

THE LAW PRACTITIONERS (AMENDMENT) BILL
(No. X of 2011)

Explanatory Memorandum

The main object of this Bill is to amend the Law Practitioners Act, in line with certain recommendations of the Presidential Commission set up in 1997 to examine and report upon the structure and operation of the judicial system and legal professions of Mauritius, so as to –

- (a) provide for the establishment of a Council for Vocational Legal Education;
- (b) ensure that prospective law practitioners undergo an adequate period of training and pupillage;
- (c) make provision for law practitioners and legal officers to follow Continuing Professional Development Programmes;
- (d) ensure that persons who wish to be considered for appointment as a judicial or legal officer follow an appropriate course;
- (e) enable a citizen of Mauritius who has obtained a professional qualification as, or equivalent to that of, barrister in another Commonwealth country or the United States to apply for admission to practise in Mauritius as a barrister,

and for matters related thereto.

Y. N. VARMA
Attorney-General

13 May 2011

THE LAW PRACTITIONERS (AMENDMENT) BILL
(No. X of 2011)

ARRANGEMENT OF CLAUSES

Clause

1. Short title
 2. Interpretation
 3. Section 2 of principal Act amended
 4. Section 4 of principal Act repealed and replaced
 5. Section 5 of principal Act repealed and replaced
 6. New section 5A inserted in principal Act
 7. Section 8 of principal Act amended
 8. Section 9A of principal Act amended
 9. New sections 9B and 9C inserted in principal Act
 10. Section 10 of principal Act amended
 11. Section 11 of principal Act repealed and replaced
 12. New section 11A inserted in principal Act
 13. Section 12 of principal Act repealed and replaced
 14. New section 12A inserted in principal Act
 15. Section 21 of principal Act amended
 16. New section 21A inserted in principal Act
 17. Section 22 of principal Act amended
 18. Schedule added to principal Act
 19. Consequential amendment
 20. Transitional provision and savings
 21. Commencement
- SCHEDULE

A BILL

To amend the Law Practitioners Act

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Law Practitioners (Amendment) Act 2011.

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 –

- (a) by deleting the definitions of “certificate of competency” and “Council”;
- (b) in the definition of “law practitioner”, by inserting, after the words “entered on”, the words “, and not been erased from,”;
- (c) in the definition of “Legal Secretary”, by inserting, after the words “public office of”, the words “Chief Legal Secretary, Legal Secretary or Assistant”;
- (d) in the definition of “signing practitioner”, by deleting the semicolon and replacing it by a full stop;
- (e) by inserting, in the proper alphabetical order, the following new definitions –

“accredited person” means the University of Mauritius or a person who is the holder of an authorisation granted under section 12A(3);

“applicant” means a person who has applied, or intends to apply, to be admitted as a law practitioner;

“Board” means the Judicial and Legal Studies Board referred to in section 7 of the Institute for Judicial and Legal Studies Act 2011;

“Continuing Professional Development Programme” means a Programme devised, organised and conducted under section 9B;

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

“Institute” means the Institute for Judicial and Legal Studies established under the Institute for Judicial and Legal Studies Act 2011;

“law degree” means a degree in law awarded, following a full-time course of studies for such period and at such level as may be prescribed under section 22(1)(c), by –

- (a) the University of Mauritius;
- (b) a university in the United Kingdom; or
- (c) such university or other tertiary education institution in Mauritius, the United States, another Commonwealth country or a civil law State, as may be approved by the Council;

“legal officer” means an officer who holds an office specified in the First Schedule and includes the Chief Legal Secretary, the Legal Secretary and the Assistant Legal Secretary;

“professional qualification” means an attestation, in such form as the Council may approve, to the effect that a person who holds a law degree has a qualification as, or equivalent to that of, barrister entitling him to practise in –

- (a) England and Wales, or such other Commonwealth country as may be prescribed; or
- (b) the United States;

“pupil master” means a person designated as such by the Council under section 5A (2);

“Secretary” means the person appointed as such under section 11A;

“vocational course” means the course referred to in section 4 (2)(a)(iii)(B) and enabling a person to qualify as a law practitioner.

