

The Information Technology (Miscellaneous Provisions) Act 1998

Act No. 18 of 1998

I assent

C.UTEEM

18th December 1998

President of the Republic

THE INFORMATION TECHNOLOGY (MISCELLANEOUS PROVISIONS) ACT 1998

Arrangement of Sections

Section

1. Short title
2. The Archives Act amended
3. The Courts Act amended
4. The Criminal Code amended
5. The Fair Trading Act amended
6. The Interpretation and General Clauses Act amended
7. The Patents Act amended
8. The National Computer Board Act 1988 amended
9. The Archives Regulations 1953 amended
10. Commencement

An Act

To amend various enactments to make provision for developments in information technology

ENACTED by the Parliament of Mauritius, as follows -

1. Short title

This Act may be cited as the Information Technology (Miscellaneous Provisions) Act 1998.

2. The Archives Act amended

Section 2 of the Archives Act is amended by inserting after the words "other documents of all kinds" in the definition of "public archives", the words ",including documents that are electronically recorded,".

3. The Courts Act amended

The Courts Act is amended by inserting, immediately after section 181A, the following new sections -

181B. Admissibility of out-of-court statements

(1) A statement made, whether orally or in a document or otherwise, by a person, whether called as a witness or not, shall, subject to subsection (2), and to rules of Court, be admissible in any civil proceedings as evidence of any fact or opinion stated therein of which direct oral evidence by the witness would be admissible.

(2) Where a party wishing to put in a statement under subsection (1), has called, or intends to call, as a witness in the

proceedings, the person by whom the statement was made, the statement shall not be given in evidence -

(a) without leave of the court; and

(b) before the conclusion of the examination-in-chief of the person by whom it was made except -

(i) where the court allows evidence of the making of the statement to be given on behalf of that party by some other person; or

(ii) in so far as the Court allows the person by whom the statement was made to narrate it in the course of his examination-in-chief on the ground that to prevent him from so doing would adversely affect the intelligibility of his evidence.

(3) Subject to subsection (4), where a statement made otherwise than in a document is admissible under subsection(1), no evidence other than direct oral evidence by the person who made the statement, or any person who heard or otherwise perceived it being made, shall be admissible for the purpose of proving it.

(4) Where a statement is made by a person while giving oral evidence in any other legal proceedings, the statement may be proved in such manner as the court thinks fit.

181C. Admissibility of certain records

(1) A statement contained in a document shall, subject to section 181E and subsection(2) and to rules of Court, be admissible in any civil proceedings as evidence of any fact or opinion stated therein of which direct oral evidence would be admissible, where the document is, or forms part of, a record compiled, by a person acting under a duty, from information which -

(a) was supplied by a person who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with in that information; or

(b) in case the information was not supplied directly by the person referred to in paragraph (a) to the compiler of the record, was supplied by him to the compiler of the record indirectly through one or more intermediaries each acting under a duty.

(2) Where a party wishing to put in a statement under subsection (1) has called, or intends to call, as a witness in the proceedings the person who originally supplied the information from which the record containing the statement was compiled, the statement shall not be given in evidence -

(a) without leave of the court; and

(b) before the conclusion of the examination-in-chief of the person who originally supplied the information.

(3) For the purposes of subsection(1), a person acting under a duty includes a person acting in the course of any trade, business, profession or other occupation in which he is engaged or employed or for the purposes of any paid or unpaid office held by him.

181D. Evidence in rebuttal

(1) Where a statement is given in evidence under section 181B and the person who made the statement is not called as a witness in the proceedings, any evidence which if that person had been so called, could be admissible for the purpose of impeaching or supporting his credibility shall, subject to rules of Court, be admissible for that purpose.

(2) Where a statement is given in evidence under section 181C, and the person who originally supplied the information from which the record was compiled is not called as a witness in the proceedings, any evidence which, if that person had been called, could be admissible for the purpose of impeaching or supporting his credibility shall, subject to rules of Court, be admissible for that purpose.

181E. Admissibility of statements produced by computers

(1) In this section, "computer" means any device for storing and processing information, whether or not the information is derived from other information by calculation, comparison or otherwise.

(2) Where, over a period, the function of storing or processing information for the purpose of carrying on an activity was regularly performed by -

(a) a combination of computers;

(b) different computers operating in succession;

(c) different combinations of computers operating in succession;

(d) the successive operation of one or more computers and one or more combinations of computers, all the computers shall, for the purposes of this section, be treated as constituting a single computer.

(3) A statement contained in a document produced by a computer shall, subject to rules of Court, be admissible in any civil proceedings as evidence of any fact stated therein of which direct oral evidence would be admissible where -

(a) the document was produced during a period over which the computer was regularly used to store or process information for the purpose of any activity regularly carried by a person over that period;

(b) information of the kind contained in the statement, or of the kind from which the information is derived, was regularly supplied to the computer over that period in the ordinary course of that activity;

(c) the computer was operating properly during the material part of that period; and

(d) the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of that activity.

