

THE CERTIFICATE OF CHARACTER BILL

(No. XVII of 2012)

Explanatory Memorandum

The main object of this Bill is to repeal the Certificate of Morality Act and to provide for the issue of certificates of character.

2. The Bill provides, *inter alia*, that –

- (a) a person who has been convicted of a specified minor offence, been given a non-custodial sentence in specified cases or been granted a free pardon in respect of an offence shall be deemed not to have committed the offence, for the purpose of being issued a certificate of character;
- (b) a person may make an application for a certificate electronically;
- (c) an applicant cannot generally make more than one application in his name within 3 months from the date of issue of the certificate;
- (d) an employer cannot require a worker to apply for a certificate within one year following the submission of a certificate by that worker to him;
- (e) an applicant shall pay an appropriate fee for the issue of a certificate;
- (f) the Director of Public Prosecutions may delegate any of his powers under the Act to the Commissioner of Police or any other public officer,

and for related matters.

Y. N. VARMA
Attorney-General

6 July 2012

THE CERTIFICATE OF CHARACTER BILL

(No. XVII of 2012)

ARRANGEMENT OF CLAUSES

Clause

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FIRST SCHEDULE
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A BILL

To make provision for the issue of certificates of character

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Certificate of Character Act 2012.

2. Interpretation

In this Act –

“absolute discharge” means an order discharging a person absolutely and made under section 197 of the Criminal Procedure Act;

"application" means an application for a certificate;

"certificate" means a certificate of character issued under section 5;

“conditional discharge” means an order discharging a person conditionally and made under section 197 of the Criminal Procedure Act;

“delegated person” means the Commissioner of Police or a public officer to whom the Director of Public Prosecutions has delegated his powers under section 3(1);

“employer” has the same meaning as in the Employment Relations Act;

“Identity Card” has the same meaning as in section 5 of the National Identity Card Act;

“probation order” has the same meaning as in the Probation of Offenders Act;

“worker” has the same meaning as in the Employment Relations Act.

3. Delegation of powers

(1) The Director of Public Prosecutions may delegate his powers under this Act to the Commissioner of Police or any other public officer.

(2) No delegation of powers under subsection (1) shall have any effect until public notice of the delegation has been given in the *Gazette*.

4. Making an application

(1) Subject to subsections (2) and (3), any person wishing to obtain a certificate in his name shall apply to the Director of Public Prosecutions, or to the delegated person, in such form and manner as the Director of Public Prosecutions may approve.

(2) Every application made under subsection (1) shall be accompanied –

(a) where it is made by –

- (i) a citizen of Mauritius, by the original and 2 photocopies of the applicant's birth certificate, identity card and, where applicable, marriage certificate; or
- (ii) a non-citizen, by the original and 2 photocopies of the applicant's birth certificate, passport and, where applicable, marriage certificate; and

(b) by the appropriate fee specified in the First Schedule.

(3) An employer may, with the written consent of a worker, apply for the issue of a certificate in the name of the worker.

(4) An application under subsection (3) shall be accompanied by –

- (a) the documents specified in subsection (2); and
- (b) the appropriate fee specified in the First Schedule.

(5) A worker who has been issued with a certificate of character under section 5 and who has submitted the certificate to his employer shall –

- (a) not be required by that employer to apply for another certificate within a period of one year from the date of submission of the certificate;
- (b) notwithstanding paragraph (a), disclose to that employer any conviction for a crime or misdemeanour subsequent to such submission.

(6) Notwithstanding subsection (2), a person may make an application electronically in such form and manner, and on payment of such fee, as may be prescribed.

5. Issue of certificate

(1) (a) The Director of Public Prosecutions or the delegated person, where he is not the Commissioner of Police, shall refer every application to the Commissioner of Police for enquiry and report.

(b) Where the delegated person is the Commissioner of Police, he shall cause an enquiry to be conducted into every application.

