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INTRODUCTION

The Constitution of Mauritius provides that each constituency shall return three members to the Legislative Assembly (except Rodrigues, which shall return two members). Every member returned by a constituency must be directly elected at a general or by-election. In order to ensure a fair and adequate representation of each community, eight additional seats in the Assembly are provided for, which are allocated to persons belonging to parties who have stood as candidates for election as members at the general election but have not been returned as members to represent constituencies.

The Constitution sets out the management structure for the organisation and conduct of elections. It also provides for the delimitation of constituencies and the review thereof from time to time.

The Representation of the People Act (herein called “the Act”) and the Legislative Assembly Elections Regulations form the principal instruments governing the organisation and conduct of elections.

— Section 1 —

RELEVANT CONSTITUTIONAL PROVISIONS

1.01 Electoral Commissioner

There is an Electoral Commissioner, whose office is a public office and who is appointed by the Judicial and Legal Service Commission.

No person is qualified to hold or act in the office of Electoral Commissioner unless he is qualified to practice as a barrister in Mauritius.

In the exercise of his functions under the Constitution the Electoral Commissioner shall not be subject to the direction or control of any other person or authority.¹

1.02 Electoral Supervisory Commission

There shall be an Electoral Supervisory Commission which shall consist of a Chairman appointed by the President in accordance with the advice of the Judicial and Legal Service Commission and not less than two nor more than seven other members appointed by the President, acting in accordance with the advice of the Prime Minister tendered after the Prime Minister has consulted the Leader of the Opposition.

No person is qualified for appointment as a member of the Electoral Supervisory

Commission if he is a member of, or a candidate for election to, the Assembly or any local authority or a public officer or a local government officer.

The Electoral Supervisory Commission shall have general responsibility for, and shall supervise, the registration of electors for the election of members of the Assembly and the conduct of election of such members and the Commission shall have such powers and other functions relating to such registration and such elections as may be prescribed.

The Electoral Commissioner shall have such powers and other functions relating to such registration and elections as may be prescribed, and he shall keep the Electoral Supervisory Commission fully informed concerning the exercise of his functions and shall have the right to attend meetings of the Commission and to refer to the Commission for its advice or decision on any question relating to his functions.

Every proposed Bill and every proposed regulation or other instrument having the force of law relating to the registration of electors for the election of members of the Assembly or to the election of such members shall be referred to the Electoral Supervisory Commission and to the Electoral Commissioner at such time as shall give them sufficient opportunity to make comments thereon before the Bill is introduced in the Assembly or, as the case may be, the regulation or other instrument is made.

The Electoral Supervisory Commission may make such reports to the President concerning the matters under its supervision, or any draft Bill or Instrument that is referred to it, as it thinks fit and if the Commission so requests in any such report, other than a report on a draft Bill or Instrument, that report shall be laid before the Assembly.

The question whether the Electoral Commissioner has acted in accordance with the advice of or a decision of the Electoral Supervisory Commission shall not be enquired into in any court of law.²

1.03 Electoral Boundaries Commission

There shall be an Electoral Boundaries Commission which shall consist of a Chairman and not less than two nor more than seven other members appointed by the President, acting in accordance with the advice of the Prime Minister tendered after the Prime Minister has consulted the Leader of the Opposition.

No person is qualified for appointment as a member of the Electoral Boundaries Commission if he is a member of, or a candidate for election to, the Assembly or any local authority or a public officer or a local government officer.³

1.04 Right to Vote at Elections

Any person who is registered as an elector in a constituency is entitled to vote in such manner as may be prescribed at any election for that constituency unless he is prohibited from so voting by any law in force in Mauritius because –

-
- (a) he is a returning officer; or
(b) he has been concerned in any offence connected with elections,
provided that no such person is entitled so to vote if on the date prescribed for polling he is in lawful custody or (except in so far as may otherwise be prescribed) he is for any other reason unable to attend in person at the place and time prescribed for polling.

No person shall vote at any election for any constituency who is not registered as an elector in that constituency.⁴

— Section 2 —

ELECTION ADMINISTRATION

2.01 Management Body

The management body for elections consists of the Electoral Commissions, that is to say, the Electoral Boundaries Commission (in so far as delimitation of constituencies is concerned) and the Electoral Supervisory Commission, which are established under the Constitution and discussed above. The Electoral Commissioner, who performs the executive role, also enjoys a constitutional position.

The Electoral Supervisory Commission (“the Commission”) has general responsibility for, and shall supervise, the registration of electors for local government areas and the conduct of elections of members of local authorities.⁵

2.02 Electoral Commissioner and His Deputy

The Electoral Commissioner shall have all the powers of the registration officer and of the returning officer in an electoral area.

There may be appointed a barrister-at-law to be Deputy Electoral Commissioner for an electoral area. The Deputy Electoral Commissioner, subject to the authority, directions and control of the Electoral Commissioner, shall have all the powers and may perform any of the functions of the Electoral Commissioner in the electoral area or areas for which he is appointed.

Every appointment made in respect of the Deputy Electoral Commissioner must be published in the Gazette.

The Electoral Commissioner shall ensure that the register of electors is prepared and elections are conducted in any electoral area as required by the Act.

The Electoral Commissioner may –

- (a) require information from any officer appointed under the Act with respect to any matter relating to the functions of the officer;

- (b) issue general instructions to an officer with respect to the performance of his duties.⁶

2.03 Registration Officers

There shall be appointed for every constituency a fit and proper person to be registration officer, and such other fit and proper persons to be assistant registration officers. Subject to the authority, directions and control of the registration officer, an assistant registration officer has all the powers and may perform any of the duties of a registration officer.⁷

2.04 Returning Officers and Deputy Returning Officers

The Commission may from time to time appoint a fit and proper person to be returning officer and some other fit and proper person to be deputy returning officer for each constituency.

Subject to the authority, directions and control of the returning officer, a deputy returning officer shall have all the powers and may perform any of the duties of a returning officer.

A registration officer may be appointed returning officer or deputy returning officer for any constituency.

If any returning officer is prevented by sickness or any other cause, from acting, or refuses or neglects to act, at any election, the Commission may at any time appoint some other fit and proper person to act in the place of such returning officer at such election. Every appointment made under these provisions must be published in the Gazette.⁸

— Section 3 —

CONSTITUENCIES

There shall be 21 constituencies and accordingly –

- (a) the island of Mauritius is divided into 20 constituencies; and
(b) Rodrigues forms one constituency,
provided that the Assembly may by resolution provide that any island forming part of Mauritius or Rodrigues shall be included in such one of the constituencies as the Electoral Boundaries Commission may determine and with effect from the next dissolution of Parliament after the passing of any such resolution, this provision shall have effect accordingly.

The Electoral Boundaries Commission is required to review the boundaries of the constituencies at such times as will enable it to present a report to the Assembly 10 years, or as near as may be, after presentation of its last report: provided that the Electoral Boundaries Commission may at any time carry out a review and present a report if it considers it desirable to do so by reason of the holding of any official census of the population of Mauritius and shall do so if a resolution is passed by the Assembly.

The report of the Electoral Boundaries Commission is required to make recommendations for any alterations to the boundaries of the constituencies as appear to the Electoral Boundaries Commission to be required so that the number of inhabitants of each constituency is as nearly equal as is reasonably practicable to the population quota: provided that the number of inhabitants of a constituency may be greater or less than the population quota in order to take account of means of communication, geographical features, density of population and the boundaries of administrative areas.

The Assembly may, by resolution, approve or reject the recommendations of the Electoral Boundaries Commission but may not vary them, and, if so approved, the recommendations shall have effect as from the next dissolution of Parliament.

“Population quota” means the number obtained by dividing the number of inhabitants of the Island of Mauritius (including any island included in any constituency in the Island of Mauritius by virtue of any resolution) according to the latest official census of the population of Mauritius by 20.⁹

— Section 4 —

REGISTRATION OF VOTERS

4.01 Qualification of Electors

A person is entitled to be registered as an elector if –

- (a) he is a Commonwealth citizen of not less than the age of 18 years; and
- (b) either he has resided in Mauritius for a period of not less than two years immediately before such date as may be prescribed by Parliament or he is domiciled in Mauritius and is resident there on the prescribed date.

No person shall be entitled to be registered as an elector –

- (a) in more than one constituency; or
- (b) in any constituency in which he is not resident on the prescribed date.¹⁰

4.02 Compilation of Registers

Every year there shall be compiled for every electoral area a register of persons entitled to be registered as electors for that electoral area.

No person shall be registered as an elector in any year unless he has attained or will have attained the age of 18 on 15 August in that year.

Every register compiled in any year shall, subject to the Commission’s power to vary the dates, come into force on 16 August in that year and shall remain in force until the register next compiled comes into force.

The normal qualifying date for the purpose of determining the residence of any person shall, in respect of the register to be compiled in any year, be January in that year.

The registration officer for every constituency shall appoint in respect of that constituency such registration office as he thinks fit and may, in addition, operate such mobile registration units as he considers necessary.

