

THE COURTS (AMENDMENT) BILL

Bill No. 10 of 2020

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THE COURTS (AMENDMENT) BILL

(No. X of 2020)

Explanatory Memorandum

The object of this Bill is to amend the Courts Act for –

- (a) the setting up, within the Supreme Court, of a Financial Crimes Division and a Land Division;
- (b) the setting up, within the Intermediate Court, of a Financial Crimes Division; and
- (c) enabling the Chief Justice to set up, within the Supreme Court and the Intermediate Court, such other divisions as he thinks fit for the despatch of civil business and criminal business.

2. The setting up of the Financial Crimes Division of the Supreme Court and the Financial Crimes Division of the Intermediate Court have been rendered necessary with a view to ensuring that financial crime cases are dealt with expeditiously, thereby ensuring further compliance with recommended international best practices and norms of the Financial Action Task Force. The Financial Crimes Division of the Supreme Court will, in addition, have jurisdiction to hear and determine any other matter under any enactment which is connected or ancillary to a financial crime offence.

3. The Director of Public Prosecutions will, depending on the seriousness of a financial crime offence, determine that the information relating to the offence shall be laid before Financial Crimes Division of the Supreme Court or the Financial Crimes Division of the Intermediate Court.

4. As regards the Land Division of the Supreme Court, the setting up of this specialised division in land disputes, which comprise both technical and complex issues in the management and administration of land, has been rendered necessary with a view to facilitating the just, expeditious and accessible resolution to land disputes. The Land Division of the Supreme Court shall, accordingly, have original jurisdiction to hear and determine –

(a) any matter regarding ownership of land and property rights, other than any matter which falls under the jurisdiction of the Intermediate Court or District Court under any enactment; and

(b) any other matter connected therewith as the Chief Justice may direct.

5. The Bill further provides for matters connected, consequential or incidental to the setting up of divisions within the Supreme Court and the Intermediate Court.

10 July 2020

M. GOBIN

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ARRANGEMENT OF CLAUSES

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A BILL

**To amend the Courts Act for the setting up of divisions within the
Supreme Court and the Intermediate Court, and to provide for
matters connected, consequential or incidental thereto**

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Courts (Amendment) Act 2020.

2. Interpretation

In this Act –

“principal Act” means the Courts Act.

3. New sections 41, 41A, 41B, 41C and 41D inserted in principal Act

The principal Act is amended by inserting, after section 40, the following new sections –

41. Divisions of Supreme Court

(1) There shall be, for the despatch of civil business and criminal business of the Supreme Court, such divisions of the Supreme Court as the Chief Justice thinks fit, including a Financial Crimes Division, a Land Division, a Family Division, and a Commercial Division, of the Supreme Court.

(2) Notwithstanding any other enactment, the Chief Justice may, for the proper administration of justice, determine the jurisdiction of any division of the Supreme Court and may direct that any case before a division of the Supreme Court be transferred to, and heard by, another division of the Supreme Court.

(3) A Judge who is assigned to a division of the Supreme Court shall not affect his tenure as Judge of the Supreme Court and the Judge shall have full power to hear and determine any case within the jurisdiction of the Supreme Court.

(4) No act done by a Judge shall be void or impeachable by reason that a case should have been heard by a division of the Supreme Court other than that to which he has been assigned to.

41A. Financial Crimes Division of Supreme Court

(1) There shall be a Financial Crimes Division of the Supreme Court which shall, subject to this section, have original jurisdiction to hear and determine –

- (a) a financial crime offence; and
- (b) any other matter under any enactment which is connected or ancillary to a financial crime offence.

(2) Where a person commits a financial crime offence, the Director of Public Prosecutions may, in his discretion, determine that the information relating to the offence shall be laid before the Financial Crimes Division of the Supreme Court or the Financial Crimes Division of the Intermediate Court.

(3) In exercising his discretion under subsection (2), the Director of Public Prosecutions may have regard to whether the offence –

- (a) has international ramifications;
- (b) involves complex sequence of bank transfers or commercial transactions;
- (c) involves complex ownership, company and proxy structures; or
- (d) is one in which the offenders may be engaged in cybercrime or computer-based fraud involving money held in the form of virtual currency.

(4) This section shall not affect the jurisdiction of any other competent Court in respect of a financial crime offence.

(5) In this section –

“financial crime offence” –

- (a) means an offence committed under an enactment specified in the Sixth Schedule; and
- (b) includes any other offence which is connected or ancillary to an offence committed under an enactment specified in the Sixth Schedule.

41B. Land Division of Supreme Court

There shall be a Land Division of the Supreme Court which shall have original jurisdiction to hear and determine –

- (a) any matter regarding ownership of land and property rights, other than any matter connected therewith which falls under the jurisdiction of the Intermediate Court or District Court under any enactment; and
- (b) any other matter connected therewith as the Chief Justice may direct.

41C. Family Division of Supreme Court

There shall be a Family Division of the Supreme Court which shall have original jurisdiction to hear and determine –

- (a) any matter under the Divorce and Judicial Separation Act;
- (b) alimony, matrimonial and family matters, other than any matter connected therewith which falls under the jurisdiction of the Intermediate Court or District Court under any enactment; and
- (c) any other matter connected therewith as the Chief Justice may direct.

41D. Commercial Division of Supreme Court

There shall be a Commercial Division of the Supreme Court which shall have original jurisdiction to hear and determine –

- (a) any matter under the Insolvency Act and the Companies Act;
- (b) any matter relating to banking, bills of exchange, offshore business, patents and trademarks or passing off;
- (c) any matter arising out of a contract; and
- (d) any other matter connected therewith as the Chief Justice may direct.

