

THE LAW PRACTITIONERS (AMENDMENT) BILL
(No. V of 2008)

Explanatory Memorandum

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

- (a) the setting up and functioning of law firms;
- (b) the status of a legal consultant;
- (c) the registration of law firms, foreign law firms, joint law ventures and foreign lawyers;
- (d) the framework for the regulation of the practice of foreign law and international law in Mauritius; and
- (e) related matters.

J. VALAYDEN
Attorney-General,
Minister of Justice and Human Rights

04 April 2008

THE LAW PRACTITIONERS (AMENDMENT) BILL
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ARRANGEMENT OF CLAUSES

Clause

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| 1. Short title | 8. Section 16 of principal Act amended |
| 2. Interpretation | 9. Section 17 of principal Act repealed and replaced |
| 3. Section 2 of principal Act amended | 10. Section 21 of principal Act amended |
| 4. Section 3 of principal Act repealed and replaced | 11. Section 22 of principal Act amended |
| 5. Section 4 of principal Act amended | 12. Consequential amendments |
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A BILL

To amend the Law Practitioners Act to provide for the setting up and functioning of law firms, the status of a legal consultant, the registration of law firms, foreign law firms, joint law ventures and foreign lawyers, the framework for the regulation of the practice of foreign law and international law in Mauritius and for related matters

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Law Practitioners (Amendment) Act 2008.

2. Interpretation

In this Act –

“principal Act” means the Law Practitioners Act.

3. Section 2 of principal Act amended

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

“director”, in relation to a law firm or foreign law firm or joint law venture –

- (a) in the case of a company, has the meaning assigned to it in the Companies Act 2001;
- (b) in any other case, means any person, whether acting individually or collectively, having responsibility for managing the day to day affairs of a body;

“foreign law firm” means a corporate entity licensed or registered as a law firm in a foreign country and having a local office registered in accordance with section 10G;

“foreign law” means the law of a jurisdiction other than that of Mauritius;

“foreign lawyer” means an individual who is admitted to practise law in a foreign country and is registered in accordance with section 10L;

“international law” –

- (a) includes law established by an international treaty or an international convention, or international customary law; but
- (b) does not include laws of Mauritius, or the domestic law of any other country;

“joint law venture” means a joint law venture referred to in section 10H;

“law firm” means a body of persons providing legal services, whether incorporated as a company, or set up as a ‘société’, registered under section 10A;

“law officer” has the same meaning as in the Law Officers Act;

“legal consultant” means –

- (a) a person who has retired from office as a Judge; or
- (b) a person authorised to act as such by the Chief Justice where his name has, at his request, been erased from the Roll after he has, for not less than 10 years in the aggregate –
 - (i) been a barrister, an attorney, a law officer or a Magistrate; or
 - (ii) held a combination of 2 or more professions or occupations set out in subparagraph (i);

“legal services” means –

- (a) in relation to a law firm or a joint law venture, any services which a law practitioner may lawfully provide under this Act; and
- (b) in relation to a foreign law firm, services relating to foreign law or international law;

“Legal Secretary” means the holder of the public office of Legal Secretary at the Attorney General’s Office;

“local office” means an office set up in Mauritius by a foreign law firm as a branch of its main office and registered in accordance with section 10G;

“Register” means a register kept by the Legal Secretary for the purposes of sections 10B, 10G, 10I and 10L;

“signing practitioner” means a law practitioner authorised in writing by a law firm to sign on its behalf.

4. Section 3 of principal Act repealed and replaced

Section 3 of the principal Act is repealed and replaced by the following section –

3. Provision of legal services

(1) Subject to this Act, no person shall provide legal services unless –

- (a) his name has been entered on the Roll as a barrister, an attorney or notary; and
- (b) he is a member –
 - (i) in the case of a barrister, of the Mauritius Bar Association;
 - (ii) in the case of an attorney, of the Mauritius Law Society; or
 - (iii) in the case of a notary, of the Chamber of Notaries; or
- (c) he is a foreign lawyer duly registered in his home jurisdiction and practising as such in a law firm, foreign law firm or joint law venture.

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

5. Section 4 of principal Act amended

Section 4 of the principal Act is amended in subsection (1), by deleting paragraph (b) and replacing it by the following paragraph –

- (b) No person shall be admitted to practise as a barrister under paragraph (a) unless –
 - (i) he is the holder of a Full Qualification Certificate issued by the General Council of the Bar of England and Wales; or
 - (ii) he has served a period of pupillage of –
 - (A) not less than one year with a barrister of at least 10 years’ standing at the Bar of England and Wales; or

- (B) not less than one year consisting of –
 - (I) 3 or more consecutive months of pupillage with a practising attorney of at least 5 years' standing in Mauritius; and
 - (II) 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.