(4) Where a party wishes to give in evidence a statement under subsection (3), a certificate which -

(a) identifies the document containing the statement and describes the manner in which it was produced;

(b) gives particulars of any device involved in the production of the document to show that it was produced by a computer;

(c) deals with any matter referred to in paragraphs (a), (b), (c) or (d) of subsection (3); and

(d) purports to be signed by a person occupying a responsible position in relation to the operation of the relevant device or to the management of the relevant activity, shall be evidence of any matter stated in the certificate.

(5) For the purposes of subsection (4), it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

181F. Proof of statements contained in a document

Where a statement contained in a document is to be given in evidence under section 181B, 181C or 181E, it may be proved by the production of that document or by the production of a copy thereof, or of the material part thereof, authenticated in such manner as the court thinks fit.

4. The Criminal Code amended

The Criminal Code is amended -

(a) by inserting immediately after section 300, the following new section -

300A. Data protection and security

(1) In this section -

"computer service person" means a person who provides another person with services in respect of personal data by -

(a) acting as agent for that other person and causing personal data held by him to be processed; or

(b) allowing another person to make use of equipment in his possession for the processing of personal data;

"data" means information recorded in a form in which it can be processed by equipment operating automatically in response to instructions given for that purpose;

"data user" means a person who holds personal data;

"personal data" means data consisting of information, including expressions of opinion relating to a living individual who can be identified from that information.

(2) For the purposes of subsections (3) and (4), a person shall be deemed to hold data where -

(a) the data form part of a collection of data processed or intended to be processed on his behalf;

(b) that person controls the contents and use of the data; and

(c) the data are in a form -

(i) in which they have been or are intended to be processed; or

(ii) into which they have been converted after being so processed.

(3) Where a data user or computer service person holds or is in possession of personal data which is not accurate, the data user or computer service person, as the case may be, shall commit an offence.

(4) Where a data user or computer service person holding or in possession of personal data -

(a) permits any unauthorised access to, or alteration or disclosure of, the personal data;

(b) holds or possesses the personal data in such a manner that they are likely to be accidentally lost, partially or totally damaged, or destroyed,

the data user or computer service person shall commit an offence.

(5) Any person who commits an offence under subsection (3) or (4) shall, on conviction, be liable to penal servitude for a term not exceeding 10 years and to a fine not exceeding 100,000 rupees.

(c) by inserting immediately after section 369, the following new sections -

369A. Computer misuse

Any person who -

(a) wilfully and in defiance of the rights of another person, impedes or tampers with the operation of a computer;

(b) wilfully and in defiance of the rights of another person, directly or indirectly introduces data into a computer or suppresses or modifies any data which it contained or the method of treatment or transmission of such data;

(c) commits, in a computerised document of whatever form, a forgery of a kind which is likely to cause prejudice to another person;

(d) knowingly makes use of a document referred to in paragraph (c);

(e) without the consent of the person to whom a computer is entrusted, gains access to, or so maintains himself in, the computer,

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years and to a fine not exceeding 100,000 rupees

369B. Aggravating circumstance

A person who commits an offence under section 369 A(e) shall, on conviction, be liable to penal servitude for a term not exceeding 20 years and to a fine not exceeding 200,000 rupees where, as a result of the commission of the offence, data contained in the computer is suppressed or modified or the operation of the computer is altered.

5. The Fair Trading Act amended

The Fair Trading Act is amended in section 6 -

(a) by numbering the existing provision as subsection "(1)"; and

(b) by adding the following new subsection -

(2) Subsection (1) shall not apply to any person acting in the exercise of a right vested in him by virtue of the Copyright Act, the Patents Act or the Trade Marks Act.

6. The Interpretation and General Clauses Act amended

The Interpretation and General Clauses Act is amended by inserting, immediately after section 35, the following new section -

35A. Electronically recorded documents

(1) Where an electronically-recorded document bears, as evidence that the document emanates from a particular individual, a personal identification mark, the mark shall have the same legal effect as if the individual had signed his name on the document, or affixed his thumbprint or other mark thereto, in accordance with section 35.

(2) Except where it is otherwise provided in any other enactment, it shall be lawful to electronically record any matter.

(3) Where any matter is electronically recorded, a reference, in any enactment -

(a) to an original shall be construed as a reference to that record;

(b) to a true or certified copy, shall be construed as a reference to a reprint of that record.