4. Section 4 of principal Act repealed and replaced

Section 4 of the principal Act is repealed and replaced by the following section –

4. Qualifications of law practitioners

(1) Any citizen of Mauritius may apply for admission to practise law in Mauritius under section 6 where he satisfies the requirements of subsection (2).

(2) The requirements of this subsection are that an applicant shall have –

- (a) (i) in the case of a prospective barrister who qualified as such in a State other than Mauritius, a professional qualification;
- (ii) in the case of a prospective notary –
 - (a) attained the age of 25 years; and
 - (b) been authorised by the Prime Minister, after consultation with the Attorney-General, to apply for admission; or
- (iii) in the case of every other prospective law practitioner –
 - (A) been awarded a law degree;
 - (B) completed the vocational course in accordance with section 5; and
 - (C) sat for and passed an examination conducted by an accredited person under the supervision of the Council; and
- (b) in every case, undergone pupillage and, in the case of a prospective barrister referred to in paragraph (a)(i), followed a prescribed course of training in accordance with section 5A (6).

5. Section 5 of principal Act repealed and replaced

Section 5 of the principal Act is repealed and replaced by the following section –

5. Vocational course

An applicant shall, for the purpose of section 4(2)(a)(iii)(B), have completed the vocational course where he has –

- (a) followed such course as may be approved by the Council in the subjects specified in the Second Schedule; and
- (b) satisfied the examiners of the accredited person of his proficiency following such oral and written tests of knowledge and aptitude as the Council may approve.

6. New section 5A inserted in principal Act

The principal Act is amended by inserting, after section 5, the following new section –

5A. Pupillage

(1) (a) The Council shall draw up and keep under review a list of law firms, and of law practitioners of not less than 15 years' standing from each of the 3 branches of the profession.

(b) The Council shall consult the Bar Council, the Mauritius Law Society Council or the Chamber of Notaries, as the case may be, for the purpose of determining whether a law firm or law practitioner is able to provide the required amenities and training to be a pupil master.

(c) The Council may –

- (i) proprio motu remove a person's name; or
- (ii) at a pupil master's request, remove his name,

from the list.

(2) Subject to subsections (4), (5) and (6), pupillage shall, for the purposes of sections 4 and 21(4), consist –

- (a) in the case of a prospective barrister, of attachment to –
 - (i) the chambers of a barrister for 9 months; or
 - (ii) the chambers of a barrister for 3 months and a barrister in a law firm for 6 months,

and the office of an attorney for 3 months;

- (b) in the case of a prospective attorney, of articleship in, or attachment to, the office of an attorney, or to an attorney in a law firm, for 12 months; and
- (c) in the case of a prospective notary, of articleship in, or attachment to, the office of a notary for 24 months,

under the supervision of a pupil master designated by the Council with his consent.

(3) The duties of a pupil master shall be to –

- (a) ensure that the applicant is in attendance for such aggregate number of hours per week as may be determined by the Council;
- (b) provide him with the necessary assistance and guidance in the completion of his preparation before he is able to practise;
- (c) in the case of a prospective barrister or attorney, make him familiar with proceedings in Court;
- (d) give the applicant the necessary and appropriate opportunity to interact with clients; and
- (e) provide the Council with a comprehensive report, in such form and manner as the Council may require, on the applicant's performance during pupillage.

(4) A period of permanent employment of a prospective barrister or attorney as a Legal Assistant, or in such other office as may be prescribed, in the Attorney-General's Office or the Office of the Director of Public Prosecutions, or in the Judicial Department as a Court Officer, shall be deemed to be pupillage, for the period determined under subsection (2) or part of it, as the case may be.

(5) Where the Council is satisfied that there are no facilities available for pupillage in the case of an applicant, it may authorise him to undergo such other form of training as it may specify, instead of pupillage.

(6) (a) Every prospective barrister who holds a professional qualification shall, during his period of pupillage, follow, to the satisfaction of the Council, a course of training conducted by the Institute in such

subjects as may, in the Council's opinion, be necessary to enable him to practise in Mauritius.

(b) A person referred to in paragraph (a) shall not be required to sit for any examination.

7. Section 8 of principal Act amended

Section 8 of the principal Act is amended, in subsection (1), by inserting, after the words "he shall", the words ", subject to section 15,".

