

THE LEGAL AID (AMENDMENT) BILL
(No. VII of 2012)

Explanatory Memorandum

The main object of this Bill is to amend the Legal Aid Act in line with certain recommendations of the Presidential Commission, set up in 1997 and chaired by Lord Mackay, namely to make legal aid more accessible, and for the provision of legal assistance.

The Bill accordingly provides for the extension of legal assistance at police enquiry stage and for bail applications for offences specified in the First Schedule.

The Bill also provides –

- (a) for a means and merits test in the determination of granting of legal aid;
- (b) for a fairer method to assess a person's need for legal aid while ensuring there is no abuse; and
- (c) that persons who give misleading information for the purpose of obtaining legal aid shall commit an offence.

Y. N. VARMA
Attorney-General

11 May 2012

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ARRANGEMENT OF CLAUSES

Clause

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|---------------------------------------|---------------------------------------|
| 1. Short title | 4. Section 2 of principal Act amended |
| 2. Interpretation | 5. Section 3 of principal Act amended |
| 3. Section 1 of principal Act amended | |

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| 6. Section 4 of principal Act amended | 12. Section 9 of principal Act amended |
| 7. Section 6 of principal Act amended | 13. Section 10 of principal Act amended |
| 8. Section 7 of principal Act amended | 14. New section 12A inserted in principal Act |
| 9. Section 7A of principal Act amended | 15. Section 14 of principal Act repealed and replaced |
| 10. New section 7B inserted in principal Act | 16. Second and Third Schedules added to principal Act |
| 11. Section 8 of principal Act amended | 17. Commencement Schedule |

A BILL

To amend the Legal Aid Act so as to give effect to the recommendations of the Presidential Commission and to provide for legal assistance and legal aid to persons in need

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Legal Aid (Amendment) Act 2012.

2. Interpretation

In this Act –

“principal Act” means the Legal Aid Act.

3. Section 1 of principal Act amended

The Short title of the principal Act is amended by adding, after the word “**Aid**”, the words “**and Legal Assistance**”.

4. Section 2 of principal Act amended

Section 2 of the principal Act is amended –

- (a) by inserting, in the appropriate alphabetical order, the following new definitions –

“application” means an application for legal aid or legal assistance;

“legal assistance” means legal assistance provided under section 7B and includes –

- (a) legal advice and counselling during the recording of a statement under warning from detainee or accused party;
- (b) legal representation, during a bail application;

“earnings” means any source of income.

5. Section 3 of principal Act amended

Section 3 of the principal Act is amended, in paragraph (b), by deleting the words “, other than proceedings under an enactment or for an offence listed in the Schedule” and replacing them by the words “except for offences specified in the First Schedule”.

6. Section 4 of principal Act amended

Section 4 of the principal Act is amended –

- (a) in paragraph (a), by deleting the words “, stating his cause of action or ground of defence or appeal, or the nature of the extra-judicial matter in respect of which the application is made;” and replacing them by the words “in the form set out in the Second Schedule;”;
- (b) in paragraph (b), by inserting, after the words “sworn statement”, the words “in the form set out in the Third Schedule,”.

7. Section 6 of principal Act amended

Section 6 of the principal Act is amended by deleting paragraph (b) and replacing it by the following paragraph –

- (b) in case of an application for legal aid, refer the application to a barrister or an attorney, or both, to give their opinion as to its apparent merits.

8. Section 7 of principal Act amended

Section 7 of the principal Act is amended by adding the following new subsection –

- (3) Notwithstanding subsection (1), where –
 - (a) an application does not satisfy the requirements of section 4(b); and
 - (b) the Authority is of opinion that, in all the circumstances, it would not be reasonable and in the interest of justice to require the applicant to finance the litigation out of his income or his capital asset,

it may grant the application in accordance with such scales as may be prescribed.

9. Section 7A of principal Act amended

Section 7A of the principal Act is amended by deleting the figure “6” and replacing it by the figure “7”.

10. New section 7B inserted in principal Act

The principal Act is amended by inserting, after section 7A, the following new section –

7B. Legal assistance

(1) Notwithstanding section 3, legal assistance shall be provided to a person in accordance with this section.

(2) Any detainee or accused party, being suspected of having committed an offence specified in the First Schedule, shall, upon arrest, be informed by the police officer in charge of the police station that he may make an application for legal assistance during police enquiry and for bail applications.

