



Mauritius

1 Introduction

The Republic of Mauritius is a small country (about 2000 square kilometres) which includes the Agalega Islands and Rodrigues, roughly 800kms off the east coast of Madagascar.¹ It has a population of approximately 1.2 million people.²

It was known to Arab and Malay sailors as early at the 10th Century. It was explored by the Portuguese and settled by the Dutch in the 16th Century who named it Mauritius, in honour of their head of state, Maurice, Prince of Orange and Count van Nassau.³

The Dutch colonisation of Mauritius was not successful, and they withdrew in 1710.⁴ Their short occupation was notorious for the extinction of the Dodo, a flightless bird.⁵ The French East India Company claimed the island for France in 1715, establishing sugar cane plantations and using the island as a base for Indian Ocean trade.⁶ In 1796, the French government moved to abolish slavery, and the Mauritian settlers broke away from French control in protest.⁷ In 1810 during the Napoleonic Wars, the British took control of the island.⁸ The United Kingdom abolished slavery in 1834, including in Mauritius, but introduced a system of indentured labour in 1835 leading to the arrival of hundreds of thousands of workers from India.⁹

The first Indo-Mauritians were elected to the government council only in 1926. In 1942, the then governor established a consultative committee with representation from all Mauritian communities;¹⁰ this was a significant milestone. During World War II, the island was strategically important to the United Kingdom, which used it for anti-submarine and convoy operations.¹¹ In 1957, internal self-government was established based on the Westminster system, and the first elections based on universal adult suffrage were held in 1959.¹²

Mauritius gained independence from the United Kingdom in 1968 during the wave of post-World War II African independence.¹³ Since then it has had a stable democracy with numerous elections in which power has changed hands on several occasions. It became a republic in 1992 and is still a member of the Commonwealth.¹⁴

Since independence, Mauritius has undergone a significant economic transformation from a low-income, agriculture-based economy to a diversified upper middle-income economy with growing industrial, financial and tourism sectors. The mainstays of the economy are sugar tourism, textiles and financial services. However, the country is expanding into other areas including fish processing, information and communication technology, education, hospitality and property development.¹⁵ The country consistently ranks as one of the most business-friendly countries on the continent.¹⁶ The government has introduced policies to stimulate economic growth in five crucial areas:¹⁷

- ▶ as a gateway for international investment into Africa
- ▶ renewable energy

- ▶ smart cities
- ▶ growing the ocean economy
- ▶ upgrading and modernising infrastructure, including public transport, the port and the airport.

Recently, Mauritius has been party to a significant international dispute over the Chagos Islands, some 2000kms from Mauritius. In 2019, the International Court of Justice issued an advisory opinion in which it ruled that the United Kingdom is under an obligation to bring an end to its administration of the disputed Chagos islands.¹⁸ The islands were to be handed back to Mauritius as the court held that the islands were unlawfully separated from Mauritius in 1965, before independence. One of the Chagos islands, Diego Garcia, has been leased by the United Kingdom to the United States as the site of a US airbase. After the court ruling, the United Nations voted overwhelmingly (116–6) on a resolution that the islands should be returned to Mauritius.¹⁹ To date the United Kingdom has refused, citing the fact that the court's ruling was 'advisory'.²⁰ However, it has undertaken to do so once the islands 'are no longer needed for defence'²¹ although it disputes that the islands were ever part of Mauritius and it has given no timetable for when that will be.

Mauritius has the second-highest GDP per capita in Africa (coming in behind the Seychelles, which has a much smaller population).²² According to the World Bank, 97.5% of the people of Mauritius have access to electricity.²³ Internet penetration is 67% which is high by African standards.²⁴ Mauritius is one of the few African countries that has completed the transition to Digital Terrestrial Television, switching off analogue television transmitters on 17th June 2015, in line with the ITU deadline for the region.²⁵ While recognising the Mauritian history of commitment to openness and democratic values, media watchers have raised concerns about recent amendments to legislation which provide for a range of internet-related offences.²⁶

In this chapter, working journalists and other media practitioners will be introduced to the legal environment governing media operations in Mauritius. The chapter is divided into five sections:

- ▶ Media and the constitution
- ▶ Media-related legislation
- ▶ Media-related regulations
- ▶ Media self-regulation
- ▶ Media-related case law

This chapter aims to equip the reader with an understanding of the primary laws governing the media in Mauritius. Significant weaknesses and deficiencies in these laws will also be identified. The hope is to encourage media law reform in Mauritius, to enable the media to fulfil its role of providing the public with relevant news and

information better, and to serve as a vehicle for government-citizen debate and discussion.

2 The media and the constitution

In this section, you will learn:

- ▷ the definition of a constitution
- ▷ what is meant by constitutional supremacy
- ▷ how a limitations clause operates
- ▷ which constitutional provisions protect the media
- ▷ which constitutional provisions might require caution from the media or might conflict with media interests
- ▷ what key institutions relevant to the media are established under the Mauritian Constitution
- ▷ how rights are enforced under the constitution
- ▷ what is meant by the three branches of government and separation of powers
- ▷ whether any weaknesses in the Mauritian Constitution ought to be strengthened to protect the media

2.1 Definition of a constitution

A constitution is a set of rules that are foundational to the country, institution or organisation to which they relate. For example, you can have a constitution for a soccer club or a professional association, such as a press council. Constitutions such as these set out the rules by which members of the organisation agree to operate. Constitutions can also govern much larger entities, indeed, entire nations.