6. New sections 10A to 10Q inserted in principal Act

The principal Act is amended by inserting, immediately after section 10, the following new sections –

10A. Law firm

(1) Where one or more law practitioners, or one or more law practitioners and a legal consultant intend to set up a law firm, they shall make a written application to the Attorney-General for registration in such form and manner as may be prescribed.

(2) On receipt of an application under subsection (1), the Attorney-General may cause the name of the law firm to be entered in the Register where –

- (a) the constitution or the objects of the law firm provide that its primary object is to provide legal services in accordance with this Act;
- (b) the name of the law firm –
 - (i) is not misleading or inappropriate, having regard to the dignity of the legal profession;
 - (ii) is not similar to that of another registered law firm, foreign law firm or joint law venture so as to be likely to cause confusion; or
 - (iii) in the case of a company, is not inconsistent with section 35 of the Companies Act 2001; and
- (c) the firm otherwise complies with the requirements of this Act.

(3) A law firm which is a company, need not, notwithstanding sections 32 and 33 of the Companies Act 2001, have the word “Limited” or “Ltd” as part of its name.

(4) Where the name of a law firm has been entered in the Register, it shall –

- (a) notwithstanding any other enactment, not alter its constitution or objects or its name except with the written approval of the Attorney-General;
- (b) on every correspondence, invoice or other document issued by it or on its behalf, mention the fact that it is a law firm registered under this Act; and
- (c) designate in writing to the Legal Secretary the name of its signing practitioner or practitioners.

(5) Where the name of a law firm has, through inadvertence or otherwise, been entered in the Register in contravention of subsection (2)(b), the Attorney-General may direct the name to be altered and the law firm shall comply with any such direction.

(6) In any enactment other than this Act, a reference to a barrister, an attorney or a notary shall be construed as including a reference to a law firm.

(7) Any invoice raised by a law firm for the provision of legal services shall be made in the name of that firm.

10B. Registration of law firm

(1) The Legal Secretary shall enter in the Register –

- (a) the name and address of every law firm;
- (b) any amendment of the constitution or objects, or of the name, of a law firm; and
- (c) whether any law firm has ceased to provide legal services, or has been wound up, or suspended, or struck off.

(2) The Legal Secretary shall, in June of every year, cause to be published in the *Gazette* a list of law firms, law practitioners, legal consultants and foreign lawyers providing legal services for the law firms.

10C. Acts of law firm and its members

- (1) Subject to subsection (2), a law firm –
 - (a) may perform any function that a law practitioner can lawfully perform; and
 - (b) shall do everything that a law practitioner is lawfully required to do.

(2) A law firm shall not perform any of the functions, under subsection (1), of a barrister, an attorney or a notary, unless the law firm comprises at least one member who is a barrister, an attorney or a notary, as the case may be.

(3) A barrister shall, notwithstanding that he is a member of a law firm, retain his right of audience before any Court.

(4) (a) A law firm shall, in its relationship with its clients, have the same rights and be subject to the same fiduciary, confidential and ethical obligations as a law practitioner has or is subject to.

(b) The law practitioner – client privilege shall exist between a law firm and its clients in the same manner as it exists between a law practitioner and his clients and extends to every law practitioner who is a partner, director or employee of the law firm.

(5) Law practitioners belonging to the same law firm shall not appear for different parties in respect of any litigation or other legal matter where there is a likelihood of a conflict of interest.

10D. Professional conduct

(1) An act or omission of a law practitioner may constitute professional misconduct even where it is only done or occurs while he provides legal services through a law firm.

(2) A signing practitioner may be liable to disciplinary proceedings if the business of the law firm is conducted in a manner unbecoming the legal profession, unless such conduct can be attributed to the act or omission of a particular law practitioner.

(3) A law practitioner or a legal consultant who is a partner, director or employee of a law firm shall not –

- (a) hold shares in any other law firm;

- (b) be a partner, director, employee of any other law firm, or foreign law firm or joint law venture, except the joint law venture in which his firm is a constituent;
- (c) practise as a law practitioner or legal consultant on his own account, as the case may be; or
- (d) after leaving a law firm, join as a partner, director, employee or legal consultant of another law firm, foreign law firm, or joint law venture within a period of 6 months, unless the law firm he is leaving gives its written consent.

(4) Where a director of a law firm has reasonable grounds to believe that an act or omission of a law practitioner or a legal consultant who is a partner, director or employee of the law firm constitutes a breach of the relevant Code of Ethics or rules of professional practice, he shall forthwith report the matter –

- (a) in the case of a barrister, to the Mauritius Bar Association;
- (b) in the case of an attorney, to the Mauritius Law Society;
- (c) in the case of a notary, to the Chamber of Notaries; or
- (d) in the case of a legal consultant, to the Chief Justice.

