

THE COURT USHERS (AMENDMENT) BILL
(No. IV of 2011)

Explanatory Memorandum

The object of this Bill is to liberalise the profession of usher, as recommended by the Presidential Commission set up in 1997 to examine and inquire into the structure and operation of the judicial system and legal professions, by enabling suitable persons, who are not public officers and who will be known as registered ushers, to serve or execute process.

2. The Bill makes provision for the manner in which registered ushers will exercise their profession and for the Chief Justice to exercise disciplinary control over them, and for related matters.

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1 April 2011

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ARRANGEMENT OF CLAUSES

Clause

1. Short title
 2. Interpretation
 3. Section 1A of principal Act amended
 4. Section 3 of principal Act amended
 5. New sections 26A to 26H inserted in principal Act
 6. Section 27 of principal Act amended
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A BILL

To amend the Court Ushers Act to enable suitable persons who are not public officers to serve or execute process and for related matters

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Court Ushers (Amendment) Act 2011.

2. Interpretation

In this Act –

“principal Act” means the Court Ushers Act.

3. Section 1A of principal Act amended

Section 1A of the principal Act is amended –

- (a) in the definition of “Court Usher”, by inserting, after the words “who is a public officer and”;
- (b) by adding the following new definition, the full stop at the end of the section being replaced by a semicolon –

“registered usher” means an usher appointed as such under section 26B(3)(a) and does not include a Court Usher.

4. Section 3 of principal Act amended

Section 3 of the principal Act is amended in paragraph (d), by deleting the words “Judges of the Supreme Court” and replacing them by the words “Chief Justice”.

5. New sections 26A to 26H inserted in principal Act

The principal Act is amended by inserting, after section 26, the following new sections –

26A. Application of sections 26A to 26H

Sections 26A to 26H shall apply to every registered usher.

26B. Appointment of registered usher

(1) Any citizen of Mauritius may make a written application to the Chief Justice, through the Master and Registrar, for appointment as a registered usher where –

- (a) he holds such qualifications, and he has passed such examination, as may be prescribed by rules made under this Act; and
- (b) he satisfies the Chief Justice that he is of good character.

(2) (a) An application under subsection (1) shall be in such form, and shall provide such information, as may be prescribed by rules made under this Act.

(b) Where a person has been appointed as a registered usher, he shall notify the Master and Registrar in writing of any change in the information provided under paragraph (a) not later than 7 days after the occurrence causing the change.

(3) (a) Where a person satisfies the requirements of subsection (1), the Chief Justice may appoint him as a registered usher after he has complied with section 26C.

(b) The Master and Registrar shall cause notice of an appointment made under paragraph (a) to be published in the *Gazette*.

26C. Security by registered usher

(1) Every registered usher shall, before being appointed, enter into a security, in such amount as may be prescribed by rules made under this Act, by means of a bank guarantee or such other obligation as may be approved by the Chief Justice, to be of good behaviour, perform the duties of his office and comply with this Act.

(2) A competent Court may order that a security entered into under subsection (1) shall be made available for the payment of any damages, interest and costs which the registered usher has been ordered to pay to a person who has retained his services.

(3) Where the security entered into under subsection (1) has been used for the purpose referred to in subsection (2), the registered usher shall provide fresh security up to the amount prescribed under subsection (1), or such additional security as the Chief Justice may require, in order to continue to exercise his duties under this Act.

(4) The Chief Justice may, in the exercise of disciplinary proceedings against a registered usher under section 26G, order that the security be forfeited to the State.

26D. Duties of registered usher

(1) (a) Subject to paragraph (b), every registered usher shall promptly provide the necessary services to any attorney or other person who requires him to serve or execute any judicial or extra-judicial process.

(b) A registered usher may refuse to provide his services where he is prohibited under any other enactment from so doing.

(2) Where, for the purposes of performing any duty referred to in subsection (1), a registered usher requires a document which is in the custody of a Court, every Court Officer of that Court shall provide all necessary assistance to the registered usher and, where a document is handed over to the latter, the Court Officer shall cause an entry to be made in the appropriate register.

(3) Subject to subsection (4), a registered usher shall not perform the duties prescribed for Court Ushers under section 13, other than those specified in subsection (1)(a).

(4) The Master and Registrar may request a registered usher to perform the duties prescribed for Court Ushers under section 13, for such time as may be necessary, on payment of an allowance to be determined by the Chief Justice.

26E. Fees and registration duty

(1) An attorney or other person who requires the services of a registered usher shall pay to him –

- (a) such fee for his services and such allowance for travelling as may be prescribed by rules made under this Act;
- (b) any amount leviable under any enactment relating to registration duties.

(2) Every registered usher shall be responsible and liable for the payment of any amount due by virtue of an enactment relating to registration duties.

26F. Performance of duties by registered usher

- (1) Every registered usher shall –
 - (a) make every necessary annotation on a document to explain the steps taken by him, in the exercise of his duties, in relation to the document;
 - (b) make every annotation under paragraph (a) in clear language, in legible characters and in English; and
 - (c) make a note, at the foot of or some other convenient space on the document, of all the fees and costs, including registration duties, payable in respect of his services.

- (2) (a) Every registered usher shall keep a register, in such form as may be prescribed, in which he shall forthwith make an entry of –
 - (i) the fact that his services have been retained, the nature of the service and the fees and costs, including registration duties, and travelling allowance which have been paid to him;
 - (ii) the steps taken by him in respect of the service; and
 - (iii) any occurrence which may have obstructed him in the performance of his duty.

- (b) Every registered usher shall cause the register kept under paragraph (a) to be inspected by the Master and Registrar or any other public officer deputed by the latter –
 - (i) whenever he is required to do so; and
 - (ii) in any event, on 31 January, 30 April, 31 July and 31 October in every year.

26G. Disciplinary proceedings

(1) Where he considers that a registered usher has failed to comply with section 26C, 26D, 26E or 26F or committed any other wrongful act, the Chief Justice shall appoint a disciplinary tribunal consisting of 3 Magistrates to enquire into the matter and provide him with a report indicating whether or not the registered usher is guilty of the alleged misfeasance.

(2) A disciplinary tribunal set up under subsection (1) shall arrive at a decision by a majority of its members.

(3) Where the report under subsection (1) is unfavourable to a registered usher, the Chief Justice may order that –

- (a) the registered usher's appointment be suspended for a period not exceeding 12 months or revoked;
- (b) any amount of security provided under section 26C be forfeited to the State.

26H. Offences

(1) Any person who wilfully makes or causes to be made, or is privy to the making of, any falsification in any matter relating to the register kept under section 26F(2) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 1,000 rupees and to imprisonment for a term not exceeding 12 months.

(2) Any person who wilfully obstructs, molests, opposes, hinders or assaults a registered usher in the performance of his duties, or any person lawfully assisting a registered usher, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees or to imprisonment for a term not exceeding 12 months.

6. Section 27 of principal Act amended

Section 27 of the principal Act is amended by deleting the words "The Judges" and replacing them by the words "The Chief Justice".

7. Commencement

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