The Mauritian Constitution published in Government Notice 54 of 1968, which has been amended several times, sets out the foundational rules of the Mauritian state. These are the rules on which the entire country operates. The constitution

contains the underlying principles and values of the Republic of Mauritius. A key constitutional provision is section 1, which states: 'Mauritius be a sovereign democratic state which shall be known as the Republic of Mauritius.'

2.2 Definition of constitutional supremacy

Constitutional supremacy means that the constitution takes precedence over all other law in a particular country, for example, legislation or case law. It is essential to ensure that a constitution has legal supremacy. If a government passed a law that violated the constitution (was not following or conflicted with a constitutional provision) such legislation could be challenged in a court of law and could be overturned on the ground that it is unconstitutional.

The Mauritian Constitution makes provision for constitutional supremacy. Section 2 specifically states: 'This Constitution is the supreme law of Mauritius; and if any other law is inconsistent with this Constitution, that other law shall, to the extent of the inconsistency, be void.'

2.3 Definition of a limitations clause

Rights are not absolute as society would not be able to function. For example, if the right to freedom of movement were absolute, society would not be able to imprison convicted criminals. Similarly, if the right to freedom of expression were absolute, the state would not be able to protect its citizens from hate speech or false, defamatory statements made with reckless disregard for the truth. Governments require the ability to limit rights to serve important societal interests; however, owing to the supremacy of the constitution, this can only be done following the constitution.

The Constitution of Mauritius makes provision for two types of legal limitations on the exercise and protection of rights contained in Chapter II, Protection of Fundamental Rights and Freedoms of the Individual.

2.3.1 Internal limitations

Section 3 of the constitution makes it clear that Chapter II 'shall have effect for the purpose of affording protection to those rights and freedoms'; however, this is not absolute. As section 3 goes on to state:

subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of those rights and freedoms by any individual does not prejudice the rights and freedoms of others all the public interest.

Some limitations are right-specific and contain limitations or qualifications to the particular right that is dealt with in a specific section of Chapter II. As discussed later, the right to freedom of expression contains such an internal limitations clause.

2.3.2 Constitutional limitations

If allowed in terms of any provision of the constitution, a law may limit any right entrenched in the Bill of Rights. See, for example, section 18 of the constitution, which deals with states of emergency. In certain circumstances, section 18(1) specifically allows for emergency legislation to provide for derogations from certain fundamental rights, namely, the right to personal liberty (section 5) and the right not to be discriminated against (section 16). These circumstances include where the derogation is reasonably justifiable for dealing with the situation that exists in Mauritius during any public emergency. A proclamation of a public emergency by the president is required and that the measures authorised by the law are necessary in the interests of peace, order and good government.

The process of declaring a public emergency is set out in section 18(2) of the constitution. Essentially, it requires the National Assembly to approve the proclamation supported by the votes of at least two-thirds of all the members of the National Assembly, failing which it will lapse within 21 days (if the National Assembly is not in session) or within seven days if it is. The proclamation can be extended for six months at a time by resolution of the National Assembly. The proclamation can be revoked at any time by the president or by resolution of the National Assembly.

2.4 Constitutional provisions that protect the media

The Mauritian Constitution contains several essential provisions in Chapter II, Protection of Fundamental Rights and Freedoms of the Individual, that protect the media, including publishers, broadcasters, journalists, editors and producers. However, there are provisions elsewhere in the constitution that assist the media as it goes about its work of reporting on issues in the public interest, and we include these in this section.

2.4.1 Freedom of expression

The most important provision that protects the media is section 12(1), part of the section headed Protection of Freedom of Expression, which states:

Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

This provision needs some detailed explanation.

- ▶ This freedom applies to all persons and not just to certain people, such as citizens.
- ▶ The freedom is not limited to speech (whether oral or written) but extends to non-verbal or non-written expression. There are many different examples of this, including physical expression (such as mime or dance), photography or art.

- ▶ Section 12(1) specifically enshrines the freedom ‘to receive or impart ideas and information without interference’. This right of everyone’s to receive information is a fundamental aspect of freedom of expression, and this subsection enshrines the right to the free flow of information. Thus, the information rights of audiences, for example, as well as the expression rights of the media are protected. This right is essential because it also protects organisations that foster media development. These organisations facilitate public access to different sources and types of information, particularly in rural areas that traditionally have limited access to the media. This provision is particularly important as the Mauritian Constitution does not have a stand-alone right of access to information.
- ▶ Lastly, section 12(1) protects against interference with a person’s correspondence which is a particularly important right for the media because it protects from unlawful search and seizure of correspondence which might reveal a confidential source of information.
- ▶ However, section 12(1) is subject to an internal limitation which is discussed more fully in section 2.5.3 below. This internal limitation results in less protection being afforded the right to freedom of expression than would appear to be the case on a plain reading of section 12(1) of the Mauritian Constitution.

2.4.2 Privacy

A second protection is contained in section 9, Protection for Privacy of Home and other Property. Section 9(1) specifies that ‘no person shall be subjected to the search of his person or his property or the entry by others on his premises’, except with his consent. This protection of property would include communications property (including letters, emails, telephone conversations, WhatsApp and other non-public social media communication) and is a basic right for working journalists to protect confidential sources of information.

However, section 9(1) is subject to an internal limitation which is discussed more fully in section 2.5.3 below. This internal limitation results in less protection being afforded the right to privacy than would appear to be the case on a plain reading of section 9(1) of the Mauritian Constitution.