10E. Shares in law firm

(1) (a) No person other than a law practitioner or a legal consultant shall hold shares in a law firm.

(b) No shares in a law firm may be held by a person as nominee for another person.

(2) No person shall transfer or dispose of shares in a law firm except in accordance with its constitution and such other conditions as may be prescribed.

(3) No security may be created over any share in a law firm.

(4) (a) A law practitioner who, pursuant to disciplinary proceedings, is suspended from practice or struck off from the Roll, shall not hold any shares in a law firm.

(b) The Attorney-General may, on the application of the law practitioner referred to in paragraph (a), or that of the law firm, grant the law

practitioner a grace period of not more than 6 months to dispose of his shares in the law firm.

(c) Subject to paragraph (b), a law practitioner referred to in paragraph (a) 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 the law firm.

(5) Any transfer or disposal of shares made in contravention of this section shall be null and void.

10F. Winding up or dissolution of law firm

(1) A law firm may, on application made by the Legal Secretary, be wound up under the Companies Act 2001 or dissolved under the Code Civil Mauricien, as the case may be, where –

- (a) the law firm ceases to satisfy the requirements of this Act; or
- (b) the activities of the law firm have been conducted in a manner likely to bring the legal profession into disrepute.

(2) The grounds for winding up or dissolution referred to in subsection (1) are in addition to those specified in the Companies Act 2001 or the Code Civil Mauricien, as the case may be.

10G. Opening of local office by foreign law firm

(1) A corporate entity licensed or registered as a law firm in a foreign country may make a written application to the Attorney-General, in such form and manner as may be prescribed, for registration of a local office.

(2) The Attorney-General may, on receiving an application under subsection (1), cause the name of the firm to be entered in the Register where he is satisfied that –

- (a) it has given a written undertaking not to provide or put itself forward as providing advice or legal services on, or in relation to, Mauritian law;
- (b) it is qualified, licensed or regulated as a firm in the home jurisdiction, the law of which it professes to practise;
- (c) it has at least 2 lawyers in its office in Mauritius who are qualified under the law of the home jurisdiction to practise

the law of that jurisdiction, and have been registered pursuant to section 10K; and

(d) it has a physical establishment in Mauritius.

(3) The Attorney-General may impose such terms and conditions as may be prescribed before causing the name of the foreign law firm to be entered in the Register.

(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 condition imposed under subsection (3).

(5) Every foreign law firm shall, in every correspondence, invoice or other document issued by it or on its behalf, mention the fact that it is a foreign law firm and is registered under this Act.

10H. Approval of joint law venture

(1) Subject to section 10J, the Attorney-General may, on written application made to him in such form and manner as may be prescribed, approve the setting up of a joint law venture by a foreign law firm and a law firm, on such terms and conditions as may be prescribed.

(2) A joint law venture may be constituted as a limited company or a “société”, or by such other arrangements as may be prescribed.

(3) The Attorney-General may, if he is satisfied that it is in the public interest to do so, by notice in writing, suspend or cancel the approval for the setting up of a joint law venture.

(4) Every joint law venture shall, in every correspondence, invoice or other document issued by it or on its behalf, mention the fact that it is a joint law venture and is registered under this Act.

(5) A law firm which is a constituent of a joint law venture shall cease to provide legal services in foreign and international law.

10I. Registration of foreign law firm and joint law venture

(1) The Legal Secretary shall enter in a separate part of the Register –

(a) the name and address of the local office of every foreign law firm;

- (b) the name and address of every joint law venture;
- (c) any amendment in the name of a foreign law firm or joint law venture; and
- (d) whether any foreign law firm or joint law venture has ceased to provide legal services, or has been wound up, or suspended, or struck off.

(2) The Legal Secretary shall, in June of every year, cause to be published in the *Gazette* a list of foreign law firms and joint law ventures and of the partners, directors, legal consultants or other persons providing legal services for the foreign law firms or joint law ventures.

10J. Practice of foreign law firm and joint law venture

(1) A foreign law firm shall not be a constituent of a joint law venture unless it gives notice of its intention to constitute a joint law venture to the Attorney-General and asks to be deregistered as a foreign law firm.

(2) A joint law venture shall, for the purpose of this Act, act as a single legal entity and may invoice its clients as if it were a single entity.

10K. Foreign lawyer

(1) A foreign lawyer may make a written application to the Attorney-General, in such form and manner as may be prescribed, for registration and the right to provide legal services within a law firm, foreign law firm or a joint law venture.

(2) A foreign lawyer shall not engage in conduct that would, if he were a law practitioner, amount to professional misconduct or unsatisfactory professional conduct.

(3) A foreign lawyer may only provide legal services in accordance with section 10M.