4. New sections 80A, 80B, 80C and 80D inserted in principal Act

The principal Act is amended by inserting, after section 80, the following new sections –

80A. Divisions of Intermediate Court

(1) There shall be, for the despatch of civil business and criminal business of the Intermediate Court, such divisions of the Intermediate Court as the Chief Justice thinks fit, including a Criminal Division, a Civil Division, and a Financial Crimes Division, of the Intermediate Court.

(2) Notwithstanding any other enactment, the Chief Justice may, for the proper administration of justice, determine the jurisdiction of any division of the Intermediate Court and may direct that any case before a division of the Intermediate Court be transferred to, and heard by, another division of the Intermediate Court.

(3) A Magistrate who is assigned to a division of the Intermediate Court shall not affect his tenure as Magistrate of the Intermediate Court and the Magistrate shall have full power to hear and determine any case within the jurisdiction of the Intermediate Court.

(4) No act done by a Magistrate shall be void or impeachable by reason that a case should have been heard by a division of the Intermediate Court other than that to which he has been assigned to.

80B. Criminal Division of Intermediate Court

There shall be a Criminal Division of the Intermediate Court which shall have jurisdiction to try any criminal matter which the Director of Public Prosecutions may refer to it pursuant to section 112.

80C. Civil Division of Intermediate Court

There shall be a Civil Division of the Intermediate Court which shall have jurisdiction in all civil cases pursuant to Sub-part II of Part III.

80D. Financial Crimes Division of Intermediate Court

(1) There shall be a Financial Crimes Division of the Intermediate Court which shall, subject to this section, have jurisdiction to hear and determine a financial crime offence.

(2) Where a person commits a financial crime offence, the Director of Public Prosecutions may, in his discretion, determine that the information relating to the offence shall be laid before the Financial Crimes Division of the Supreme Court or the Financial Crimes Division of the Intermediate Court.

(3) In exercising his discretion under subsection (2), the Director of Public Prosecutions may have regard to whether the offence –

- (a) has international ramifications;
- (b) involves complex sequence of bank transfers or commercial transactions;
- (c) involves complex ownership, company and proxy structures; or
- (d) is one in which the offenders may be engaged in cybercrime or computer-based fraud involving money held in the form of virtual currency.

(4) This section shall not affect the jurisdiction of any other competent Court in respect of a financial crime offence.

(5) In this section –

“financial crime offence” –

- (a) means an offence committed under an enactment specified in the Sixth Schedule; and
- (b) includes any other offence which is connected or ancillary to an offence committed under an enactment specified in the Sixth Schedule.

5. Section 200 of principal Act amended

Section 200 of the principal Act is amended –

- (a) by numbering the existing provision as subsection (1);
- (b) by adding the following new subsection –

(2) The Attorney-General may, after consultation with the Chief Justice, amend the Sixth Schedule by regulations.

6. Sixth Schedule added to principal Act

The principal Act is amended by adding the Sixth Schedule set out in the Schedule to this Act.

7. Consequential amendments

(1) The Criminal Procedure Act is amended, in the Fifth Schedule –

- (a) in subparagraph (c), by deleting the words “158(1), (2)” and replacing them by the words “158(2)”;
- (b) in subparagraph (g), by deleting the words “, 145 and 148(4) and (5)” and replacing them by the words “and 145”;
- (c) in subparagraph (i), by deleting the words “sections 123(8) and 147” and replacing them by the words “section 123(8)”;

(d) in paragraph (m), by deleting the words “, 58”;

(e) by adding the following new paragraph –

(n) an enactment specified in the Sixth Schedule to the Courts Act.

(2) The Financial Intelligence and Anti-Money Laundering Act is amended by repealing section 7.

8. Transitional provision and saving

(1) Any trial in relation to any financial crime offence which, prior to the commencement of this Act, has started and is pending before the Criminal Division of the Intermediate Court or a District Court shall, on the commencement of this Act, be heard and determined by the Criminal Division of the Intermediate Court or the District Court.

(2) Where a case in relation to any financial crime offence has, prior to the commencement of this Act, been lodged before the Criminal Division of the Intermediate Court or a District Court and the trial in relation to that case has not started, that case shall, on the commencement of this Act, be transferred to, and heard by, the Financial Crimes Division of the Intermediate Court.

SCHEDULE

[Section 6]

SIXTH SCHEDULE

[Sections 41A and 80D]

ENACTMENTS

Asset Recovery Act

Banking Act – Part VIIIA and section 96C

Bank of Mauritius Act – sections 42, 43 and 44

Captive Insurance Act

Companies Act – section 167A(1)

Convention for the Suppression of the Financing of Terrorism Act

Co-operatives Act – section 57(5)

Customs Act – section 131A or 158(1)(a)

Declaration of Assets Act 2018

Financial Intelligence and Anti-Money Laundering Act

Financial Services Act

Gambling Regulatory Authority Act – section 148(4) or (5) or 113B

Income Tax Act – section 147

Insurance Act

National Payment Systems Act 2018 – section 22

Prevention of Corruption Act – Part II

Prevention of Terrorism Act – section 6

Protected Cell Companies Act

Registration of Associations Act – section 14A, 14B, 14D, 14E, 14F or 14H

Securities Act

Securities (Central Depository, Clearing and Settlement) Act

Trusts Act

United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Sanctions Act 2019

Value Added Tax Act – section 58