2.4.3 Freedom of conscience

A third protection is contained in section 11, Protection of Freedom of Conscience. Section 11(1), provides that except with his consent ‘no person shall be hindered in the enjoyment of his freedom of conscience ... [which] includes freedom of thought’. Freedom of thought is important for the media as it protects media commentary on public issues of importance, along with the right to freedom of expression.

However, section 11(1) is subject to an internal limitation which is discussed more fully in section 2.5.3 below. This internal limitation results in less protection being afforded the right to freedom of conscience than would appear to be the case on a plain reading of section 11(1) of the Mauritian Constitution.

2.4.4 Freedom of association

A fourth protection is provided for in section 13, Protection of Freedom of Assembly and Association. Section 13(1) provides that except with his consent:

No person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble free and associate with other persons and, in particular, to form or belong to, trade unions or other associations for the protection of his interests.

This is important because it guarantees the rights of individuals involved in the media to form press associations and media houses and to conduct media operations.

However, section 13(1) is, subject to an internal limitation which is discussed more fully in section 2.5.3 below. This internal limitation results in less protection being afforded the right to freedom of association than would appear to be the case on a plain reading of section 9(1) of the Mauritian Constitution.

2.5 Constitutional provisions that might require caution from the media or might conflict with media interests

Just as some certain rights or freedoms protect the media, other rights or freedoms can protect individuals and institutions from the media. Journalists need to understand which provisions in the constitution can be used against the media. There are several of these.

2.5.1 Right to privacy

The right to privacy (discussed in some detail above) is often raised in litigation involving the media, with the subjects of press attention asserting their rights not to be photographed, written about, followed in public and so on. The media has to be careful in this regard. They should be aware that there are always boundaries concerning privacy that need to be respected and which are dependent on the particular circumstances, including whether or not the person is a public figure or holds public office and the nature of the issue being dealt with by the media.

2.5.2 Internal limitations to various rights

It is important to note that all of the rights that are important to the media and dealt with above are internal limitation provisions.

Internal limitations on the right to freedom of expression

Section 11(2) of the constitution provides that any law does not contravene the right to freedom of expression to the extent that the law makes provision in the interests of:

- ▶ defence or public safety, order, morality or health

- ▶ protecting the reputations and rights and freedoms of other persons or the private lives of persons concerned in legal proceedings
- ▶ preventing the disclosure of information received in confidence
- ▶ maintaining the authority and independence of the courts
- ▶ regulating the technical administration or operation of electronic communications, including broadcasting
- ▶ imposing restrictions on public offices, except if not reasonably justifiable in a democratic society.

These require detailed discussion.

- ▶ First, limiting freedom of expression on the grounds of defence or public safety, order, morality, or health are internationally accepted grounds for restrictions. However, it is unfortunate that these are not crafted in a way that requires the limitations to be reasonably justifiable in a democratic society.
- ▶ Second, limiting freedom of expression on the grounds of protecting the reputations and rights of others or the private lives of persons concerned in legal proceedings is following internationally accepted grounds for restrictions.
- ▶ Third, limiting freedom of expression on the grounds of maintaining the authority and independence of the courts is an internationally accepted ground for restrictions to protect the administration of justice.
- ▶ Fourth, restrictions on freedom of expression arising from the technical administration of broadcasting is an internationally accepted ground of restriction. Unfettered or unlicensed broadcasting making use of the radio frequency spectrum would simply result in radio signal interference, rendering all broadcasting impossible.

Internal limitations on the right to privacy

In its relevant part, section 9(2) of the constitution provides that a law does not contravene the right to privacy to the extent that the law makes provision in the interests of defence or public safety, order, morality or health. Although these grounds are internationally accepted, it is unfortunate that the wording of the internal limitation is not crafted in a way that requires the limitations to be reasonably justifiable in a democratic society.

Internal limitations on the right to freedom of conscience

In its relevant part, section 11(5) of the constitution provides that the right to freedom of conscience is not contravened by any law to the extent that the law makes provision in the interests of defence or public safety, order, morality or health or to protect the rights and freedoms of other persons. These grounds are internationally accepted, and, unusually, the wording of the internal limitations provided

for in section 11(5) is crafted in a way that requires the limitations to be reasonably justifiable in a democratic society.

Internal limitations on the right to freedom of association

In its relevant part, section 13(2) of the constitution provides that the right to freedom of conscience is not contravened by any law to the extent that the law makes provision in the interests of defence or public safety, order, morality or health or to protect the rights and freedoms of other persons or to impose restrictions on public officers. These grounds are internationally accepted, and, unusually, the wording of the internal limitations provided for in section 13(2) is crafted in a way that requires all the limitations to be reasonably justifiable in a democratic society.

2.5.3 States of emergency provisions

These have been dealt with in paragraph 2.3.2 above.

2.6 Key institutions relevant to the media established under the Constitution of Mauritius

2.6.1 The judiciary

Chapter VII of the Mauritian Constitution is headed The Judicature. The Supreme Court in Mauritius has unlimited jurisdiction to hear and determine any civil or criminal proceedings provided for in any law or of the constitution, in terms of section 76(1). Section 80(1) provides that the Court of Civil Appeals and the Court of Criminal Appeal are divisions of the Supreme Court with jurisdictions conferred by law and the constitution. The Supreme Court also has jurisdiction to supervise any civil or criminal proceedings before any subordinate court including the authority to give directions for ensuring that justice is duly administered by any such subordinate court, in terms of section 82(1). In terms of section 83(2), the Supreme Court has general jurisdiction to determine whether any provision of the constitution has been contravened and to make a declaration accordingly.

