

MAURITIUS BAR ASSOCIATION



BAR COUNCIL

Chairperson: Narghis Bundhun SC

Secretary: Varuna Roy Bunwaree Goburdhun Treasurer: Rubna B. Daood Daureeawo

Members: Jacques Tsang Mang Kin, Ghanshyamdas Bhanji Soni, Angelique A. Desvaux De Marigny & Didier B.A.Dodin

Co-opted Members: Isme Azam Neerooa & Dinay Reetoo

08th September 2020

Dear friends,

You will recall that the Council had expressed its strong reservations on the interpretation given by the Registrar of Companies and/or the local authorities to the following part of GN 252 of 2020 as including barristers: “Business and/or Management Consultancy or Professional Service (Including medical and paramedical practitioners and opticians”

The Council made representations to the Attorney General and to the Prime Minister regarding this matter.

Representations were also sent to the Ministry of Finance in the context of the 2019/2020 Pre-budget consultations.

A meeting has also been organized with the Registrar of Companies to discuss the issue.

The Council’s requests have not been entertained so far.

Meanwhile, the Council had sought the opinions of Me Desire Basset QC, Me Patrice de Speville SC and Me Herve Duval SC on this matter. The majority opinion is that the imposition of the trade licence fees violates the principle of an independent bar and should be resisted.

Therefore the Council is formally objecting to the imposition of trade licence fees on Barristers.

You will find annexed a letter sent to the Registrar of Companies in that context.

Regards

Varuna R. Bunwaree Goburdhun
Secretary of the Bar Council

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03rd September 2020

**The Registrar of Companies
Corporate and Business Registration Department
Ground Floor, One Cathedral Square Building
Jules Koenig Street
Port Louis**

Dear Madam,

Imposition of Trade Licence Fee on barristers

I write to you further to the meeting between yourself and the Chairperson and Treasurer of the Mauritius Bar Association (MBA) dated 8th June 2020 regarding this matter.

I wish to inform you that the Mauritius Bar Association objects to application of the trade licence fee on barristers for the following reasons:

- a. The MBA holds the view that the imposition of the obligation to obtain/pay for a trade license is a fetter to the independence of Barristers who can only be submitted to the authority of its regulatory body the MBA, who has the authority to discipline and or to refer its members to the Supreme Court for disciplinary action to be taken. Such disciplinary action includes suspension and disbarment.
- b. An administrative body, which is a creation of the Executive cannot and ought not have the powers to control and or hinder the free and independent exercise of their profession by Barrister.
- c. The control of the right of Counsel to exercise his/her profession, inevitably results in a breach of section 10 of the Constitution in as much as a litigant will not be able to be represented by Counsel of his/her choice.
- d. This is the reason why historically, Barristers have NEVER been subjected to the obligation to apply for and pay for a trade license as a requisite to exercise their profession.
- e. The Local Government Act 2003 included specifically the profession of 'Attorneys' as being a classified trade. Following representations made by our colleague attorneys, the mention of 'Attorneys' was deleted from list of classified trade in the Eighth Schedule of the Local Government Act 2003 as part of the consequential amendments in the enactment of the Mauritius Law Society Act 2005. The 2005 enactment indeed rendered it mandatory for Attorneys to be a member of the Mauritius Law Society has powers to discipline its members and /or refer them to the Supreme Court for disciplinary action to be taken.
- f. Also, by way of background, please note that representations have been made on behalf of the Association, in connection with the 2019/2020 budget, which included a proposal to amend the

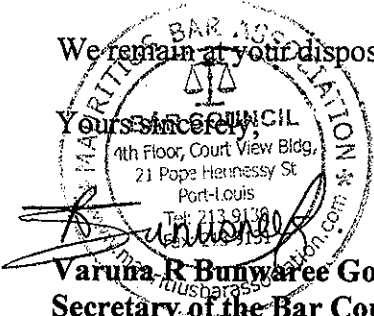
Business Registration Act 2002 to exclude, in the definition of 'business', 'Legal services provided by Law Practitioners in independent practice'.

- g. For the above reasons, we challenge the inclusion of barristers, law firms and attorneys in the interpretation of the phrase '*Business and/or Management Consultancy or Professional Service*'.
- h. You may also note that, in order to be able to practice, barristers are already subject to payment of yearly Continuous Professional Development (CPD) fees as well as mandatory membership fees to the MBA as per the MBA Act. The Report of the High-Level Committee on the review of the Law Practitioners' Act makes it clear that the intention of the Committee is that the law be amended to prevent barristers who do not acquit themselves of their yearly subscription fees from practicing.
- i. Annexed is a list of primary documents which we considered useful in the consideration of this point.
 - A. GN 252 of 2019
 - B. Extracts of the Local Government Bill 2003
 - C. Extracts of the Local Government Act 2003
 - D. The Business Registration Act 2002
 - E. Extracts of the Mauritius Law Society Act 2005
 - F. Extract of the Value Added Tax Act 1998 and 10th Schedule.
 - G. The Parliamentary Debates on the Mauritius Law Society Bill (No. Xxxiii Of 2005) Debate No. 16 of 22.11.2005
 - H. Latest representations made to the PMO in connection with the 2019/2020 budget
- j. The Honourable Minister of Local Government, Disaster and Risk Management, the Honourable Minister of Finance, Economic Planning and Development, the Honourable Attorney General, the Financial Secretary and the Mauritius Law Society are copied to this letter.

For these reasons, the MBA reiterates its disagreement with your interpretation and formally objects to the application of trade licence fees on Barristers.

We remain at your disposal for any clarification that you may require.

Yours sincerely,


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Varuna R Bunyaree Goburdhun
Secretary of the Bar Council

- cc. Honourable Dr A.Husnoo, Minister of Local Government, Disaster and Risk Management
- cc. Honourable Dr R.Padayachy, Minister of Finance, Economic Planning and Development
- cc. Honourable M.Gobin, Attorney General
- cc. Mr D.Manraj, Financial Secretary
- cc. Mr T.Koenig SA, President of The Mauritius Law Society