10L. Registration of foreign lawyer

(1) The Legal Secretary shall enter in the Register –

- (a) the name and address of every foreign lawyer;

- (b) any amendment or alteration in the name and address of every foreign lawyer; and
- (c) whether any foreign lawyer has ceased to provide legal services, or has been suspended or struck off.

(2) The Legal Secretary shall, in June of every year, cause to be published in the *Gazette* a list of foreign lawyers.

10M. Scope of practice of foreign lawyers

- (1) A foreign lawyer may provide legal services –
 - (a) in relation to arbitration proceedings;
 - (b) 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 law of a country other than Mauritius is essential;
 - (c) for conciliation, mediation and such other forms of consensual dispute resolution as may be prescribed; or
 - (d) by tendering legal advice in relation to foreign law or international law.

(2) Notwithstanding subsection (1), a foreign lawyer may advise on the effect of a Mauritian law where –

- (a) the giving of advice on Mauritian law is necessarily incidental to the practice of foreign law or international law; and
- (b) the advice is expressly based on advice given on the Mauritian law by a law practitioner.

10N. Suspension or cancellation of registration

(1) The registration of a foreign law firm, a joint law venture or a foreign lawyer may be suspended or cancelled by the Attorney-General where –

- (a) the foreign law firm's registration in its home jurisdiction has been suspended or cancelled;

- (b) the registration or authorisation of the foreign law firm in its home jurisdiction has lapsed;
- (c) the foreign law firm has been dissolved or is in liquidation;
- (d) the joint law venture has been dissolved or been reconstituted without the approval of the Attorney-General;
- (e) the foreign lawyer is no longer authorised to practise in his home jurisdiction;
- (f) the foreign lawyer has committed an act which constitutes an act of professional misconduct; or
- (g) the Attorney-General is satisfied that it is in the public interest to do so.

(2) A registration may not be suspended or cancelled on any ground specified in subsection (1) unless the foreign law firm, joint law venture or foreign lawyer is given reasonable opportunity to make prior written representations to the Attorney-General as to why the registration should not be suspended or cancelled.

(3) Where there are disciplinary proceedings pending against a foreign lawyer in his home jurisdiction, he shall give notice of same to the Attorney General and shall cease forthwith to provide legal services in Mauritius.

10O. Consultation by Attorney-General

On receipt of an application under sections 10A, 10G, 10H or 10K, the Attorney-General shall consult the Chief Justice and such other public authorities as he thinks fit, and keep them informed of the outcome of the application.

10P. Right of entry and residence

Nothing in this Act shall affect the provisions of any enactment relating to the right of entry or residence of any non-citizen in Mauritius.

10Q. Right of appeal

(1) Any person aggrieved by a decision of the Attorney-General pursuant to section 10A(2), (4)(a) or (5), 10G(2), 10H(1), 10K(1) or 10N may, within 21 days of the day on which he has been informed of the decision of the Attorney-General, appeal to the Supreme Court against the decision 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) reverse, vary or amend the decision of the Attorney-General,

and may make such order as to the payment of costs as it thinks fit.

7. Section 13 of principal Act amended

Section 13 of the principal Act is amended by adding or, as the case may be, inserting, after the words “law practitioner” wherever they appear, the words “or a foreign lawyer”.

8. Section 16 of principal Act amended

Section 16 of the principal Act is amended –

(a) by deleting the heading “Touting” and replacing it by the heading “Unauthorised practices”; and

(b) by numbering the existing provision as subsection (1) and adding the following subsections –

(2) No law practitioner or legal consultant shall hold himself out as belonging to a law firm or make use of the words “Law Firm” or “Société Civile Professionnelle” unless he is a member of a law firm.

(3) No person shall hold himself out to be a legal consultant unless –

(a) he has retired from office as a Judge; or

(b) he has been authorised to act as such by the Chief Justice.

9. Section 17 of principal Act repealed and replaced

Section 17 of the principal Act is repealed and replaced by the following section –

17. Inducing clients

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

10. Section 21 of principal Act amended

Section 21 of the principal Act is amended, in subsection (3), by –

- (a) deleting the words “and 6” and replacing them by the words “,6 and 10M”; and
- (b) by deleting the words “a barrister entitled to practise law before any Court in a country, other than Mauritius” and replacing them by the words “a foreign lawyer”.

11. Section 22 of 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, for the purposes of this Act, be made –
 - (a) by the Attorney-General for the purposes of section 3(1)(b)(iii) and in relation to law firms, foreign law firms, joint law ventures or foreign lawyers; and
 - (b) by the Council, in relation to any other matter.

12. Consequential amendments

(1) The Mauritius Bar Association Act is amended by repealing subsection (2) and replacing it by the following subsection –

(2) Every barrister shall be a member of the Association.

(2) The Mauritius Bar Association Rules 1957 are amended by deleting rule 6.

13. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a day to be fixed by Proclamation.

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