A place appointed as a registration office of a constituency shall as far as practicable be within that constituency but the registration officer for any constituency may appoint a registration office or operate a mobile unit at a place not within that constituency.

The Electoral Commissioner may, by notice published in the Gazette, appoint for each constituency such registration areas as he thinks necessary. A registration area shall be sufficiently described by enumerating the inhabited areas composed in it.

The registration officer for every constituency shall compile the register of persons entitled to be registered as electors in the constituency.

There must be a separate part of the constituency register for each registration area of the constituency. Every part of a register shall be in the prescribed form.

The names in each part of the register shall –

- (a) be classified in alphabetical order or in such other manner or order as may be prescribed; and
- (b) as far as is reasonably practicable, be numbered consecutively.

There shall be a distinguishing letter for each part of a register, and the distinguishing letter shall form part of the elector's number in the register.

In compiling the registers, the registration officer –

- (a) shall, as far as possible, have a house-to-house or other sufficient inquiry made as to the persons entitled to be registered as electors in his constituency and for this purpose may by himself or by any of his assistants –
 - (i) require any householder or any person owning or occupying premises within his constituency to complete a return in the prescribed form; and
 - (ii) require any person named in the return to subscribe a declaration of his qualification in the prescribed form;
- (b) shall prepare or cause to be prepared a list of all persons who appear to him, from the information obtained in the inquiry or from any other information in his possession, to be qualified to be registered as electors in his constituency and shall publish the list as soon as possible and in any event not later than 1 April in any year.

Any person who fails to complete a return or knowingly gives information which is false in material particular shall commit an offence.

The electors' list shall be published in the form in which the register is to be framed and shall consist of as many parts as there are registration areas in the constituency.

Each part shall include two sections, namely –

- (a) Section A, which shall consist of a copy of the part of the register in force relating to the registration area, with the deletion of the names of all persons who appear to the registration officer to be no longer qualified to be registered as electors in that registration area;
- (b) Section B, which shall include the name of every person who has subscribed the declaration stipulated, unless it appears to the registration officer that that person is not qualified to be registered as an elector in the registration area to which the part of the electors' list relates.

Each part of the electors' list may, if the Commission thinks necessary, consist of only one section which shall include the names of all persons who appear to the registration officer to be qualified to be registered in the registration area to which that part of the elector's list relates.

Section A of the electors' list shall be published at the office of the registration officer and at such other places as the Commission may, by notice published in the Gazette and in three daily newspapers, appoint.¹¹

4.03 Claims and Objections

A person (referred to as a "claimant") who –

- (a) claims to be entitled to be registered as an elector and is not already entered on the electors' list for the electoral area in which he claims to be registered;
 - (b) being entered on the electors' list, does not have the same qualifications as described in the list; or
 - (c) is, in any other manner, incorrectly entered on the elector's list,
- may between 1 April and 15 April in every year, appear before the registration officer of the constituency in which he claims to be registered as an elector and present his claim to be registered or to be correctly registered in the manner stipulated.

At the time of the publication of the electors' list –

- (a) the registration officer shall cause a notice in the prescribed form to be published in the Gazette informing all persons in his constituency of the right to make claims and shall affix copies of the notice at conspicuous places in his constituency; and
- (b) the Electoral Commission shall give further notice of the right to make a claim by publication in at least three daily newspapers.

A claimant shall, in the presence of the registration officer receiving the claim, sign and date his claim which shall also be signed by the registration officer.

Where a claimant is incapacitated or declares that he cannot read or write, the registration officer shall require him to impress his thumb print on the registration form and the registration officer shall sign and date the form. Where, for a physical reason a claimant cannot affix his thumb print, he may affix the print of another finger. Where, for a physical reason, a claimant cannot affix the print of any finger, the registration officer shall insert a note to that effect on the registration form.

The registration officer when receiving claims shall not allow to be present inside his office any person other than the officers concerned with the procedure for registration, the claimant and one of his relatives and his counsel or attorney and such other members of the public as can be accommodated in the public gallery.

A claimant who knowingly makes a statement which is false in any material particular advanced by him, is guilty of an offence.

A service elector who claims to be entitled to be registered in any year shall, not later than 15 April in that year, make a declaration by sending to the Electoral Commissioner a notice in the prescribed form.

The Permanent Secretary of the Ministry of External Affairs shall, not later than 15 April in every year, give written notice to the Electoral Commissioner of the name of every person who is entitled to be registered as a service elector, and of anyone who has ceased to be so.

“Service elector” means a person who holds the office of Ambassador, High Commissioner or other principal representative of Mauritius, or who is a public officer required to perform duties on behalf of the Government of Mauritius under a person mentioned above who is absent from Mauritius for the purpose of taking up his office or performing his duties, or is a member of the family of a person so specified and forms part of his household.

The registration officer shall publish the list of claimants not later than 30 April in every year.

A person whose name appears on an electors’ list or on a list of claimants may object to the registration of a person as an elector for the same constituency or for the same local government area as that in respect of which the objector’s name appears in the electors’ list or the list of claimants in the manner stipulated.

An objection to the registration of any person whose name is included in the electors’ list shall be made by sending notice of objection in the prescribed form to the registration officer not later than 7 April.

An objection to the registration of any person whose name is included in the list of claimants, shall be made by sending notice of the objection in the prescribed form to the registration officer not later than 15 May.

A notice of objection is not valid unless it is accompanied by a deposit of the sum of 10 rupees made of any legal tender.

Where, after considering the objection, and subject to an appeal being made from his decision, the registration officer –

- (a) admits the objection, the deposit must be returned to the objector;
- (b) does not admit the objection, the deposit shall be –
 - (i) paid to the person objected to, if that person appeared at the hearing of the objection; or
 - (ii) forfeited to the State if that person has not appeared.

The registration officer shall as soon as practicable after receiving a valid notice of objection, cause a notice in the prescribed form to be served on the person in respect of whose registration the notice of objection is given.

The registration officer must examine the electors' list and the list of claimants with a view of ascertaining whether all the persons whose names appear on the electors' list or on the list of claimants are qualified as electors.

Where the registration officer has reason to believe that a person whose name appears on the electors' list or the list of claimants is not qualified as an elector, he shall cause a notice in the prescribed form to be served on that person, calling upon him to show cause why his name should not be expunged.

The registration officer shall, not later than 10 April, publish a list of the names of persons included in the electors' list in respect of whose registration notice of objection has been given.

The registration officer shall, not later than 20 May, publish a list of the names of persons included in the list of claimants in respect of whose registration notice of objection has been given.

The registration officer shall, as soon as practicable, consider all objections of which notice has been given to him and for that purpose shall give at least five clear days' notice to the objector and to the person in respect of whose registration the notice of objection has been given, of the time and place at which the objection will be considered by him.

In all proceedings for the consideration of claims and objections by the registration officer the law and rules of evidence to be complied with shall be the same as in civil cases before a Magistrate, and the practice and procedure shall as nearly as may be conform to the practice and procedure on the hearing of such cases, and the registration officer shall have the same powers, jurisdiction and authority (including the power to administer an oath or affirmation) as a Magistrate in such cases.

Any person who makes a false statement on oath or affirmation in any proceedings for the consideration of claims and objections by the registration officer shall commit an offence.

Where the registration officer considers that any claim of which notice has been given to

him, and, in respect of which no notice of objection has been given, may be allowed without further inquiry, he must, enter the claimant's name in the register.

Where the registration officer is not satisfied that any such claim can be allowed without inquiry, he shall either consider the claim and in due course enter the claimant's name in the register or, where he cannot accept the claim, give at least five clear days' notice to the claimant of the time and place at which the claim will be considered by him.¹²

4.04 Correction of Lists

The registration officer shall make such additions to and corrections of the electors' list and the list of claimants as are required in order to carry out his decision on any objection or claim, and shall also make any such correction in these lists, whether by way of the removal of duplicate entries (subject to any expression of choice by the person affected as to those entries), the expunging of the names of persons who are dead or subject to any legal incapacity, the correction of clerical errors or otherwise in order to ensure that no person is registered as an elector in respect of more than one qualification in the same electoral area and that the list will be complete and accurate as a register.

Where the registration officer makes any correction in the electors' list or in the list of claimants, otherwise than in pursuance of a claim or objection, or for the purpose of correcting a clerical error, he shall give notice to the person affected by the correction, and give that person an opportunity of objecting to the correction, and if necessary, of being heard with respect to the correction.¹³

4.05 Formation of Lists into Register

The Registrar-General in Port Louis, and the civil status officers in the other districts and in Rodrigues, shall, not later than 20 May, furnish to every registration officer a statement of the names of all persons deceased whose names appear on the list of claimants or on the electors' list published by such registration officer.

On receipt of the statement, the registration officer shall, after inquiry, if necessary expunge the names of the deceased persons from the lists.