8. Section 9A of principal Act amended

Section 9A of the principal Act is amended –

- (a) by numbering the existing provision as subsection (1);
- (b) in the newly numbered subsection (1), by inserting, before the words "on the recommendation", the words "subject to subsection (2) and"; and
- (c) by adding the following new subsection –

(2) No barrister or attorney shall be appointed pursuant to subsection (1) unless he is, and has been for at least 15 years, a barrister or an attorney entitled to practise before the Supreme Court.

9. New sections 9B and 9C inserted in principal Act

The principal Act is amended by inserting, after section 9A, the following new sections –

9B. Continuing Professional Development

(1) The Institute shall devise, organise and conduct Continuing Professional Development Programmes for each of the three branches of the legal profession with a view to broadening the knowledge of law practitioners and legal officers, keeping them abreast of developments in the law, encouraging them to share experiences and enhancing their professional skills.

(2) A Programme referred to in subsection (1) may include attendance at such lectures, workshops or seminars, as may be approved by the Institute.

(3) Every law practitioner and legal officer shall, in every year, follow a Continuing Professional Development Programme for the prescribed number of hours unless he is excused by the Chief Justice for reasons such as proven ability and experience, age, ill health or unavoidable professional commitments.

(4) Notwithstanding section 13, where a person referred to in subsection (3) fails, without reasonable excuse, to follow a Continuing Professional Development Programme, the Institute may –

- (a) in the case of a legal officer, report the matter to the Judicial and Legal Service Commission; and
- (b) in the case of a law practitioner, refer the matter to the Chief Justice who may –
 - (A) issue a written warning to him; or
 - (B) suspend his right to practise for a period not exceeding one year.

9C. Courses for prospective judicial and legal officers

(1) Any person who wishes to be considered for appointment as a Judge, Magistrate or legal officer shall follow a course referred to in subsection (2).

(2) The Institute shall devise one or more courses with a view to enabling persons referred to in subsection (1) to familiarise themselves with the duties which they will be required to perform in the office to which they wish to be appointed.

(3) Where a person has followed a course in accordance with this section, the Institute shall forward to the Judicial and Legal Service Commission a report on the person's attendance and performance.

10. Section 10 of principal Act amended

Section 10 of the principal Act is amended by repealing subsection (3) and replacing it by the following subsection –

- (3) The Supreme Court –
 - (a) shall, on the appointment of a law practitioner as a judicial or legal officer, remove the person's name from the Roll; and

- (b) may, on its own motion or an application by the person concerned, and after making such enquiry as it thinks fit –
 - (i) amend an entry on the Roll;
 - (ii) remove the name of a person from the Roll following an order made under section 14 or where the person has ceased to be a member of a body referred to in section 3(1)(b);
- (c) cause the name of a person which has been removed from the Roll to be restored on the Roll.

11. Section 11 of principal Act repealed and replaced

Section 11 of the principal Act is repealed and replaced by the following subsection –

11. Establishment of Council

(1) There is established for the purposes of this Act a Council for Vocational Legal Education, which shall be a body corporate.

(2) The Council shall consist of –

- (a) a Chairperson, who shall be a person who holds or has held judicial office, a law practitioner or a legal officer of not less than 10 years' standing, or a person who has proven ability and experience in legal education, to be appointed by the Chief Justice, after consultation with the Attorney-General;
- (b) the Registrar;
- (c) the Solicitor-General or his representative;
- (d) the Director of Public Prosecutions or his representative;

- (e) a member of the academic staff of the Faculty of Law of the University of Mauritius designated by the Vice-Chancellor of the University;
 - (f) 3 law practitioners, to be appointed by the Attorney-General;
 - (g) such other persons, not exceeding 3 in number, as the Chief Justice may, after consultation with the Chairperson, co-opt on the Council either generally or for any specific purpose.
- (3) (a) The persons referred to in subsection (2)(f) shall –
- (i) be law practitioners of not less than 10 years' standing; and
 - (ii) include a barrister, an attorney and a notary appointed after consultation with the Bar Council, the Mauritius Law Society Council or the Chamber of Notaries, respectively.
- (b) Every member, other than the members referred to in subsection (2)(b), (c) and (d), shall hold office for 2 years but shall be eligible for re-appointment.
- (4) (a) Where a vacancy occurs in the membership of the Council, the vacancy shall, in the case of a person appointed under subsection (2)(a) or (f), be filled by a person appointed by the Chief Justice or the Attorney-General, as the case may be, in accordance with subsection (2).
- (b) The person appointed under paragraph (a) shall hold office for the remainder of the term of office of the member whom he is replacing.
- (5) (a) The Council shall meet as often as is necessary at such place and time as the Chairperson thinks fit.
- (b) The Secretary shall convene a meeting of the Council on a request made by not less than 4 members.
- (c) At a meeting of the Council, 5 members shall constitute a quorum.