In terms of sections 80 to 82, appeals from subordinate courts go to the Supreme Court. Appeals from the Supreme Court go to the appeal courts on civil matters or criminal matters where the authority to hear such appeals has been conferred by the constitution or any other law. Appeals from the appeal courts or from the Supreme Court on matters where the appeal courts do not have jurisdiction, go to the judicial committee of the Privy Council in the United Kingdom. These matters include final decisions on questions as to the interpretation of the constitution, matters involving high-value disputes, disputes involving applications under section 17 of the constitution which deal with redressing violations of fundamental rights and other case prescribed by parliament.

In terms of section 77:

- ▶ the president appoints the Chief Justice of Mauritius after consultation with

the prime minister. Note that this wording formulation means that the prime minister does not have a veto over the president's choice

- ▶ the senior puisne judge is appointed by the prime minister acting following the advice of the Chief Justice. Note that this wording formulation means that the prime minister also does not have a veto over the Chief Justice's advice
- ▶ the puisne judges are appointed by the president, acting per the advice of the Judicial and Legal Service Commission.

In terms of section 78(1), a person holding the office of the judge of the Supreme Court shall vacate that office on attaining retirement age, subject to certain provisions enabling him or her to stay on to complete any unfinished proceedings.

Supreme Court judges may be removed from office only for the inability to perform the functions of the office or for misbehaviour in terms of section 78, which section also sets out detailed provisions regarding such removals.

Judges are required to take the oath of allegiance and for the due execution of the office set out in the Third Schedule to the constitution.

2.6.2 The Judicial and Legal Service Commission (JLSC)

The JLSC is a constitutional body established to participate in the appointment and removal of judges, section 86. Many would query why the JLSC is relevant to the media. The answer is because of its critical role in the judiciary, the proper functioning and independence of which are essential for democracy. In terms of section 85(1), the JLSC comprises the Chief Justice, the senior puisne judge, the chairman of the Public Service Commission and one other member, a sitting of a former judge appointed by the president acting under the advice of the Chief Justice.

2.6.3 The Ombudsman

Chapter IX of the constitution is headed The Ombudsman. The Ombudsman is a public office appointed by the president, acting after consultation with the prime minister, the leader of the opposition and other leaders of parties in the National Assembly, in terms of section 96 of the constitution.

The Ombudsman is an important office for the media because it is aimed at holding public power accountable. The main power of the Ombudsman is to investigate any action by any officer or authority in which a member of the public (resident in Mauritius or where the action was taken when he or she was present in Mauritius) claims to have sustained injustice as a consequence of maladministration in connection with the action taken, section 97. There are exceptions to the Ombudsman's powers and, in broad terms, these include being unable to investigate the judiciary or actions taken by the Director of Public Prosecutions.

Section 99 of the constitution grants the Ombudsman broad powers to require the production of information or documents for any investigation, except for Cabinet documents.

Section 100 of the constitution grants the Ombudsman a wide range of powers where the Ombudsman finds that the action investigated was unlawful, unreasonably delayed or otherwise unjust or manifestly unreasonable. These include that decisions should be cancelled, reversed or varied, that practices should be altered, that laws should be reconsidered and that any other steps should be taken.

Section 101 specifically protects the independence of the office of the Ombudsman. Section 101(1) even provides that no proceedings of the Ombudsman shall be called into question in any court of law, which puts the activities of the Ombudsman beyond the reach of the judiciary.

2.7 Enforcing rights under the constitution

A right is only as effective as its enforcement. All too often rights are enshrined in documents such as a constitution or a bill of rights, and yet remain empty of substance because they cannot be enforced.

Section 17(1) of the constitution entitles any person to apply to the Supreme Court for redress when he or she alleges that any of sections 3 to 16 of the constitution (those sections deal with fundamental rights) has been, is being or is likely to be, contravened, in addition to any other remedy that may be lawfully available.

In terms of section 17(2), the Supreme Court has original jurisdiction to determine any such application. It may make orders or give directions that it considers appropriate to enforce the protections provided for in sections 3 to 16 of the constitution. Note that the Supreme Court is required not to exercise its powers under section 17(2) if it is satisfied that adequate means of redress for the alleged contravention are available to the person concerned under any other law.

Although rights are generally enforceable by the courts, the constitution itself also envisages the right of people, including the media, to approach a body such as the Ombudsman to assist in enforcing the rights.

Perhaps one of the most effective ways in which rights are protected under the constitution is by the provisions that entrench Chapter II, the chapter on the Protection of Fundamental Rights and Freedoms of the Individual. Section 47(2)(c) of the constitution requires that a constitutional amendment to Chapter II be passed by three-quarters of all of the members of the National Assembly, thereby providing significant protection for fundamental rights.

2.8 The three branches of government and separation of powers

All too often, politicians, commentators and journalists use political terms such as branches of government and separation of powers, yet working journalists may not have a clear idea what these terms mean.

2.8.1 Branches of government

It is generally recognised that government power is exercised by three branches of government, the executive, the legislature and the judiciary.

The executive

The Mauritian Constitution does not refer specifically to 'the executive'. However, in terms of section 28(1) of the constitution, it is clear that executive power is vested in the president as he or she is the Head of State and Commander in Chief of the Republic of Mauritius.