The registration officer shall, not later than 15 June, decide all objections and shall thereafter make all necessary corrections of the electors' list and the list of claimants and do everything necessary to form those lists so corrected into a register (with a separate series of numbers for each part of the register) in time to allow its publication on the day stipulated.

The registration officer shall sign and date the register and the register so dated and signed shall be the register in force. The register may be altered or corrected in conformity with any decision of the Court.¹⁴

4.06 Publication of Registers

The Electoral Commissioner or the registration officer, as the case may be, shall as soon as

practicable after 1 July, and not later than 14 August, publish the registers by making a copy of them available for inspection by the public at his office and causing a notice to be affixed outside his office informing the public that it is so available.

The Electoral Commissioner or the registration officer, as the case may be, shall, on application of any person during business hours and on payment of the prescribed fee, furnish copies of the registers to the applicant.

The registration officer shall, on the application of any person, allow that person to inspect, and take extracts from, or, on payment of the prescribed fee, supply to that person copies of the electors' list or list of claimants and of any claim or notice of objection.¹⁵

4.07 Hearing Proceedings of Claims and Objections

On the consideration by the registration officer of any claim or objection or other matter, the claimant, the objector or person objected to may appear and be heard either in person or by counsel or attorney on his behalf.

The registration officer may, at the request of any person interested or, if he thinks fit, without such request, on the consideration of any claim or objection or other matter make such order as he thinks just for ascertaining if any person is duly qualified for registration as an elector and may for that purpose examine such person or other witnesses on oath or affirmation, call for the production of books and other papers or documents, and make local inspections.

No misnomer or inaccurate description of a person or place on a list, register or notice shall prejudice the operation of the Act in respect of that person or place where the person or place is so designated as to be commonly understood.¹⁶

4.08 Appeals

An appeal lies to a Judge in Chambers, in vacation, or, in term time, to the Supreme Court from any decision of a registration officer on any claim or objection which has been considered by him.

No appeal shall lie where a claimant or objector has not availed himself of the opportunity of being heard by the registration officer on the claim or objection.

A claimant or objector desiring to appeal against the decision of a registration officer or of any of his assistants shall give written notice of appeal to the registration officer and to any opposite party within five days after the said decision, specifying the grounds of appeal.

The registration officer shall immediately forward the notice to the Registrar of the Court together with a statement of the material facts which, in his opinion, have been established in the case, and of his decision upon the whole case and upon any point which may be specified as a ground of appeal, and shall also furnish to the Court or Judge any further information which the Court or Judge may require and which he is able to furnish.

Where it appears to the registration officer that any notices of appeal given to him are based on similar grounds, he shall inform the Registrar of the Court of the fact for the purposes of enabling the Court or Judge, if the Court or Judge thinks fit, to consolidate the appeals or to select a case as a test case.

On appeal the registration officer shall be a party to the proceedings, if there is no other respondent.

The right of any person whose name is for the time being on the register to vote at an election shall not be prejudiced by any appeal pending and any vote given at an election in pursuance of that right shall be as valid and effective as if no such appeal were pending, and shall not be affected by the subsequent decision of the appeal.

Notice shall be sent to the registration officer by the Registrar of the decision of the Court or Judge on any appeal and the registration officer shall make such alteration in the electors' list or the register, as the case may be, as may be required to give effect to the decision.

The jurisdiction vested in the Court or Judge, and any duty imposed upon the Registrar shall, in Rodrigues, vest in the Magistrate appointed for the purpose and be performed by the district clerk of the Court of Rodrigues respectively.

A decision of the Magistrate in the exercise of his jurisdiction is final and not subject to appeal.¹⁷

4.09 Omissions in Register

The Court may order the insertion in the register of the name of any person which has been inadvertently omitted from it on application made by way of motion in that behalf by such person, or *ex parte*, by the Electoral Commissioner.¹⁸

— Section 5 —

REGISTRATION OF POLITICAL PARTIES

5.01 Application for Registration of Parties

Every political party wishing to be registered under paragraph 2(1) of Schedule 1 to the Constitution is required to make application to the Commission in the prescribed manner at least ten days before nomination day.

Any application shall be made and signed in the presence of the Electoral Commissioner by the president, chairman or secretary of the party duly authorised so to do by a resolution passed by the executive committee of such party, and such application must be supported by a certified extract of the minutes of proceedings of the meeting at which the executive committee of such party passed such resolution.

Where an application is made by political parties as a party alliance, such application shall be made and signed jointly by the respective president, chairman or secretary of such political parties and supported by a certified extract of the minutes of proceedings of the meeting at which the executive committees of the respective political parties passed the resolution.¹⁹

5.02 Registration Procedure

The Commission shall, upon application made in accordance with the stipulated procedure, register the name of the party and the name or names of the person or persons making or authorised to make the application in a register kept for that purpose.

The Commission must not register any party until the day next following the last day for making applications. As soon as practicable after the registration of any party the Commission shall give notice of such registration by publication in the Gazette.

Where any party has applied to be registered in a name that is the same as that of any other party that has also applied or that is so similar thereto as to be liable in the opinion of the Commission to confuse the electorate, the Commission shall not register any of the parties concerned and shall forthwith give notice to those parties accordingly.

Where such a party is a party formed in Rodrigues the foregoing provision does not apply, and the Commission shall in its absolute discretion register such party under a name that is not open to objection under the regulations: provided that before registering such party as aforesaid, the Commission shall cause the party to be informed of the name under which it intends to register such party and the party may not later than two days before nomination day, request the Commission either not to register it under the proposed name or to register it under such alternative name as would not be open to objection, and the Commission shall, if satisfied that such alternative name is not so open to objection, register the party accordingly.

Within 24 hours of the receipt of a notice from the Commission disallowing a proposed name, any parties concerned may apply to the Supreme Court for a determination that it may be registered in the name specified in its application for registration.

If application is made to the Supreme Court as aforesaid, the party applying shall give notice of such application to all the other parties who have applied for registration under the same name or a similar name, as the case may be, and the Supreme Court after hearing such of the parties as desire to be heard shall determine the name in which each party shall be registered and shall make an order directed to the Commission to that effect and the Commission shall register those parties accordingly.

Any party concerned in proceedings relating to an application to the Supreme Court may submit to the Court an alternative name under which, in the event of the Court deciding that it should not be registered under the name specified in its application for registration, such party could be registered, and the Court when making an order shall in the event as aforesaid, if it is satisfied that the alternative name is not open to objection, direct the Commission to register the party under such alternative name.

Any application to the Supreme Court shall be heard and determined by a single Judge of the Court not later than two days before nomination day, and the determination of the Judge therein shall not be subject to appeal.

Where any party is registered with the Commission, notice shall from time to time be given in writing by that party to the Commission of the names of at least two persons any one of whom is authorised by such party to discharge the functions of leader of that party.

The notice required to be given must be given by the president, chairman or secretary of the party duly authorised so to do by a resolution passed by the executive committee of such party, and such notice shall be supported by a certified extract of the minutes of proceedings of the meeting at which the executive committee of such party passed such resolution.

Where a notice is given by political parties as a party alliance, such notice must be given jointly by the respective president, chairman and secretary of such political parties and supported by a certified extract of the minutes of proceedings of the meeting at which the executive committees of the respective political parties passed the resolution.²⁰

— Section 6 —

PREPARATION FOR ELECTIONS

6.01 Writs for Election

The President, acting in accordance with the advice of the Prime Minister, shall, for the purpose of electing a new Parliament, not later than 55 days after a dissolution of Parliament –

- (a) issue a writ of election directed to the returning officer of every constituency; and
- (b) by notice of the Commission appoint the day on which, if it becomes necessary to adjourn the election for the taking of a poll, the poll is to be taken.

Every writ of election shall –

- (a) specify the place of election and the day of election; and
- (b) be forwarded to the Electoral Commissioner for transmission to the returning officer.

The writs of election for all constituencies shall be dated on the same day and shall specify the same day of election.

The day of election appointed must not be less than fifteen days nor more than thirty days after the day on which the writ is issued and the day on which a poll is to be taken must not be less than fifteen days nor more than sixty days after the day on which the nomination of candidates for the election is received.

Where on the day of election or at any time thereafter until the day on which the poll is to be taken, being days appointed in the notice of the writ, no candidate has been nominated or the number of candidates remaining nominated is less than or is reduced to a number less than the number of seats to be filled an election shall be held for the purpose of filling any seat that is unfilled –

- (a) on such day of election; or
 - (b) on such day on which, if it becomes necessary to adjourn the election for the taking of a poll, the poll is to be taken,
- as may be determined by the person appointed to conduct the election.²¹

6.02 Nomination of Candidates

On the day and at the place fixed for the receipt of nominations, the returning officer shall attend between the hours of 9am and 3pm to receive the nomination of candidates for the seats to be filled. Any nomination paper which is delivered after the hour of 3pm shall be rejected.

Every candidate for election shall be nominated in writing by not less than eight registered electors of the constituency for which he seeks to be elected.