(2) Where the applicant has in Mauritius –

- (a) never been convicted of any crime or misdemeanour;
- (b) following a conviction for a crime or misdemeanour, other than an offence specified in the Second Schedule, been given only –
 - (i) an absolute discharge; or
 - (ii) a conditional discharge, and has complied with the terms and conditions of the discharge; or
- (c) more than 5 years before making the application, been convicted of a crime or misdemeanour, other than an offence specified in the Second Schedule, and been –
 - (i) given only a fine of up to 5,000 rupees; or
 - (ii) made the subject of a probation order only, and has complied with the terms and conditions of the order; or
- (d) been granted a free pardon in respect of a crime or misdemeanour pursuant to section 75 of the Constitution,

the Director of Public Prosecutions shall issue a certificate in the form set out in Part A or B of the Third Schedule, specifying that the person in whose name the application has been made has never been convicted of a crime or misdemeanour in Mauritius.

(3) For the purposes of subsection (2)(b) and (c), an offence –

- (a) under an enactment which is not specified in the Second Schedule; but
- (b) of which the constitutive elements are the same as, or substantially similar to, those of an offence specified in that

Schedule,

shall be deemed to be an offence specified in the Second Schedule.

(4) Where the person has been convicted of a crime or misdemeanour and none of the circumstances specified in subsection (2) is applicable, the Director of Public Prosecutions shall issue a certificate in the form set out in Part C or D of the Third Schedule.

(5) Where an applicant requires more than one original of a certificate within a period of 3 months from the date of issue of the certificate, the Director of Public Prosecutions shall, on payment by the applicant of the appropriate fee specified in the First Schedule, issue up to a maximum of 3 originals of the certificate.

(6) (a) Subject to paragraph (b), the Director of Public Prosecutions shall not issue another certificate in the name of a person within a period of 3 months following the issue of a certificate to that person.

(b) The Director of Public Prosecutions may issue another certificate in the name of a person within the period of 3 months where –

- (i) there has been a material change in the circumstances of that person; or
- (ii) the subsequent application is made by an employer under section 4.

(7) (a) The Director of Public Prosecutions may authorise a law officer from his Office to issue a certificate on his behalf.

(b) Where the delegated person is the Commissioner of Police, he may authorise a police officer, not below the rank of Assistant Commissioner of Police, to issue a certificate on his behalf.

6. Offences and proceedings

(1) Any person who tampers with, forges or fraudulently alters a certificate shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 8 years.

(2) A worker who contravenes section 4(5)(b) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 25,000 rupees and to imprisonment for a term not exceeding 2 years.

(3) In any proceedings in which the genuineness of a certificate is in question –

- (a) an attestation under the hand of the Director of Public

Prosecutions, or the delegated person, to the effect that a certificate is or is not genuine shall be received in all Courts as conclusive evidence of that fact;

- (b) the Director of Public Prosecutions, the delegated person or a law officer authorised to issue the certificate on behalf of the Director of Public Prosecutions, or a police officer authorised by the Commissioner of Police to issue a certificate on his behalf, shall not be examined or cross-examined with respect to the genuineness of the certificate.

7. Protection from liability

(1) No liability, civil or criminal, shall be incurred by the Director of Public Prosecutions, the delegated person, a law officer or a police officer in respect of any act or omission in the execution, in good faith, of his functions or duties under this Act.

(2) This section shall be in addition to, and not in derogation from, the Public Officers' Protection Act.

8. Regulations

(1) The Attorney-General may make such regulations as he thinks fit for the purposes of this Act.

(2) Regulations made under subsection (1) may provide for –

- (a) the levying of fees and charges;
- (b) the amendment of the Schedules, including the amendment of the Third Schedule, where the Director of Public Prosecutions has delegated his powers under section 3(1).

9. Repeal

The Certificate of Morality Act is repealed.

10. Consequential amendment

A reference in any enactment to a certificate of morality shall be deemed to be reference to a certificate.

11. Savings and transitional provisions

(1) Any certificate of morality issued under the Certificate of Morality Act prior to the coming into operation of this Act shall be deemed to have been issued under this Act.

(2) Any application made under the Certificate of Morality Act prior to the coming into operation of this Act shall be dealt with in accordance with this Act.