Section 28(1) requires the president to ensure that the institutions of democracy and the rule of law are protected, that the fundamental rights of all are respected and to maintain and strengthen the unity of the diverse Mauritian nation.

In terms of section 28(2), the president is elected by a majority of the National Assembly on a motion made by the prime minister. No person is eligible for election to the office of president unless he or she is a citizen of Mauritius, at least 40 years of age and has resided in Mauritius for at least five years immediately preceding the election. The president holds office for five years and is eligible for re-election in terms of section 28(2)(a)(ii). There are similar provisions about the election of the vice-president in terms of section 29.

Section 30 of the constitution deals with the removal from office of the president and vice president. There are two grounds for removal, namely for violating the constitution or any other serious act of misconduct or an inability to perform his or her functions. The removal requires a motion introduced in the National Assembly by the prime minister that a tribunal investigates the circumstances requiring the removal, as well as a recommendation by the tribunal for such removal. The tribunal must be made up of a chairman and two or four other members appointed by the Chief Justice, who are required to be sitting or retired judges. The motion for removal in the National Assembly must be supported by the votes of at least two-thirds of all the members of the National Assembly.

The constitution is quiet on the precise roles of the executive. The typical role of the executive is to administer or enforce laws, make government policy and propose new laws.

The legislature

In terms of section 45(1) read with sections 46(1), (3) and (5) of the constitution, legislative power in Mauritius is vested in parliament.

In terms of section 31(1) of the constitution, parliament consists of the president and the National Assembly. The National Assembly is made up of 70 members. Mauritius has a constituency-based electoral system, and voters must be registered before they can vote in a particular constituency.

The make-up of the National Assembly is set out in the First Schedule to the

constitution. Sixty-two seats are for members representing 21 constituencies. The island of Mauritius is made up of 20 constituencies, returning three members to the National Assembly each. Rodrigues is made up of one constituency and returns two members to the National Assembly; section 1(1) of the First Schedule read with section 39(1) of the constitution. The remaining eight seats are distributed according to a fairly complex system which focuses on ‘successful unreturned candidates’, candidates who garnered many votes but were not winners, representing communities, as set out in section 5 of the First Schedule.

The judiciary

As described above, judicial power is vested in the courts. The role of the judiciary is to interpret the law and to adjudicate legal disputes following the law.

2.8.2 Separation of powers

In a functioning democracy, it is essential to divide government power between different organs of the state to guard against the centralisation of power, which may lead to abuse. This is known as the separation of powers doctrine. The aim is to separate the functions of the three branches of government, the executive, the legislature and the judiciary so that no single office can operate alone, assume complete state control and amass centralised power. Each branch performs many different functions, and also plays a watchdog role concerning the other, helping to ensure that public power is exercised in a manner that is accountable to the general public and follows the constitution.

2.9 Weaknesses in the constitution that ought to be strengthened to protect the media

There are some weaknesses in the Mauritian Constitution. If these provisions were strengthened, there would be specific benefits for the Mauritian media.

2.9.1 Remove internal constitutional limitations

It would be better to have a general limitations clause, applicable to all limits to rights provided for in the constitution, rather than the series of internal limitations to certain rights as set out in each right. This is particularly so given that the tests for such limitations are not consistent. For example, the internal limitations provisions in respect of the rights to freedom of conscience and association require that any limitation be ‘reasonable and justifiable in a democratic society’. However, the internal limitations provisions concerning the rights to freedom of expression and privacy have no such requirement.

2.9.2 Bolster independence of the broadcasting regulator

It would provide greater protection for independent media regulation if the constitution made provision for an independent authority to regulate the media in

Chapter VIII, alongside the other service commissions provided for in that chapter, and the Ombudsman.

2.9.3 Constitutional protections for the public broadcaster

Similarly, it would provide greater protection for the independence of the public broadcaster, the Mauritian Broadcasting Corporation (MBC), if the constitution made provision, in Chapter VIII, for an independent MBC, alongside the other service commissions provided for in that chapter and the Ombudsman.

3 The media and legislation

In this section, you will learn:

- ▷ what legislation is and how it comes into being
- ▷ legislation governing the print media
- ▷ legislation governing both print and broadcasting media
- ▷ legislation governing the broadcast media generally
- ▷ legislation governing the public broadcasting sector
- ▷ legislation governing broadcasting signal distribution
- ▷ legislation governing the internet
- ▷ legislation that threatens a journalist's duty to protect sources
- ▷ legislation that prohibits the publication of certain kinds of information
- ▷ legislation governing the interception of communication
- ▷ legislation that protects personal data
- ▷ legislation that specifically assists the media in performing its functions

3.1 Legislation: An introduction

3.1.1 What is legislation?

Legislation is a body of law consisting of acts properly passed by parliament; which is the legislative authority. Parliament, in terms of the constitution, is made up of the National Assembly and the president. Consequently, both the president and the National Assembly are involved in passing legislation.

Detailed rules in sections 54, 46 and 47 of the constitution set out the law-making processes that apply to different types of legislation. Journalists and others in the media need to be aware that the constitution requires different kinds of legislation to be passed according to particular procedures. The procedures are complicated and need not be explained here. Journalists should, however, be aware that, in terms of the constitution, there are three kinds of legislation, each of which has particular procedures or rules or both applicable to it. These are:

- ▶ legislation that imposes or alters (other than reducing) taxation, imposes a charge on the Consolidated Fund (essentially the fiscus) or for the composition or remission of any debt to the government, section 54
- ▶ legislation to amend the constitution, section 47
- ▶ other legislation, section 53.