Every candidate shall make and subscribe on nomination paper a declaration –

- (a) that he is qualified;
- (b) in the case of a general election, of the party, if any, registered under these regulations to which he belongs, if he wishes to declare such party;
- (c) in the case of a general election, as to which of the Hindu, Muslim, Sino Mauritian or General Population communities he belongs.

If such declaration is not made in conformity of these provisions the nomination of such candidate shall be deemed to be void and of no effect.

Any candidate making a statement in a declaration which is false in any material particular and which he knows or believes to be false or does not believe to be true is guilty of an offence and is liable on conviction to imprisonment for any term not exceeding two years and to a fine not exceeding one thousand rupees, and shall, in addition, be incapable, during a period of six months from the date of his conviction, of being elected a member of the Assembly, or if elected before his conviction, of retaining his seat as such member.

The aforesaid disqualification shall not take effect until the time allowed by law for appealing against such conviction to any court in Mauritius has expired and, if an appeal against such conviction is filed, shall not take effect until the final determination thereof.

If the conviction is upheld on appeal, the disqualification shall take effect from the date of final determination of the appeal.

Every candidate, or some other person on his behalf, shall in the case of a general election,

at the time of delivering his nomination paper, deposit with the returning officer a certificate under the hand of the president, chairman or secretary of the party declared by him that he belongs to that party. If the candidate fails to deposit such certificate he shall be deemed not to belong to any party and his nomination paper shall have effect accordingly.

The returning officer shall, on the nomination paper being delivered to him, forthwith publish a notice of the name of the person nominated as a candidate, of the names of the persons nominating him and of the community to which he belongs by placarding or causing to be placarded such notice in a conspicuous position outside his office. In the case of a general election, the Electoral Commissioner shall give further notice of the names of the candidates nominated together with the name of the party, if any, and the community to which each candidate belongs by publication in the Gazette and in at least three daily newspapers.

Every candidate, or some other person on his behalf, shall, at the time of delivering his nomination paper, deposit, or cause to be deposited, with the returning officer, the sum prescribed, and if he fails to do so, the nomination of such candidate is deemed to be invalid.

If after the deposit is made, the candidature is withdrawn not more than seven days after the nomination day by notice given in the prescribed form, the deposit shall, if the withdrawal is allowed, be returned to the person by whom it was made, and if the candidate dies after the deposit is made and before the poll has commenced, the deposit, if made by him, shall be returned to his estate, or, if not made by him, shall be returned to the person by whom the deposit was made.

Before the hour of 3pm on the day fixed for the receipt of nominations and within one hour afterwards objection may be made to a nomination paper by the returning officer or some other person and the returning officer shall decide on the validity of every such objection.

The returning officer is entitled to hold a nomination paper invalid only on one of the following grounds –

- (a) that the candidate has failed to make the deposit prescribed;
- (b) that the particulars of the candidate or the persons subscribing the nomination paper are not as required by law; and
- (c) that the nomination paper is not subscribed as required.

Where the returning officer decides that a nomination paper is invalid, he shall endorse and sign on the nomination paper the fact and the reasons for his decision.

The decision of the returning officer that a nomination paper is valid is final and cannot be questioned in any proceeding other than on an election petition.²²

6.03 Appeal by Aggrieved Prospective Candidate

The decision of the returning officer that the nomination paper of a candidate presenting himself for election is invalid may be questioned by that candidate within five days of that

decision by way of motion to the Supreme Court for an order directing the returning officer to insert his name on the list of candidates for the said election.

Any such motion shall be heard by a single Judge of the Supreme Court.²³

6.04 Questioning Declaration as to Community

Within seven days of the nomination of any candidate for election at any general election any elector may question the correctness of the declaration relating to his community made by that candidate at his nomination and obtain an order directing the returning officer to insert the proper community of the candidate on his nomination paper for the said election.

A motion to the Supreme Court in respect of this matter shall be heard and determined by a single Judge of the Supreme Court within fourteen days of nomination and the determination of the Judge therein is not subject to appeal.²⁴

6.05 Withdrawal of Candidature

Any candidate may withdraw from his candidature by notice in writing signed by him, and delivered by himself or one of the persons nominating him to the returning officer between the hours of 9am and 3pm not more than seven days after nomination day, unless he has before the expiry of such period of seven days been declared elected.²⁵

6.06 Method of Election

Where, at 4pm on nomination day, the number of candidates remaining nominated exceeds the number of seats to be filled, a poll shall be taken.

Where, at the time aforesaid on nomination day or at any time thereafter until the time fixed for the taking of the poll, the number of candidates remaining nominated is, or is reduced to, a number equal to the number of seats to be filled, the remaining candidates shall forthwith be declared elected.

If, at the time aforesaid on nomination day or at any time thereafter until the time fixed for the taking of the poll, no candidate has been nominated or the number of candidates remaining nominated is less than, or is reduced to a number less than, the number of seats to be filled, the remaining candidates, if any, shall forthwith be declared elected, and the returning officer shall appoint a day of election for the purposes of filling any seat that is unfilled.

Where any candidate is to be declared elected the returning officer shall forthwith publicly declare such candidate elected and immediately thereafter certify by endorsement on the writ of election the return of such candidate.²⁶

6.07 Preparation for the Taking of the Poll

If there are more candidates, duly nominated, than there are seats to be filled the returning officer must adjourn the election to the day appointed for the taking of a poll and shall

report to the Electoral Commissioner the names of the candidates and, in the case of a general election, the respective party, if any, to which they belong.

The Electoral Commissioner shall allot a symbol of identification to each candidate, and the returning officer shall thereupon cause to be placarded in a conspicuous position outside his office a facsimile of the symbol allotted to each candidate.

At the expiry of the time limit laid down, if more candidates remain nominated than there are seats to be filled, the returning officer shall forthwith report to the Electoral Commissioner the names of the candidates remaining nominated.

Upon receipt of such reports the Electoral Commissioner shall give notice of the day on which the poll will be taken and of the names of candidates nominated for election and, in the case of a general election, their respective party, if any, by the publication in the Gazette, of a notice in the prescribed form.

The returning officer shall cause similar notices to be posted up in a conspicuous position at such places in the constituency as he may deem necessary.

The Electoral Commissioner shall further give public notice, combined with a statement of the candidates nominated for election, in at least three daily newspapers, of the situation of each polling station and the description of voters entitled to vote thereafter: provided that such notice shall, in Rodrigues, be given by the returning officer by affixing copies thereof at such conspicuous places as he may deem fit.²⁷

6.08 Polling Agents

Each candidate may appoint in respect of any polling station not more than one person to be in attendance in each voting room and in addition to his official election agent, if any, not more than two polling agents to be within the precincts of the polling station for the purpose of detecting personation: provided that no person shall be appointed under this paragraph who has at any time been convicted of, and sentenced to a term of imprisonment in respect of, any offence involving fraud, dishonesty or the use of violence against the person of any individual.

Notice in writing of the appointments stating the names and address of the polling agents, together with the polling stations to which they have been assigned, shall be given by the candidate to the returning officer not later than three days before the day fixed for the election.

Each candidate may, in addition to the polling agents appointed by him, appoint one alternate polling agent who shall, whenever a substantive polling agent is incapable of acting as such and upon notice being given by the candidate to the returning officer or the senior presiding officer, be entitled to replace any such substantive polling agent.

If any polling agent (whether substantive or alternative) dies or becomes incapable of acting as such, the candidate may, before the opening of the poll or within two hours of such

opening and subject to such notice being given to the returning officer, appoint another polling agent in the place of any agent.

A polling agent must not remove his marked register or make any extract therefrom or remove such extract from the voting room before the close of the poll nor shall he leave the voting room to which he has been assigned without the permission of the presiding officer, provided that the presiding officer must not unreasonably withhold such permission.

Any polling agent who contravenes these provisions is guilty of an offence.²⁸

6.09 Voting Procedures

The ballot of each elector shall consist of a paper (referred to as ballot paper) showing:

- (a) the full name and description of each candidate;
- (b) the symbol of identification allotted to each candidate in accordance with regulations; and
- (c) in the case of a general election, the party if any, to which the candidate belongs.

Each ballot paper shall have a number printed on the back and shall have attached to it a counterfoil with the same number printed on the face.

The returning officer shall ensure that, wherein poll is to take place, each polling station is provided with proper doors, barriers, tables, chairs or other conveniences, properly arranged for carrying out the polling activities and he shall, subject to the approval of the Commission, appoint a senior presiding officer to preside at each polling station and a presiding officer to preside at each voting room therein: provided that he may himself act as a senior presiding officer at any one polling station in the constituency for which he has been appointed.

The returning officer shall, subject to the approval of the Commission, also appoint such poll and other clerks and other persons to assist in the taking of the poll and he shall also provide each polling station with polling compartments or other places properly screened from observation, with copies of the register of electors for the constituency, certified under his hand, a proper ballot box, and a sufficient number of ballot papers, and such other conveniences and materials for taking the poll as may be necessary.