12. Commencement

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

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

FIRST SCHEDULE [Sections 4 and 5]

	Fee (Rs)
1. Application fee for employer on behalf of worker	300
2. Application fee for individual	100
3. Fee for each additional original certificate	50

SECOND SCHEDULE

[Section 5]

Child Protection Act	Sections 13A, 13B, 13C, 14, 15
Civil Status Act	Sections 69, 70
Combating of Trafficking in Persons Act	Section 11
Convention for the Suppression of the Financing of Terrorism Act	Section 4
Criminal Code	Sections 37 and 38, in so far as they affect the other offences mentioned in this Schedule, 50 to 76A, 77 to 191, 215, 216, 220 222, 223, 228, 229, 231, 232 to 260, 272 to 291, 300, 301 to 311, 322, 323, 330, 330A, 330B, 331, 332, 333, 333A, 334 to 351
Criminal Code (Supplementary) Act	Sections 90, 103, 105, 106, 106A, 106B, 107, 109 (in so far as it affects the other offences mentioned in this Schedule)
Dangerous Drugs Act	Any offence under the Act
District and Intermediate Courts (Criminal Jurisdiction) Act	Section 126(2)
Financial Intelligence and Anti-Money Laundering Act	Sections 3, 4
International Criminal Court Act 2011	Section 4
Interpretation and General Clauses Act	Sections 2 and 45, with respect to attempts, in so far as they affect the other offences mentioned in this Schedule
Piracy and Maritime Violence Act 2011	Sections 3 to 5
Prevention of Corruption Act	Sections 4 to 17
Prevention of Terrorism Act	Sections 3, 5 to 9, 12, 15

THIRD SCHEDULE

[Section 5]

PART A

CERTIFICATE OF CHARACTER

On the application made on by of
..... on his behalf*/on behalf of his
worker*....., born on in
..... I,, the Director of Public Prosecutions*/
on behalf of the Director of Public Prosecutions*, in and for Mauritius, have the honour
to inform whoever it may concern that the abovenamed has, as at
....., never been convicted of any crime or
misdemeanour in Mauritius.

CHAMBERS,
PORT LOUIS,

.....
for* Director of Public Prosecutions

Date:

**Delete as appropriate*

PART B

ATTESTATION DE CASIER JUDICIAIRE

Suite à une demande faite le par.....
résidant à, en son nom*/au nom de son
employé(e)*..... né(e) le à
....., je soussigné(e),
..... Directeur des Poursuites Publiques de la République de
Maurice déclare*/ déclare au nom du Directeur des Poursuites Publiques de la
République de Maurice* qu'au, les casiers judiciaires
tenus à Maurice démontrent que la personne susnommée n'a jamais fait l'objet d'une
condamnation criminelle ou correctionnelle.

LE PARQUET,
PORT LOUIS,

.....

Ce 20..... pour* le Directeur des Poursuites Publiques

**Rayer les mentions inutiles*

PART C

CERTIFICATE OF CHARACTER

On the application made on by..... of
..... on his behalf*/on behalf of his
worker*....., born on in
....., I,, the Director of Public Prosecutions*/ on
behalf of the Director of Public Prosecutions*, in and for Mauritius, have the honour to
inform whoever it may concern that the abovenamed has, as at
..... been convicted and sentenced in Mauritius for the
crime(s) and/or misdemeanour(s) which follow –

.....
.....

CHAMBERS,
PORT LOUIS,

.....
for* Director of Public Prosecutions

Date:

**Delete as appropriate*

PART D

ATTESTATION DE CASIER JUDICIAIRE

Suite à une demande faite le par
résidant à, en son nom*/au nom de son
employé(e)*.....né(e) le..... à
....., je soussigné(e),
..... Directeur des Poursuites Publiques de la République
de Maurice déclare*/ déclare au nom du Directeur des Poursuites Publiques de la
République de Maurice* que les casiers judiciaires tenus à Maurice démontrent que la
personne susnommée a fait, au, l'objet des condamnations criminelles ou
correctionnelles et encouru les peines suivantes –

.....
.....

.....
.....

LE PARQUET,
PORT LOUIS,

Ce..... 20

.....
Pour* le Directeur des Poursuites Publiques

**Rayer les mentions inutiles*