(6) Every member shall be paid such allowance as the Chief Justice may determine.

12. New section 11A inserted in principal Act

The principal Act is amended by inserting, after section 11, the following new section –

11A. Secretariat of Council

(1) The Council shall, on such terms and conditions as it may determine, appoint a Secretary to the Council.

(2) (a) There shall be such public officers designated by the Registrar as may, in the opinion of the Council, be necessary to assist the Secretary.

(b) Every person referred to in paragraph (a) shall be under the administrative control of the Secretary.

(3) The Secretary shall –

(a) be the chief executive officer of the Council;

(b) act in accordance with such directions as he may receive from the Chairperson; and

(c) ensure that assistance and guidance are available to law students at all reasonable times.

(4) Service of process on or on behalf of the Secretary shall be deemed to be service on or by the Council.

(5) The Council may pay to a person referred to in subsection (2) such allowance as it thinks fit.

13. Section 12 of principal Act repealed and replaced

Section 12 of the principal Act is repealed and replaced by the following section –

12. Functions and powers of Council

The Council shall –

- (a) be responsible for the granting of an authorisation to run a vocational course;
- (b) supervise vocational courses and approve oral or written examinations for prospective law practitioners;
- (c) after consultation with the appropriate professional body, draw up and keep under review a list of law firms, and of law practitioners of not less than 15 years' standing, which or who are able to provide the required amenities and training to be pupil masters; and
- (d) where appropriate, formulate and cause to be published in the *Gazette* a Code of Ethics for any of the three branches of the profession.

14. New section 12A inserted in principal Act

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

12A. Accredited persons

(1) No person, other than an accredited person, shall run a vocational course, or hold himself out, by advertisement or otherwise, as being a person who runs or is entitled to run a vocational course.

(2) Any person, other than the University of Mauritius, wishing to be an accredited person shall make a written request to the Council, accompanied by the prescribed application fee, and furnish to the Council such information as the Council may require regarding his or its ability to run a vocational course.

(3) The Council shall, on receipt of a request under subsection (2), make such enquiry as it thinks fit and may, on payment of the prescribed accreditation fee, authorise the person to run such vocational courses as it may approve.

(4) An accredited person shall, where required by the Council to do so, run a vocational course in accordance with section 5.

(5) An accredited person, other than the University of Mauritius, shall not require any person to pay a fee in excess of such amount as may be prescribed for the purpose of following a vocational course.

(6) The Council may, where an accredited person other than the University of Mauritius contravenes subsection (4) or (5), suspend or revoke an authorisation granted pursuant to subsection (3).

(7) Where an accredited person runs a vocational course, the Council may –

- (a) require the accredited person to submit its syllabus or programme to it for approval; and
- (b) make such arrangements as it thinks fit to supervise the running of the course or the holding of examinations.

15. Section 21 of principal Act amended

Section 21 of the principal Act is amended by adding the following new subsection –

(4) (a) Notwithstanding sections 3 and 6, a prospective barrister or attorney who has completed 6 months of pupillage may represent his pupil master's client at any stage of any proceedings before a Magistrate other than –

- (i) a trial on the merits;
- (ii) arguments on a matter of law; or
- (iii) submissions at the end of a case.

(b) Every pupil master shall ensure that a prospective barrister or attorney who is his pupil is suitably attired for the purposes of paragraph (a).

16. New section 21A inserted in principal Act

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

21A. Access to Courts and Library

(1) Every prospective law practitioner shall, on payment of the prescribed fee, be issued by the Council with a means of identification showing that he is following a vocational course or undergoing pupillage, which he may be required to produce for the purposes of subsection (2).