The returning officer shall, on or before the day fixed for the taking of the poll, visit each polling station, and see that each such station is provided with such requisites as aforesaid for taking the poll.

The poll at each polling station shall take place between the hours of 6.30am and 12 noon and of 1pm and 6pm on the same day.

During the interval when voting is suspended between 12 noon and 1pm the presiding officer shall place the ballot box and all documents relating to the election under his own seal and shall otherwise take proper precautions for the securing of such ballot box and documents.

The ballot box shall be of convenient size and shall be so constructed that the ballot paper can be introduced therein but cannot be withdrawn without the box being unlocked. It shall be provided with a lock and key.

The ballot box shall be exhibited empty to such persons as may be in the polling station immediately before the taking of the poll, and shall then be securely locked, and sealed in a manner as to prevent it being opened without breaking the seal. It shall be placed in the full view of the presiding officer and the polling agents for the receipt of ballot papers.

For the guidance of electors in voting, notices in the prescribed form shall be printed in conspicuous characters in English, French, Hindi, Tamil, Telegu, Urdu, Gujarati and Chinese and posted in various places outside and inside of each polling station.

The senior presiding officer shall keep order at his polling station and shall regulate the number of electors to be admitted at a time, and shall exclude all other persons except the Chairman and members of the Commission, the election officers, the candidates, one polling agent in each voting room for each candidate and the members of the police force on duty.

The senior presiding officer may limit the number of polling agents who may be admitted at any one time within the precincts of a polling station.

The polling agents in the voting room shall be posted in such a place that they can see each person who presents himself as an elector, and hear his name as given in by him, but so that they cannot see how an elector votes. They shall not interfere in the proceedings save in so far as may be allowed.

Every elector desiring to record his vote shall proceed to the polling station allotted to him and shall present himself to the presiding officer at the appropriate voting room and state his name and the presiding officer, after satisfying himself that the name of such elector appears on the copy of the part of the register of electors containing the names of the electors allotted to that voting room, shall, in accordance with the stipulated procedure, deliver a ballot paper to the elector.

Every ballot paper shall bear an official mark consisting partly of a printer's design printed on such ballot paper and partly of a secret mark which shall be stamped, embossed or perforated thereon.

An interval of not less than five years shall intervene between the use of the same official mark at elections for the same constituency.

Immediately before being delivered to the voter, the ballot paper shall be marked on both sides with the mark, which is required to be stamped, embossed or perforated thereon. The number and names of the elector as stated in the copy of the register shall be called out, the number of such elector shall be marked on the counterfoil and a mark shall be placed in the register against the number of the elector to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received.

Before delivering a ballot paper the presiding officer may and shall if requested by a candidate or a polling agent, put to the person applying therefor the following questions –

- (a) are you the person registered in the register of electors for this constituency as follows (the whole entry from the register to be read)?
- (b) have you already voted at this election either here or elsewhere?

and may require such person to furnish an impression of his thumb or, if he is incapacitated by physical cause from impressing his thumb print, of such other finger as may be available for the purpose.

If any person does not answer satisfactorily any question put to him or refuses to furnish an impression of his thumb or finger, or if the presiding officer is satisfied that the person offering himself to vote is not the same person whose name is on the register of electors or that such person has already voted at the election, the presiding officer may refuse to give him a ballot paper.

If any person makes a false answer to any such question he is guilty of an offence.

The elector, on receiving his ballot paper shall forthwith proceed to a polling compartment, within the voting room, and there secretly mark his paper, and fold it up so as to conceal his vote, and shall then put the ballot paper, so folded up, into the ballot box after having shown to the presiding officer the official mark on the back; and shall quit the polling station as soon as he has put his ballot paper into the ballot box.

The elector shall mark his vote upon the ballot paper by placing a cross opposite the name of each candidate for whom he wishes to vote. The presiding officer shall on request give to any elector such instructions as may appear to be necessary for the purpose of enabling him to record a valid vote.²⁹

6.10 Tendered Ballot Paper

If a person representing himself to be a particular elector named on the register applies for a ballot paper after another person has voted as such elector, the applicant shall, upon duly answering the questions set forth in the regulations, be entitled to mark a ballot paper in the same manner as any other elector, but the ballot paper (referred to as a “tendered ballot paper”) shall be of a colour differing from the other ballot papers and instead of being put into the ballot box shall be given to the presiding officer, and shall be endorsed by him with the name of the elector and his number in the register of electors, and set aside in a separate packet, and shall not be counted by the returning officer. The name of the elector and his number on the register shall be entered on a list to be called the tendered votes list.³⁰

6.11 Spoilt Ballot Papers

An elector who has inadvertently dealt with his ballot paper in such a manner that it cannot be conveniently used as a ballot paper may, on delivering to the presiding officer the ballot paper so inadvertently dealt with, and proving the fact of the inadvertence to the satisfaction

of the presiding officer, obtain another ballot paper in the place of the ballot paper so delivered up (referred to as a “spoilt ballot paper”), and the spoilt ballot paper shall be immediately cancelled by the presiding officer writing the word “cancelled” across the face thereof.

All spoilt ballot papers shall be preserved by the presiding officer, in a separate packet, and shall be given up by him at the close of the poll to the returning officer.³¹

6.12 Incapacitated Voters

If any elector is incapacitated by blindness or other physical cause from voting in the manner laid down in the regulations or declares that he is unable to read or understand the symbols, the poll clerk shall, at the request of the elector, and on being so ordered by the presiding officer and in his presence and that of another election officer, mark the vote of such elector on a ballot paper in the manner directed by such elector and the ballot paper so marked shall be placed in the ballot box; and the name and number on the register of electors of every elector whose vote is so marked for him, and the reason why it is so marked, shall be entered on a list to be called the “list of votes marked by the presiding officer”.

All necessary precautions must be taken by the presiding officer to ensure that no person, save the person by whom the ballot paper is marked for the voter and the other election officer present, shall know for whom such voter has voted.³²

6.13 Voting by Proxy

The following persons are entitled to vote by proxy –

- (a) any member of the Police and any election officer, certified in writing by the Commissioner of Police or the returning officer, as the case may be, to be engaged in the performance of duties at the date of any election held;
- (b) any service elector; and
- (c) any candidate duly nominated for election.

At least seven days before the date of any election the Commissioner of Police, the Permanent Secretary, Ministry of External Affairs and the returning officers of all the constituencies shall forward to the Electoral Commissioner lists of persons entitled to vote by proxy showing also the constituency in which they are entitled so to vote.

Any elector whose name appears on a list or whose name appears in a notice of taking of poll published under the regulations may apply to the returning officer in the prescribed form, not less than seven days before the date of such election aforesaid, for the issue of a proxy paper appointing another person to vote as proxy for such elector.

The application form shall be filled in and signed by the applicant and the proxy, as required.

The returning officer shall, on application, appoint the person designated by the elector in

his application form as proxy for that elector and issue to the elector or, in the case of a service elector, to the proxy, a proxy paper in the prescribed form. A person shall not be entitled to have more than one proxy at a time appointed to vote for him at any election, nor shall a person be entitled to vote in person at any election where that person's application for a proxy paper has been allowed.

A person shall not be capable of being appointed to vote, or of voting, as proxy at any election unless he is a Commonwealth Citizen over eighteen years of age, and not subject to any legal incapacity to vote as an elector, and a person shall not be entitled to vote as proxy at the same election on behalf of more than two electors.

It shall be the duty of the returning officer to issue a proxy paper in pursuance of any application duly made to him in that behalf if he is satisfied –

- (a) that the applicant's name appears on the register of electors for the constituency and on a list of specified persons or, in the case of a candidate, on any notice of poll; and
- (b) that the proxy is capable of being, and is willing to be, appointed.

The returning officer shall keep a record (the list of proxies) of electors for whom proxies have been appointed and of the names and addresses of the persons appointed. No person must be permitted to vote as proxy unless he first surrenders to the presiding officer his proxy paper.

Before delivering a ballot paper to a proxy, the presiding officer may, and shall, if requested by a candidate or a polling agent, put to the person applying therefor the following questions –

- (a) are you the person whose name appears as A.B on your proxy paper and on the list of proxies for this election as entitled to vote as proxy on behalf of C.D (the whole entry from the register of electors to be read)?
- (b) have you already voted here or elsewhere at this election as proxy on behalf of C.D? and may require such person to furnish an impression of his thumb or, if he is incapacitated by physical cause from impressing his thumb print, of such other finger as may be available for the purpose.

If any person does not answer satisfactorily any question put to him, or refuses to furnish an impression of his thumb or finger, or if the presiding officer is satisfied that the person offering himself to vote is not the same person whose name is on the proxy paper and on the list of proxies as entitled to vote as proxy on behalf of the elector, or that such person has already voted at the election as proxy on behalf of the elector, the presiding officer may refuse to give him a ballot paper.

If any person makes a false answer to any such question he is guilty of an offence.