3.1.2 The difference between a bill and an act

A bill is a draft law that is debated and usually amended by parliament during the law-making process. If the National Assembly passes a bill following the various applicable procedures required for different types of bills as set out above, it is sent to the president for his or her assent.

In terms of section 45(1) read with sections 46(1), (3) and (5) of the constitution, legislative power in Mauritius is vested in parliament. It is exercised when the National Assembly passes a bill which is assented to by the president and published in the gazette as a law, at which point it becomes an act of parliament.

Section 46(2)(b) provides that the president may not withhold consent to a bill passed by the National Assembly:

- ▶ for the imposition or alteration of taxation and other matters relating to charges on the Consolidated Fund (essentially the fiscus), section 54
- ▶ which amends the constitution and which the speaker has certified complies with section 47 (the section setting-out the procedures for various types of constitutional amendments)
- ▶ unless he or she believes that the National Assembly ought to reconsider the bill.

Note that, in terms of section 46(2)(d), the president is required to consent to a bill that has been reconsidered by the National Assembly, whether or not it is amended as a result of the reconsideration.

3.2 Legislation governing the print media

There are few limitations on the ability to operate as a print media publication. The laws setting down specific obligations on the print media are reasonable and justifiable and do not impinge on the public's right to know.

Newspapers and Periodicals Act, Act 6 of 1837

There are certain requirements laid down by the Newspapers and Periodicals Act for the publication of newspapers and periodicals.

- ▶ Section 2 makes it an offence to print or publish a newspaper or periodical: 'devoted in whole or in part to news or politics' without first having deposited a notice with the Accountant-General specifying its title, the printer and publisher's addresses, the names and addresses of the printer, the editor and one of the owners residing in Mauritius, together with a statement of his or her interest. The penalty, on conviction, is a fine.
- ▶ It is also an offence, with the same penalty, not to update the notice in terms of section 3.
- ▶ Section 4 provides that the penalties payable in respect of the offences provided for in sections 2 and 3 are payable daily until the notices have been given.
- ▶ Section 6 makes it an offence for a newspaper or periodical not to contain the name and address of the printer and editor in every addition. The penalty on conviction is a fine.

Criminal Code, Act 6 of 1838

Section 289(1) of the Criminal Code grants a person named or referred to in a newspaper, a right of reply, free of charge, within three days (or in the next print run if the newspaper is not a daily). The reply is to be in the same place and type as the original article. If the reply is longer than twice that of the original article, the newspaper may charge advertising rates for the excess. Failing to comply with section 289(1) is an offence, the penalty for which is a fine and an order to publish the reply and a further fine if it is still not published.

Police Act, Act 19 of 1974

Section 13A(1) of the Police Act empowers the Commissioner of Police to declare any area a protected area, if he or she considers it necessary or expedient in the interests of public safety or public order. Section 13A(2) makes it an offence to be in a protected area without lawful authority.

Section 13B(1) of the Police Act empowers the Commissioner of Police to declare any area a protected area, if he or she considers it necessary or expedient in the interests of public safety or public order. Section 13B(2) makes it an offence to be in a restricted area without lawful authority or to contravene the provisions of a permit to be in a restricted area.

Section 13C(1) of the Police Act empowers the Commissioner of Police to order a curfew concerning a particular area and particular hours if he or she considers it necessary or expedient in the interests of public safety or order. Section 13C(2) makes it an offence to contravene a curfew or the provisions of a curfew permit.

In terms of section 24(4) of the Police Act, all of the above offences carry a penalty of a fine and imprisonment on conviction.

Journalists need to be aware of these provisions of the Police because restricting access to a particular place or movement during particular hours can hinder the ability of the media to do its work. The Police Act would meet international good practice standards if the discretion to be exercised by the Commissioner of Police were objective instead of subjective. That is if a court were able to enquire as to whether or not the declaration of a protected or restricted area or a curfew was necessary or expedient in the interests of public safety or public order.

3.3 Legislation governing both print and broadcast media

3.3.1 Media Trust Act 1994

Establishment of the Media Trust

The Media Trust Act establishes the Media Trust as a body corporate in terms of section 3 and which operates with a board of trustees.

Main Functions of the Media Trust

The Media Trust Act, at section 4, provides that the objects of the Media Trust include:

- ▶ running a media and documentation centre
- ▶ organising seminars, conferences workshops and training courses
- ▶ fostering relationships with international media.

Appointment of the Media Trust board members

In terms of section 5 of the Media Trust Act, the board of trustees is made up of nine members appointed by the Minister of Information. Of the nine members:

- ▶ one is a chairperson
- ▶ two are ministry representatives; one each from the Ministries of Information and Finance

- ▶ six are full-time journalists:
 - ▶ a representative of the registered associations of journalists
 - ▶ a representative of the electronic media
 - ▶ four press representatives elected by the press, two of whom are required to be Editors-in-Chief
- ▶ The board members hold office for two years and are eligible for reappointment.

Funding of the Media Trust

In terms of section 4(a) of the Media Trust Act, the funds of the Media Trust consist of funds 'obtained from the government and other organisations'.

Regulations

In terms of section 10(1) of the Media Trust Act, the board is empowered to make regulations for itself without them being approved by the minister, published in the Gazette or laid before the National Assembly.

