leasehold immovable property in Mauritius or abroad;
 - (ii) a motor vehicle, a boat, a ship or an aircraft;
- (b) in section 3(e) and (f) shall make a fresh declaration with ICAC –
 - (i) at every interval of 5 years following the date of the first declaration; and
 - (ii) within a period of 30 days after leaving office.

7. Disclosure of declaration

(1) Subject to subsection (2), ICAC shall disclose to the public the declarations made by members of the National Assembly, including the Speaker, members of the Rodrigues Regional Assembly, including the Chairperson of the Rodrigues Regional Assembly, and Councillors of a Municipal City Council, Municipal Town Council or District Council.

(2) ICAC shall not, in relation to the persons referred to in subsection (1), disclose to the public information pertaining to –

- (a) money, in any currency, in local banks and foreign banks;
- (b) any item of jewellery, precious stone or metal, or watch, exceeding 500,000 rupees in value; and
- (c) cash in hand not exceeding one million rupees in any currency accepted as legal tender in any country.

(3) ICAC shall keep confidential and not disclose to the public any declaration, other than a declaration referred to in subsection (1).

(4) Any enforcement authority may apply to the Judge in Chambers for the disclosure of a declaration and the Judge in Chambers may, on good cause shown, order the disclosure of the declaration.

(5) In this section –

“enforcement authority” means the Police, the Enforcement Authority under the Asset Recovery Act, the Mauritius Revenue Authority, ICAC, the Financial Intelligence Unit, the Integrity Reporting Services Agency under the Good Governance and Integrity Reporting Act, or such other body as may be prescribed.

PART III – POWERS OF ICAC

8. Power to issue directives

For the purposes of this Act, ICAC may issue directives to any person to whom this Act applies.

9. Power to monitor assets and liabilities

Notwithstanding any other enactment, ICAC shall monitor the assets and liabilities of any declarant for the purpose of detecting and investigating corruption and money laundering offences or illicit enrichment.

10. Penalty for late submission of declaration

(1) Where a person fails, without reasonable excuse, to submit a declaration within the specified period, he shall be liable to pay to ICAC a penalty representing 5,000 rupees per month or part of the month, until such time as the declaration is submitted, provided that the total penalty payable shall not exceed 50,000 rupees.

(2) Any person who is dissatisfied with a decision of ICAC relating to the imposition of a penalty pursuant to subsection (1), may, within 28 days of the imposition of the penalty, apply to the Supreme Court for a judicial review of such decision.

PART IV – MISCELLANEOUS

11. Offences

(1) Any person who fails to make a declaration or who wilfully makes a false declaration shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 5 years.

(2) Any person who, in any other manner contravenes this Act or any regulations made under it, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees.

(3) Any spouse who, without any reasonable excuse, fails to collaborate in disclosing his or her assets and liabilities for the purpose of fulfilling a requirement under this Act, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 6 months.

(4) Notwithstanding –

(a) section 114 of the Courts Act; and

(b) section 72 of the District and Intermediate Courts (Criminal Jurisdiction) Act,

a Magistrate shall have jurisdiction to try any offence under this Act and may impose any penalty provided for by this Act.

12. Prosecution

(1) No prosecution for an offence under this Act shall be commenced except by, or with, the consent of, the Director of Public Prosecutions.

(2) Any declaration made under this Act shall be admissible as evidence before any Court of law for the purpose of the prosecution of any criminal offence.

13. Regulations

(1) The Prime Minister may, for the purposes of this Act, make such regulations as he thinks fit.

(2) Any regulations made under subsection (1) may provide for –

(a) extending the application of this Act to such other category of persons or officers; and

(b) anything that may be prescribed under this Act.

14. Repeal

The Declaration of Assets Act is repealed.

15. Consequential amendment

The Prevention of Corruption Act is amended, in section 20(1), by adding the following new paragraphs, the full stop at the end of paragraph (r) being deleted and replaced by a semicolon –

- (s) issue directives under the Declaration of Assets Act 2018;
- (t) monitor the assets and liabilities of persons under the Declaration of Assets Act 2018;
- (u) impose penalties in accordance with the Declaration of Assets Act 2018.

16. Transitional provisions

(1) Every person referred to in section 3(1) and in office at the commencement of this Act shall, within 90 days of the commencement of this Act, make a declaration of his assets and liabilities with ICAC, including the assets and liabilities of his spouse, his minor children and, subject to section 4(4), his children of age and grandchildren.

(2) Where, before the commencement of this Act, a person referred to in section 3(2) is required to make a declaration of his assets and liabilities under any other enactment –

- (a) he shall, notwithstanding that other enactment, make a declaration of his assets and liabilities under this Act; and
- (b) any declaration made under paragraph (a) shall be deemed to meet the requirements of that other enactment.

17. 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 the coming into operation of different sections of this Act.