If a person whose name appears on a proxy paper and on a list of proxies as proxy for an elector applies for a ballot paper after another person has voted as proxy for the elector the

presiding officer shall deliver to him a tendered ballot paper. In the case of a person applying for a ballot paper as proxy for an elector, a mark shall be placed against that proxy's name in the list of proxies, to denote that he has received a ballot paper, in addition to the mark placed against the number of the elector in the copy of the register of electors.³³

6.14 Close of Poll and Counting of Votes

The presiding officer of each voting room, as soon as practicable after the close of the poll, shall, in the presence of the agents of the parties or of the candidates as the case may be, make up into separate packets sealed with his own seal and the seals of such agents as desire to affix their seals –

- (a) the ballot box in use at his voting room unopened but with the key attached, and so sealed as to prevent the introduction of additional ballot papers;
 - (b) the unused and spoilt ballot papers;
 - (c) the tendered ballot papers;
 - (d) the marked copies of the register of electors and the counterfoils of the ballot papers;
 - (e) the tendered votes list, and the list of votes marked by the presiding officer; and
 - (f) the list of proxies and the proxy papers,
- and shall deliver such packets to the returning officer.

The packets must be accompanied by a statement made by such presiding officer, showing the number of ballot papers entrusted to him, and accounting for them under the heads of "ballot papers in the ballot box" and "unused, spoilt and tendered ballot papers", which statement is called the ballot paper account.

Each candidate may appoint not more than two persons (counting agents), to attend the counting of votes at each counting compartment: provided that no person shall be appointed as counting agent who has at any time been convicted of, and sentenced to a term of imprisonment in respect of, any offence involving fraud, dishonesty or the use of violence against the person of any individual.

Notice in writing of the appointments, stating the names and addresses of the counting agents, shall be given by the candidate to the returning officer not later than three days before the day of election and the returning officer may refuse to admit to the place where the votes are counted any person purporting to be a counting agent in respect of whom such notice has not been given.

If a counting agent dies or becomes incapable of acting as such, the candidate may appoint another counting agent in his place and shall immediately give to the returning officer notice in writing of the name and address of the counting agent so appointed.

On the day next following the poll the returning officer shall attend at the place of election or such other place as he may appoint, and at 8am shall, in the presence of such of the duly

appointed agents of the candidates as attend, break any seal affixed to each ballot box in compliance with the regulations, open each ballot box and first proceed to count the ballot papers contained in each ballot box and record the number thereof, keeping the ballot papers with their faces upwards and taking all proper precautions for preventing any person from seeing the numbers on the backs of such papers, and then proceed to count the votes.

The returning officer may, with the approval of the Commission, in addition to any clerks, appoint competent persons to assist him in counting the votes.

No person shall be allowed within the precincts of any place where a counting is carried out except the election officers, the candidates and their official agents, if any, two counting agents for each candidate at each counting compartment and the members of the police force on duty.

The returning officer may limit the number of counting agents who may be admitted at any one time at each counting compartment.

The returning officer shall, as far as is practicable, proceed continuously with the counting of the votes allowing only time for refreshment, and excluding (except in so far as he and the candidates or their official election agents otherwise agree) the hours between 6pm and 8am. During the excluded period the returning officer shall place the ballot papers and other documents relating to the election under his own seal, and the seals of such of the agents of the candidates as desire to affix their seals, and shall otherwise take proper precautions for the security of such papers and documents.

Any ballot paper which has not on its back the official mark or on which votes are given to more candidates or to a lesser number of candidates than required or on which anything, except the number on the back, is written or marked by which the voter can be identified, or which is unmarked or which there is any uncertainty as to the vote, shall be void and not counted.

The returning officer shall endorse "rejected" on any ballot paper which he may reject as invalid, and shall add to the endorsement "rejection objected to" if an objection to his decision be in fact made by any agent.

The returning officer shall report to the Commission the number of ballot papers rejected and not counted by him under the several heads of –

- (a) want of official mark;
- (b) voting for more candidates than entitled to;
- (c) voting for a lesser number of candidates than required to;
- (d) writing or mark by which the voter could be identified;
- (e) unmarked or void for uncertainty,

and shall, on request, allow the agents of the candidates before such report is sent to copy it.

A candidate or his election agent may, if present when the counting is completed, require the returning officer to have the votes recounted or again recounted but the returning officer may refuse to do so if in his opinion the request is unreasonable.

No step shall be taken on the completion of the counting or any recount of the votes until the candidates and election agents present at the completion thereof have been given a reasonable opportunity to exercise the right conferred under the regulations.

Upon the completion of the counting, the returning officer shall seal up in separate packets the counted and rejected ballot papers. He shall not open the sealed packet of tendered ballot papers or of marked copies of the register of electors and counterfoils of ballot papers, or of the list of proxies and the proxy papers, but shall proceed, in the presence of the agents of the candidates, to verify each ballot paper account by comparing it with the number of ballot papers counted by him as aforesaid, and the unused and spoilt ballot papers in his possession and the tendered votes list, and shall seal each packet opened by him after examination.

The decision of the returning officer as to any question arising in respect of any ballot paper shall be final, subject to reversal on petition questioning the election or return.³⁴

6.15 Equality of Votes

Whenever there is an equality of votes between any candidates at an election, the election as between the candidates with an equal number of votes shall be decided by the drawing of lots in the presence of the returning officer.

No elector shall be entitled to vote in a constituency for which he is the returning officer or in which he performs the duties of the returning officer.³⁵

6.16 Declaration of Results

The returning officer shall, as soon as he shall have ascertained the result of the poll, forthwith publicly announce such result and in the case of the election of more than one member shall declare to be elected as members the candidate who has received the greatest number of votes and the candidate or the candidates standing next in order on the basis of the number of votes they have received up to the total number of seats to be filled, and shall immediately thereafter certify by endorsement on the writ of election the return of such candidates and the number of votes they have respectively obtained and shall return that writ so endorsed to the President within the time for the purpose specified therein.

In respect of Rodrigues the writ so endorsed shall be forwarded by the returning officer to the Magistrate and Civil Commissioner for Rodrigues who shall forthwith inform the Commission of the terms of endorsement of such writ and thereafter transmit the writ to the President at the earliest opportunity.³⁶

— *Section 7* —

ELECTION EXPENSES

7.01 Election Agents

On or before the day fixed for the election, each candidate or prospective candidate shall, by notice in writing given to the returning officer, appoint either himself or some other person as his election agent and specify an address within the electoral area to which all claims, notices, writs, summonses and documents addressed to the candidate or to his agent may be sent, and the returning officer shall forthwith give public notice of the name and address of every election agent so appointed.

A candidate may, by notice in writing given to the returning officer, revoke the appointment of his election agent, and, in the event of such revocation or of the death of the agent, whether such event is before, during or after the election, forthwith appoint another election agent and give written notice of his name and address to the returning officer who shall forthwith give public notice thereof.

An election agent may act in relation to any matter required to be done in a polling station by sub-agents appointed by him for that station and anything done for the purposes of the Act by or to any sub-agents in his electoral area shall be deemed to be done by or to the election agent, and any act or default of a sub-agent, which, if he were the election agent, would be an illegal practice or other offence under the Act is an illegal practice or other offence committed by the sub-agent, and the sub-agent is liable to punishment accordingly.

A candidate shall suffer the like incapacity, as if the act or default had been the act or default of the election agent unless he proves that he had no knowledge of that act or default.

Not later than two clear days before the poll the election agent shall declare in writing the name and address of every sub-agent to the returning officer, who shall forthwith give public notice thereof.

The appointment of a sub-agent shall not be vacated by the election agent who appointed him ceasing to be election agent, but may be revoked by the election agent of the candidate, and, in the event of such revocation, or of the death of a sub-agent, another sub-agent may be appointed, and notice of his name and address shall forthwith be given in writing to the returning officer, who shall forthwith give public notice thereof.

A document delivered at the address specified in the notice shall be deemed to have been duly served on the election agent and every election agent may, in respect of any matter connected with the election for which he is acting, be sued in any competent court.

The election agent of a candidate shall appoint every sub-agent, clerk and messenger employed for payment on behalf of the candidate at an election, and hire every committee room hired on behalf of the candidate.

A contract whereby any expenses are incurred on account of, or in respect of, the conduct or management of an election, shall not be enforceable against a candidate at such election unless made by the candidate himself or by his election agent either by himself or by his sub-agent.

The inability to enforce such contract against the candidate shall not relieve the candidate from the consequence of any illegal practice having been committed by his agent.

Except as permitted by the Act, no payment, advance or deposit shall be made by a candidate, at an election, or by an election agent on behalf of the candidate, or by any other person, whether before, during, or after such election, in respect of expenses incurred on account of, or in respect of, the conduct or management of such election, otherwise than by or through the election agent of the candidate, whether acting in person or by a sub-agent.

All money provided by a person other than the candidate for any expenses incurred on account of, or in respect of, the conduct or management of the election, whether as gift, loan, advance or deposit, shall be paid to the candidate or his election agent and not otherwise.³⁷

7.02 Authorised Amount of Election Expenditure

No election expenses shall be incurred and no sum shall be paid in respect of a candidature in excess of the amount specified.