3.4 Legislation governing the broadcast media generally

3.4.1 Statutes regulating broadcasting generally

Broadcasting in Mauritius is regulated in terms of the Independent Broadcasting Authority Act, Act 29 of 2000 (the IBA Act).

3.4.2 Establishment of the IBA

The IBA Act establishes the Independent Broadcasting Authority (IBA) as a body corporate in terms of section 3.

3.4.3 Main functions of the IBA

In terms of section 4 of the IBA Act, the IBA's objectives concerning broadcasting include to:

- ▶ promote a diverse range of radio and television broadcasting services throughout Mauritius
- ▶ promote the development of broadcasting services which are responsive to the needs of the Mauritian audience
- ▶ preserve and promote the plural nature of Mauritian culture by ensuring that licensees include programmes reflecting the linguistic and cultural diversity of Mauritius, including locally produced programmes
- ▶ ensure that foreign nationals do not control broadcasting services

- ▶ impose cross-media controls
- ▶ ensure fair competition
- ▶ set and monitor compliance with standards for programming and advertising
- ▶ ensure that broadcasting services give adequate coverage to information, education, culture, entertainment and recreation, are impartial and accurate and do not encourage crime or racial hatred leading to disorder or offend public feeling
- ▶ issue licences
- ▶ promote efficient use of the broadcasting frequency bands
- ▶ enquire into, and take appropriate action in respect of, public complaints against a licensee.

Section 5(4) empowers the IBA to establish committees and to delegate functions other than the power to issue licences, borrow money or incur expenditure above a particular threshold.

3.4.4 Appointment of the IBA

In terms of section 6 of the IBA Act, the IBA consists of between nine and 11 people, appointed as follows:

- ▶ The president appoints the chairperson after consultation with the prime minister and the leader of the opposition.
- ▶ Three ministry representatives, one from each of the ministries responsible for broadcasting, information and arts and culture.
- ▶ A representative of the attorney general's office.
- ▶ The Chairperson of the Information and Communications Technology Authority of Mauritius
- ▶ No fewer than three and not more than five members appointed by the minister responsible for broadcasting, having regard to their experience in the fields of broadcasting policy and technology, media issues, frequency planning, entertainment education or in any other related activities. Provided that the following are disqualified as being so appointed in terms of section 7: members of the National Assembly, office bearers of a political party or organisation or a person whose spouse or child has an interest in the broadcasting, advertising or audio-visual production sectors.

In terms of section 9, the chairperson and the members appointed by the minister responsible for broadcasting hold office for three years and are eligible for reappointment. The chairperson and the members appointed by the minister responsible for broadcast cannot be removed from office by him during their

terms except in terms of section 37(3)(b) of the Interpretation and General Clauses Act, Act 33 of 1974 which sets out the grounds for removal. These are: unreasonably absenting him or herself from meetings, becoming insolvent, being guilty of misconduct or convicted of an offence which renders him or her unfit for office (in the minister's opinion), or is suffering from a physical or mental disability.

In terms of section 11 of the IBA Act, the IBA appoints the director, who is the chief executive officer responsible for the day-to-day running of the business of the IBA. Although the IBA is empowered to appoint employees necessary for the proper discharge of the IBA's duties, such employees are under the administrative control of the director in terms of section 12.

3.4.5 Funding for the IBA

In terms of section 13 of the IBA Act, the IBA is required to establish a general fund into which all of the revenue of the IBA is paid and out of which all expenses incurred are paid.

The revenue of the IBA consists of fees or charges levied on a licensee, amounts received from the Consolidated Fund (the fiscus) and any other sum that may lawfully accrue to the IBA.

3.4.6 Making broadcasting regulations

The IBA Act empowers the IBA to make regulations.

Section 38(1) empowers the IBA to make regulations 'as it thinks fit' for the IBA Act. Section 38(2) grants the IBA additional discretionary power to amend the schedules to the IBA Act by way of regulation. The IBA Act's schedules include categories of broadcast licences (First Schedule) and the Code of Conduct for Broadcasting Services (Second Schedule). These have indeed been amended and are dealt with in section 4 below.

Section 38(3) provides that regulations may contain provisions to levy fees or charges and offences or penalty provisions for regulation contraventions specifying a fine of up to a certain amount and not exceeding two years.

3.4.7 Enforcement of compliance

Section 30(1) and (2) of the IBA Act requires the IBA to establish a complaints committee (the CC). The committee is made up of a chairperson who is a legal practitioner of not less than ten years' standing and six other persons who are not members of the IBA. The CC adjudicates complaints relating to:

- ▶ failure to comply with the code of ethics or the code of advertising practice
- ▶ unjust or unfair treatment in a broadcast programme
- ▶ unwarranted infringement of privacy in obtaining material included in a broadcast programme.

In terms of section 30(5), complaints must be made in writing by an affected person who identifies him or herself and within six months of the date of the broadcast of the relevant programme. Every interested person is to be given a hearing and, in terms of section 30(9), the CC has the power to summon any person to attend the hearing and produce documents. After considering a complaint, the CC forwards a copy of its decision to the IBA and may recommend that the IBA issue a direction to a licensee.

3.4.8 The licensing regime for broadcasters in Mauritius

Section 18 of the IBA Act prohibits the provision of a broadcasting service without a licence. In terms of section 37, to do so is an offence punishable by a fine and imprisonment.

The categories of broadcasting licences are provided for in regulations and are dealt with in section 4 below.