7. The Patents Act amended

Section 3 of the Patents Act is amended by deleting paragraph (a) from the definition of "invention" and replacing it by the following paragraph -

(a) discoveries, the invention of new chemical products, and the invention of new computer software intended to be used

as a component within a technical product or process;

8. The National Computer Board Act 1988 amended

The National Computer Board Act 1988 is amended -

(a) by deleting the word "finance" from the definition of "Minister" in section 2 and replacing it by the words "information technology";

(b) in section 2 by inserting the following definitions in their proper alphabetical order -

"Code of Practice" means the Code of Practice set out in the First Schedule;

"computer service person" means a person who provides another person with services in respect of personal data by -

(a) acting as agent for that other person and causing personal data held by him to be processed; or

(b) allowing another person to make use of equipment in his possession for the processing of personal data;

"data" means information recorded in a form in which it can be processed by equipment operating automatically in response to instructions given for that purpose;

"data user" means a person who holds personal data;

"personal data" means data consisting of information, including expressions of opinion relating to a living individual who can be identified from that information.

(c) by deleting paragraph (d) from section 4 and replacing it by the following paragraph-

(d) to ensure data protection and security by -

(i) recommending legislative proposals;

(ii) over-viewing any regime of data protection or security established by law;

(iii) monitoring compliance with the Code of Practice;

(iv) conducting a regular review and revision of the Code of Practice;

(v) in relation to personal data, receiving, and advising on, complaints of any unlawful or wrongful act and requests for inspection thereof or amendment thereto.

(d) in section 13 (1) (a), by inserting the word "Second" immediately before the word "Schedule".

(e) in section 20 (2) (a), by deleting the word "Schedule" and replacing it by the word "Schedules";

(f) by adding the following section immediately after section 21 -

21A. Data protection

(1) Subject to subsection (3), every data user or computer service person shall -

(a) upon a written request to that effect being made to the Board at any reasonable time by an individual; and

(b) upon such request being transmitted by the Board to such user or person, cause -

(i) that individual to be informed, without undue delay or expense, whether he holds, or is in possession of, as the case may be, of personal data relating to the individual;

(ii) where the Board so directs, the personal data relating to the individual to be corrected or erased.

(2) Any data user or computer service person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years and to a fine not exceeding 100,000 rupees.

(3) Subsection (1) shall not apply to any personal data kept for -

(a) safeguarding the State's defence or public safety;

(b) the prevention of crime;

(c) the apprehension or prosecution of offenders;

- (d) the assessment or collection of any tax or duty;
- (e) following up the physical or mental health of an individual;
- (f) calculating the amount payable by way of remuneration or pension in respect of service in any office or employment;
- (g) personal, family or household affairs or recreational purposes, by an individual;
- (h) determining the results of an academic or other examination.
- (g) by inserting immediately before the Schedule, the Schedule to this Act.
- (h) by deleting the word "SCHEDULE" in the Schedule and replacing it by the words "SECOND SCHEDULE".

9. The Archives Regulations 1953 amended

The Archives Regulations 1953 are amended by inserting, immediately after regulation 17, the following new regulation -

17A. Where any public archives are electronically recorded, the Committee may, with the approval of the President, direct that any corresponding documents that are otherwise recorded shall be disposed of.

10. Commencement

- (1). Subject to subsection(2), this Act shall come into operation on a day to be fixed by Proclamation.
- (2). Different dates may be fixed for the coming into operation of different sections.

Passed by the National Assembly on the seventeenth day of November one thousand nine hundred and ninety-eight.

ANDRE POMPOM

Clerk of the National Assembly

SCHEDULE
(section 8(g))
FIRST SCHEDULE
(section 2)
CODE OF PRACTICE

- (1) Information to be contained in personal data shall be obtained and be processed, fairly and lawfully. For the purposes of this paragraph -
 - (a) data shall be deemed to have been fairly obtained where, prior to obtaining the data from the data subject, the data user shall have informed the data subject of the identity of the data user, the intended use of data and the persons to whom data would be disclosed; and
 - (b) data shall be deemed to have been fairly processed where the data shall not have been used contrary to any written personal instruction sent directly to the data user, or via a lawful intermediary, by the data subject.
- (2) Personal data shall be held for one or more specified and lawful purposes. Personal data held shall only be used for the specified purpose or purposes for which they were collected.
- (3) Personal data held for any purpose or purposes shall not be used or disclosed in any manner incompatible with the purpose or purposes for which they were collected.
- (4) Personal data will be held that are adequate, relevant and not excessive in relation to the purpose or purposes. This implies data that data user should not record personal data merely because there is a possibility that extra information will be useful in the future.
- (5) Personal data held will be accurate and, where necessary, be kept up to date. This implies that data held by the data user will reflect the true state of fact about the data subject.
- (6) Personal data shall not be kept for longer than is necessary. This implies that data should be destroyed when the specified purpose or purposes for which they were collected has been achieved.