The maximum amount of election expenses to be incurred in respect of a candidature shall be –

- (a) in respect of a Legislative Assembly election –
 - (i) where the candidate does not belong to any party, or there is no other candidate belonging to the same party at the election in a constituency, 250,000 rupees;
 - (ii) where the candidate is not the only candidate belonging to a party at the election in a constituency, 150,000 rupees;
- (b) in respect of a municipal council election, 50,000 rupees.

In determining the total expenditure incurred in relation to the candidature of any person at any election regard shall not be had –

- (a) to any deposit required to be made by the candidate on his nomination in compliance with the regulations;
- (b) to any expenditure incurred before the notification of the date fixed for the election in respect of services rendered or materials supplied before such notification; or
- (c) (i) any act done, services rendered or expenditure incurred by a public officer, a local government officer or an officer of a statutory authority or corporation either in the discharge or purported discharge of the officer's functions while that person was the holder of an office; or
 - (ii) any act done, services used or expenditure incurred by that person while he was the holder of an office.

No expenditure shall be incurred in respect of the candidature of any person at any election except by the candidate, his agent or a person authorised in writing by the agent.

No payment must be made by any candidate to any person other than his agent in connection with his candidature of any election except –

- (a) expenditure for the candidate's personal living expenses during the period of the election to an amount not exceeding 25,000 rupees; and
- (b) petty expenditure to an amount not exceeding 2,500 rupees.

This paragraph does not apply to a candidate who is his own official agent.

No expenditure must be incurred in respect of the candidature of a candidate at an election, by a person authorised in writing by the agent of such candidate, in excess of the amount specified in the authorisation.³⁸

7.03 Unauthorised Expenditure

Where any expenditure is incurred in contravention of the Act, the person by whom such expenditure was incurred and the candidate in connection with whose candidature it was incurred shall be deemed to be guilty of an illegal practice.

A candidate shall not be guilty of an illegal practice by reason of any other person having incurred any expenditure in connection with the candidature of the candidate in contravention of sections 51, 52 or 54 unless it is proved that such expenditure was incurred with his consent.³⁹

7.04 Return by Election Agent

Within six weeks after the day on which the candidate or candidates returned at an election is or are declared elected, the election agent of every candidate at such election shall make an election return to the returning officer for the electoral area in which he acted as an election agent.

Every return shall contain a full statement under that appropriate head specified in the return of all expenditure incurred in connection with the election by or on behalf of the candidate and shall be supported by vouchers for all payments in excess of 30 rupees.

Every return made shall contain a full statement of all money, securities, or the equivalent of money, received by the election agent from the candidate or from any other person in connection with the election.

Every return shall be in the prescribed form and shall be sworn to before a Magistrate by the agent by whom it is made.

Every return shall be supported by a declaration sworn to before a Magistrate by the candidate stating –

- (a) that the return fully and accurately sets out all payments made by the candidate himself; and
- (b) that to the best of his knowledge, information and belief the return is a full and accurate return of all expenditure incurred, and of all money, securities or the equivalent of money received by the election agent, in connection with the election.

Sub-paragraph (b) does not apply where a candidate acts as his own agent.

The returning officer shall, within 10 days after he receives a return, publish in a daily newspaper a notice of the time and place at which the return and the documents in support thereof can be inspected.

In Rodrigues, the notice shall be published by affixing copies thereof at such conspicuous places in Rodrigues as the returning officer thinks fit.

Any candidate or election agent who fails to comply with any of the provisions of this section is guilty of an offence.⁴⁰

7.05 Claim and Payment for Election Expenses

Every claim against a candidate at an election, or his election agent, in respect of any expenses incurred on account of, or in respect of, the conduct or management of such election which is not sent in to the election agent within 14 days after the day on which the candidates returned are declared elected shall be barred and shall not be paid, and an election agent who pays a claim which is barred shall be guilty of an illegal practice.

Where the election agent in the case of any claim sent to him within the time limited disputes it, or refuses or fails to pay it within the period of 28 days, the claim is deemed to be a disputed claim.

The claimant may bring an action for a disputed claim in the competent court. Any sum paid by the candidate or his agent in pursuance of the judgment or order of such court shall be deemed to be paid within the time limited by the Act.

On cause shown to the satisfaction of a Judge in Chambers, or, in Rodrigues, of the Magistrate appointed for the purpose, the Judge or Magistrate, on application by the claimant or by the candidate or by his election agent, may by order give leave for the payment by a candidate or his election agent of a disputed claim, or of a claim for any such expenses as are incurred although sent in after the time for sending in claims or although such claim was sent in to the candidate and not to the election agent, and any sum specified in the order of leave may be paid by the candidate or his election agent, and when paid in pursuance of such leave shall be deemed to be paid within the time limited by the Act.⁴¹

— *Section 8* —

ELECTION OFFENCES

8.01 Corrupt Withdrawal from a Candidature

Any person who corruptly induces or procures another person to withdraw from being a candidate at an election in consideration of any pecuniary or other reward or promise of pecuniary or other reward is guilty of the offence of illegal payment.

Any person withdrawing, in pursuance of such inducement or procurement, is also guilty of illegal payment.⁴²

8.02 Name and Address of Printer on Placard

Every bill, placard or poster having reference to an election must bear on its face the name and address of the printer and publisher.

Any person printing, publishing, or posting, or knowingly causing to be printed, published, or posted, any bill, placard or poster and which does not bear on its face the name and address of the printer and publisher, shall, if he is the candidate, or the election agent of the candidate, be guilty of illegal practice and, if he is not the candidate or the election agent of the candidate, shall commit an offence, the conviction for which is liability to a fine not exceeding 1,000 rupees.⁴³

8.03 Bribery and Treating

Any person who –

- (a) directly or indirectly, by himself or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers, promises, or promises to procure or to endeavour to procure, any money or valuable consideration to or for any elector, or to or for any person on behalf of any elector, or to or for any other person, in order to induce any elector to vote or refrain from voting, or corruptly does any such act on account of any elector having voted or refrained from voting at any election;
- (b) directly or indirectly, by himself or by any other person on his behalf, gives or procures, or agrees to give or procure, or offers, promises or promises to procure or to endeavour to procure any office, place, or employment, to or for any elector, or to or for any person, on behalf of any elector or for any other person, in order to induce such elector to vote or refrain from voting, or corruptly does any such act on account of any elector having voted or refrained from voting at any election;
- (c) directly or indirectly, by himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement, or agreement to or for any person, in order to induce such person to procure, or endeavour to procure, the return of any person as an elected member of a council or the vote of any elector at any election;

- (d) upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procures or engages, promises or endeavours to procure, the return of any person as an elected member of a council or the vote of any elector at any election;
 - (e) advances or pays, or causes to be paid, any money to or to the use of any other person, with the intent that such money or any part thereof, shall be expended in bribery at any election, or who knowingly pays, or causes to be paid, any money to any person in discharge or repayment of any money in whole or in part expended in bribery at any election;
 - (f) before or during any election, directly or indirectly, by himself or by any other person on his behalf, receives, agrees or contracts for any money, gift, loan or valuable consideration, office, place, or employment, for himself or for any person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at any election; or
 - (g) after any election, directly or indirectly, by himself or by any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting, at any election,
- is guilty of bribery.

A person who –

- (a) corruptly by himself or by any other person, either before, during or after an election, directly or indirectly gives or provides, or pays in whole or in part the expenses of giving or providing, any food, drink, entertainment, or provision to or for any person for the purpose of corruptly influencing that person, or any other person, to vote or refrain from voting at such election; or
 - (b) corruptly accepts or takes any such food, drink, entertainment, or provision,
- is guilty of treating.⁴⁴

8.04 Undue Influence

A person who directly or indirectly, by himself or by any other person on his behalf, makes use of, or threatens to make use of, any force, violence or restraint, or inflicts, or threatens to inflict, by himself or by any other person any temporal or spiritual injury, damage, harm or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting, at any election, or who by abduction, duress or any fraudulent contrivance, impedes or prevents the free exercise of the franchise of any elector, or thereby compels, induces, or prevails upon, any elector either to give or refrain from giving his vote at any election, is guilty of undue influence.