(2) The Registrar shall make appropriate arrangements in order that –

(a) a person following a vocational course may have access to the Supreme Court Library –

(i) up to 9.30 a.m. and after 3.30 p.m. on week days; and

(ii) during opening hours on Saturdays; and

(b) a prospective law practitioner undergoing pupillage may have access –

(i) to the Supreme Court Library; and

(ii) in the case of a prospective barrister or attorney, to the places in a Court reserved for barristers or attorneys where he is representing his pupil master's client in accordance with section 21 (4).

17. Section 22 of principal Act amended

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

(c) in relation to any other matter, including an amendment of the Schedule, by the Council, with the approval of the Attorney-General.

18. Schedule added to principal Act

The principal Act is amended by adding the First and Second Schedules set out in the Schedule to this Act.

19. Consequential amendment

The Tertiary Education Commission Act is amended in –

- (a) section 2, by inserting, in the proper alphabetical order, the following new definitions –

“programmes” does not include vocational course;

“vocational course” has the same meaning as in the Law Practitioners Act.

- (b) section 6 –

(i) by numbering the existing provision as subsection (1); and

(ii) by adding the following new subsection –

(2) Without prejudice to section 2 of this Act, in this section, “programmes” includes vocational course.

20. Transitional provision and savings

(1) Where, at the commencement of this Act, the Council is satisfied that a prospective law practitioner has, in accordance with the repealed section 4 of the principal Act, started undergoing pupillage, it may, subject to such conditions as it thinks fit, authorise him to continue and complete his pupillage which shall be deemed to be pupillage for the purposes of section 5A.

(2) Any certificate issued or approval given by the former Council shall, the commencement of this Act, be deemed to have been issued or given by the Council.

(3) All assets and liabilities of the former Council shall, at the commencement of this Act, vest in the Council.

(4) Every agreement and instrument to which the former Council was a party or which affected the former Council shall, at the commencement of this Act, have effect as if the Council were a party to it or affected by it instead of the former Council.

(5) Any proceedings pending immediately before the commencement of this Act to which the former Council was a party may be continued as if the Council was a party to these proceedings instead of the former Council.

(6) Any Code of Ethics made by the former Council and which is in force at the commencement of this Act shall be deemed to have been made by the Council.

(7) Where this Act does not make provision for any transition, the Attorney-General, or the Council with the approval of the Attorney-General, may make such regulations as may be necessary for such transition.

(8) The members of the former Council shall, at the commencement of this Act, be deemed to be members of the Council and continue as such for the remainder of their term of office.

(9) All employees of the former Council shall, at the commencement of this Act, become employees of the Council.

(10) In this section –

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

“former Council” means the Council of Legal Education established under the repealed section 11 of the principal Act.

21. Commencement

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

SCHEDULE
[Section 18]

FIRST SCHEDULE
[Section 2]

Attorney-General's Office

Solicitor-General
Deputy Solicitor-General
Parliamentary Counsel
Assistant Solicitor-General
Assistant Parliamentary Counsel
Principal State Counsel
Senior State Counsel
State Counsel
Chief State Attorney
Deputy Chief State Attorney
Principal State Attorney
Senior State Attorney
State Attorney

Office of the Director of Public Prosecutions

Director of Public Prosecutions
Deputy Director of Public Prosecutions
Senior Assistant Director of Public Prosecutions
Assistant Director of Public Prosecutions
Principal State Counsel
Senior State Counsel
State Counsel
Chief State Attorney
Deputy Chief State Attorney
Principal State Attorney
Senior State Attorney
State Attorney

SECOND SCHEDULE
[Section 5]

VOCATIONAL COURSE

SUBJECTS

PART I – Prospective law practitioners

Conferencing
Drafting of legal documents
Ethics
Opinion writing

PART II – Prospective barristers and attorneys

Administrative and constitutional law
Advocacy
Arbitration and mediation
Civil Procedure
Criminal Procedure
Dispute resolution
Evidence

PART III – Prospective notaries

Civil Procedure
Commercial and business law
Practical aspects of family law
Practical aspects of the law of immovable property
“Rédaction des actes”
Revenue and Taxation Laws
“Tenue de l’office notarial”