(3) Any detainee or accused party who wishes to obtain legal assistance shall –

- (a) make a written application to the Magistrate in the form set out in the Second Schedule; and

(b) declare that –

- (i) excluding his wearing apparel and tools of trade, he is not worth 500,000 rupees; and
- (ii) his total monthly earnings are not more than 10,000 rupees.

(4) The detainee or accused party making an application under subsection 3(a) shall be –

- (a) brought before a Magistrate within 24 hours of his application; and
- (b) asked to swear or make solemn affirmation as to the correctness of all the information provided in the application form before the Magistrate.

(5) Where a detainee or accused party satisfies the requirements set out in subsection 3(b), the Magistrate shall –

- (a) forthwith grant the application for legal assistance and make such orders, consequential on his decision, as he thinks fit; or
- (b) request such additional information as may be required from the detainee or accused party before granting the application.

11. Section 8 of principal Act amended

Section 8 of the principal Act is amended by inserting, after the words “legal aid”, the words “or legal assistance”.

12. Section 9 of principal Act amended

Section 9 of the principal Act is amended, in subsection (1), by adding, after the words “legal aid”, the words “or legal assistance”.

13. Section 10 of principal Act amended

Section 10 of the principal Act is amended –

- (a) by inserting, after the words “legal aid” wherever they appear, the words “or legal assistance”;
- (b) in subsection (1)(b), by deleting the words “1,000 rupees” and “3 months” and replacing them by the words “10,000 rupees” and “one year”, respectively.

14. New section 12A inserted in principal Act

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

12A. Giving false or misleading information

Any person who, for the purposes of, or in connection with an application for legal assistance or for legal aid, wilfully gives any information which is false or misleading, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees or to penal servitude for a term not exceeding 3 years.

15. Section 14 of principal Act repealed and replaced

Section 14 of the principal Act is repealed and replaced by the following section –

14. Regulations

(1) The Attorney-General may, upon the recommendation of the Chief Justice, make such regulations –

- (a) to amend the Schedules;
- (b) to prescribe a scale setting out the proportion to which a meritorious application may be granted legal aid under section 7(3).

16. Second and Third Schedules added to principal Act

The principal Act is amended –

- (a) by deleting the heading to the existing Schedule and replacing it by the following heading –

FIRST SCHEDULE
[Sections 3 and 7B]

- (b) by adding the Second and Third Schedules set out in the Schedule to this Act.

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.

SCHEDULE
[Section 16(b)]

SECOND SCHEDULE
[Section 4(a)]

APPLICATION FORM FOR LEGAL ASSISTANCE

Name and Surname of applicant –

Marital Status of the applicant –

National Identity Card No –

Address and phone number –

Name and surname of spouse/partner

Name and surname and age of other dependants –

Name and address of next of kin who could be contacted in case of need –
.....

Average monthly income of applicant –

Employment, trade or occupation –

Average monthly income of spouse/partner –

Employment, trade or occupation of spouse/partner –

Average monthly expenses for dependants –

Other sources of income and particulars thereof –

Net monthly income of applicant –

Total household income –

Particulars of immovable property other than subject matter of proceedings –

(a) extent of land –

(b) nature of buildings

(c) income derived therefrom –

I swear/solemnly affirm that the information set out above is true to the best of my knowledge and belief.

Date –.....

.....
Signature or mark of applicant

Name and rank of the representative of the Authority –
.....

Date –.....

.....
Signature of the representative of the Authority

THIRD SCHEDULE
[Section 4(b)]

APPLICATION FORM FOR LEGAL AID

Name and Surname of applicant –

Marital Status of the applicant –

National Identity Card No –

Address and phone number –

Name and surname of spouse/partner

Name and surname and age of other dependants –

Name and address of next of kin who could be contacted in case of need –
.....
.....

Average monthly income of applicant –

Employment, trade or occupation –

Average monthly income of spouse/partner –

Employment, trade or occupation of spouse/partner –

Average monthly expenses for dependants –

Funds available in cash or in an account in a financial institution –

Other sources of income and particulars thereof –

Loan contracted and particulars thereof –

Net monthly income of applicant –

Total household income –

Particulars of immovable property other than subject matter of proceedings –

- (a) extent of land –
- (b) nature of buildings –
- (c) income derived therefrom –

Particulars of motor vehicles owned –

- (a) brand or make –
- (b) year registration –.....
- (c) capacity –.....

I declare that the information set out above is true to the best of my knowledge and belief.

Date –.....
Signature or mark of applicant

Name and rank of the representative of the Authority –

Date –.....
Signature of the representative of the Authority