Any person who, on polling day –

- (a) annoys, molests or otherwise interferes with an elector;
- (b) attempts to obtain any information as to the candidate for whom an elector is about to vote or has voted, or as to the number on the ballot paper given to an elector;

- (c) remains outside any voting room except for the purposes of gaining entry to the voting room in order to vote; or
 - (d) within 200 metres of the precincts of a polling station –
 - (i) loiters in any street, or open place;
 - (ii) by word, message, writing or in any other manner, endeavours to persuade any person to vote for any candidate or party or dissuades any person from voting or from voting for any candidate or party; or
 - (iii) opens or maintains, for the purpose of any activity directed towards promoting or procuring the election of a candidate at an election, an office in any room, building or place, whether public or private, open or closed,
- is guilty of undue influence.⁴⁵

8.05 Personation

Every person who –

- (a) at an election applies for a ballot paper in the name of another person, whether that name is the name of a person living or dead, or of a fictitious person; or
 - (b) having voted once at any election, applies at the same election for a ballot paper in his own name,
- is guilty of personation.⁴⁶

8.06 Disqualification on Conviction

Every person who is convicted of bribery, treating, undue influence or personation, shall, without prejudice to any other punishment, be incapable during a period of seven years from the date of his conviction –

- (a) of being registered as an elector, or of voting at any election;
- (b) of being a candidate at an election or, if elected before his conviction, of retaining his seat.⁴⁷

8.07 Illegal Practice

A person who –

- (a) votes, or induces or procures any person to vote, at any election, knowing that he or such other person is prohibited from voting at such election; or
 - (b) before or during an election knowingly publishes a false statement of the withdrawal of a candidate at such election for the purpose of promoting or procuring the election of another candidate,
- is guilty of an illegal practice.

A person who is guilty of an illegal practice is liable on conviction to a fine, and in addition shall be incapable during a period of five years from the date of his conviction of being registered as an elector or of voting at any election or of being a candidate at an election, or, if elected before his conviction, of retaining his seat.⁴⁸

8.08 Offences by Election Officers

Every election officer who –

- (a) makes in any record, return or other document which he is required to keep or make, any entry which he knows, or has reasonable cause to believe to be false, or does not believe to be true;
 - (b) permits any person whom he knows, or has reasonable cause to believe, not to be a blind person, an incapacitated person or an illiterate person, to vote in the manner provided for blind persons, incapacitated persons or illiterate persons, as the case may be;
 - (c) refuses to permit any person whom he knows or has reasonable cause to believe to be a blind person, an incapacitated person or an illiterate person to vote in the manner provided for blind persons, incapacitated persons or illiterate persons, as the case may be;
 - (d) wilfully prevents any person from voting at the polling station at which he knows or has reasonable cause to believe such person is entitled to vote;
 - (e) wilfully rejects or refuses to count any ballot paper which he knows, or has reasonable cause to believe, is validly cast for any candidate; or
 - (f) wilfully counts any ballot paper as being cast for any candidate, which he knows, or has reasonable cause to believe, was not validly cast for such candidate,
- shall commit an offence.⁴⁹

8.09 Duty of Secrecy

Every officer, clerk, candidate and agent in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting in the station, and shall not communicate except for a purpose authorised by law, before the poll is closed, to any person any information as to the name or number on the register of electors of any elector who has or has not applied for a ballot paper or voted at that station or as to the official mark.

No person shall interfere with an elector when marking his vote, or otherwise attempt to obtain in the polling station information as to the candidate for whom any elector in such station is about to vote or has voted, or communicate to any person any information obtained in a polling station as to the candidate for whom any elector in such station is about to vote or has voted, or as to the number on the back of the ballot paper given to any elector at such station.

Every officer, clerk, candidate and agent in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and shall not attempt to ascertain at the counting the number on the back of any ballot paper, or communicate any information obtained at the counting as to the candidate for whom any vote is given in any particular ballot paper.

No person shall, directly or indirectly, induce any elector to display his ballot paper after he has marked it so as to make known to any person the name of the candidate for or against whom he has so marked his vote.

A person who contravenes these provisions commits an offence.⁵⁰

— *Section 9* —

ELECTION PETITION

9.01 Grounds for Presenting Election Petition

An election petition complaining of an undue return or undue election of a member to the Assembly, a municipal or village council on the ground that –

- (a) the person whose election is questioned was not qualified or was disqualified at the time of the election; or
 - (b) the election was avoided by reason of bribery, treating, undue influence, illegal practice, irregularity, or any reason,
- may be presented to a Judge in Chambers by –
- (i) any person who voted or had the right to vote at the election to which the petition relates;
 - (ii) any person who claims to have had a right to be returned or elected at the election to which the petition relates;
 - (iii) any person who alleges he was a candidate at the election to which the petition relates.

A petition shall not be presented on the ground that a candidate other than the person whose election is questioned was not qualified or was disqualified for election.

An election petition shall not be presented against a member and the return or election of a member shall not be avoided on the ground that, in connection with, or in furtherance of, his candidature or for his return or election –

- (a) any act was done, services were rendered or expenditure was incurred by a public officer, a local government officer or an officer of a statutory authority or corporation where the act was done, the services were rendered or the expenditure was incurred either in the discharge or purported discharge of the officer's function or while the member was the holder of an office;
- (b) any act was done, services were used or expenditure was incurred by the member where the act was done, the services were used or the expenditure was incurred while the member was the holder of an office.⁵¹

9.02 Procedure for Presenting Petition

On the presentation of an election petition –

- (a) the petition shall be signed by the petitioner, or all petitioners if more than one, and shall be presented to a Judge in Chambers who shall fix a day on which the Court shall hear the petition;
- (b) the petition shall be heard and determined by a court consisting of at least two Judges;
- (c) the petition shall be presented within 21 days or in the case of Rodrigues 56 days

after the date of the return made by the returning officer to the Commission of the member to whose election the petition relates, unless it questions the return or election upon an allegation of illegal practice and specifically alleges a payment of money or some other act to have been made or done since the date of such return by the member, or an agent of the member or with the privity of the member or his election agent in pursuance or in furtherance of the illegal practice alleged in the petition, in which case the petition may be presented at any time within 28 days or, in the case of Rodrigues, 70 days after the date of such payment or other act;

- (d) at the time of the presentation of the petition or within three days thereof, security for the payment of all costs, charges and expenses that may become payable by the petitioner –
 - (i) to any person summoned as a witness on his behalf; or
 - (ii) to the member whose election or return is complained of, or to any other person named as a respondent in the petition,shall be given on behalf of the petitioner;
- (e) the security shall be the amount prescribed and shall be given by recognizance to be entered into before the Master by any number of sureties not exceeding four approved by him, or by a deposit of money in the Registry of the Court or partly in one way and partly in the other.⁵²

9.03 Trial of Election Petition

During the trial of an election petition the Court may order –

- (a) the production and inspection of any rejected ballot paper;
- (b) the inspection of any counted ballot paper; or
- (c) the opening of any sealed packet of counterfoils of used ballot papers.

In making and carrying into effect the order, the Court shall ensure that the way in which the vote of any particular person has been given shall not be disclosed until it has been proved that the vote was given and the vote has been declared by the Court to be invalid.

No person who has voted at an election shall, in any legal proceeding to question the election or return, be required to state for whom he has voted.⁵³

9.04 Rules of Court Governing Trial of Petition

Rules as to the practice and procedure for the service and hearing of election petitions and as to the matters connected therewith and as to the practice and procedure in respect of any application made to the Court under regulations made for the conduct of elections to the Assembly may be made in like manner as rules under the Courts Act.⁵⁴

NOTES

1. Constitution of Mauritius, see section 40
2. Ibid., see sections 38 and 41
3. Ibid., see section 38
4. Ibid., see section 44
5. See sections 38 and 40 of the Constitution of Mauritius and section 2A of Representation of the People Act
6. Representation of the People Act, see section 3
7. Ibid., see section 5
8. Legislative Assembly Elections Regulations, see regulation 3
9. Constitution of Mauritius, see section 39
10. Ibid., see section 42
11. Representation of the People Act, see sections 4-9
12. Ibid., see sections 10-18
13. Ibid., see sections 20-21
14. Ibid., see sections 23-24
15. Ibid., see sections 25-29
16. Ibid., see sections 33-35
17. Ibid., see section 36
18. Ibid., see section 36A
19. Legislative Assembly Elections Regulations, see regulation 7
20. Ibid., see regulations 8-10
21. Representation of the People Act, see section 41
22. Legislative Assembly Elections Regulations, see regulation 12
23. Ibid., see regulation 12
24. Ibid., see regulation 13
25. Ibid., see regulation 14
26. Ibid., see regulation 15
27. Ibid., see regulation 16
28. Ibid., see regulation 18
29. Ibid., see regulations 19-34
30. Ibid., see regulation 35
31. Ibid., see regulation 36
32. Ibid., see regulation 37
33. Ibid., see regulations 38-43
34. Ibid., see regulations 45-53
35. Ibid., see regulations 54 and 55
36. Ibid., see regulation 56
37. Representation of the People Act, see sections 49-50
38. Ibid., see sections 51-54
39. Ibid., see section 55
40. Ibid., see section 56
41. Ibid., see section 57
42. Ibid., see section 59
43. Ibid., see section 60
44. Ibid., see section 64
45. Ibid., see section 65
46. Ibid., see section 67
47. Ibid., see section 69
48. Ibid., see sections 70 and 74
49. Ibid., see section 73
50. Ibid., see section 72
51. Ibid., see section 45
52. Ibid., see section 45
53. Ibid., see section 46
54. Ibid., see section 47