Section 19(1) requires any person who wishes to obtain a broadcasting licence to make an application to the IBA in the prescribed form.

Besides ownership considerations, set out in detail below, in terms of section 19(3), the IBA is also prohibited from granting a broadcasting licence to certain applicants including:

- ▶ a non-citizen or non-resident
- ▶ a religious organisation
- ▶ a local authority
- ▶ a declared insolvent or someone that has been found liable for defamation or sedition or convicted of any offence involving fraud or dishonesty.

Section 19(4) of the IBA Act requires the IBA to give notice of the licence application in the Gazette and at least two daily newspapers for three consecutive days, inviting any interested party to lodge objections against the application within 21 days.

Section 20 requires the IBA to take account of the following when determining whether or not to grant an application for a licence:

- ▶ objections received
- ▶ objectives of the IBA
- ▶ qualifications of the applicant
- ▶ likelihood of the applicant complying with licence conditions
- ▶ possibility of the applicant complying with the broadcasting code of conduct
- ▶ the need to promote pluralism in the media by giving priority to applicants

who shall be subject to no editorial control other than independent editorial control exercised from within the broadcasting business of the applicant.

Section 21(1) of the IBA Act requires the IBA to decide to grant or refuse a licence application within three months of the closing date for public objections to an application and to furnish reasons for its decision. Where the IBA does not decide within three months, it is deemed to have refused the licence in terms of section 21(2) of the IBA Act.

Section 21(5) empowers the IBA to refuse a licence application where it believes that granting the licence may impede the promotion of the diversity of broadcasting services and the plural nature of Mauritian culture.

Section 22 of the IBA Act provides that radio broadcasting licences are valid for three years and television broadcasting licences for five years. These are renewable.

Frequency spectrum licensing

Section 19(4) of the IBA Act requires the IBA to ensure that there is a spectrum available in the broadcasting frequency bands and that it will be allocated to a licence applicant by the Information and Communications Technology Authority of Mauritius (ICTA). There is a great deal of liaison regarding spectrum issues that takes place between the IBA and ICTA on spectrum issues.

Digital broadcasting

Mauritius falls in Region 1 of the International Telecommunications Union (the ITU) and was the first African country to provide digital terrestrial television (DTT) to its entire population. It completed the digital switchover (and the analogue switch off) within the ITU target date of June 2015.²⁷

3.4.9 Responsibilities of broadcasters in Mauritius

Adherence to licence conditions

Section 21(3) empowers the IBA to impose licence conditions, including the right of reply to a person whose reputation has been adversely affected by broadcast and charges that the licensee can levy from its audience. Section 21(6) requires licensees to comply with the terms and conditions of their licences.

Adherence to content requirements or restrictions

Although all broadcasters enjoy the constitutional right to freedom of expression, this right is not absolute, and broadcasters are subject to a range of content regulation concerning what they may or may not broadcast. These regulations include the following.

Adherence to a broadcasting code of ethics, including local content requirements

Section 29(1) and (2) of the IBA act requires the IBA to establish a Standards Committee (SC) comprising a chairperson and six persons who are not members of the IBA. In terms of section 29(4), the SC is to develop a code of ethics for licensees with the approval of the IBA.

The code of ethics is to give guidance on several issues, including:

- ▶ technical standards for broadcast programmes including the need for subtitling for the benefit of the deaf where applicable
- ▶ the promotion of locally produced programmes
- ▶ standards of taste and decency for broadcast programmes, particularly regarding the portrayal of violence or sexual conduct.

The SC is required to consult with licensees as well as audiences when drawing up or reviewing the code of ethics and is to conduct audience research as required by the IBA.

This code of ethics has been developed by way of regulation, as is set out in section 4 below. Note that in terms of section 24(2)(d), the IBA may revoke a licence for failure to comply with the code of ethics.

Adherence to an advertising code

Section 29(1) and (2) of the IBA act requires the IBA to establish a Standards Committee (SC) comprising a chairperson and six persons who are not members of the IBA. In terms of section 29(5), the SC is to develop a code of advertising practice which licensees are required to adhere to with the approval of the IBA. The SC is required to consult with licensees as well as audiences when drawing up or reviewing codes.

Adherence to ownership and control requirements

Regulating ownership and control of broadcasting licences is an integral part of the IBA's regulatory work.

The IBA has five essential areas of supervision concerning ownership and control:

- ▶ approval of transfers of licences or changes in ownership or control
- ▶ section 23(1) of the IBA Act provides that no licensee may assign or transfer a licence without the written consent of the IBA
- ▶ section 24(1) empowers the IBA to approve a written application to amend a licence, subject to any conditions it deems fit
- ▶ section 24(2) empowers the IBA to revoke a licence on the following grounds:

- ▶ the licensee has failed to begin operating within six months of the issue of its licence
- ▶ the licensee has ceased broadcasting operations
- ▶ the licensee has given the IBA information which is materially false or misleading
- ▶ failure to comply with the code of ethics
- ▶ the revocation is in the public interest
- ▶ the licensee has become disqualified from holding a licence in terms of the grounds specified in section 19(3) of the IBA Act.

Section 25 empowers the IBA to suspend a licence on grounds substantially similar to those set out above.

No party political broadcasters

Section 19(3)(c) and (d) of the IBA Act prohibits a broadcasting licence from being given to any political party or association or any person actively engaged in politics.

Limitations on foreign ownership and control of broadcasting licences

Section 19(3)(h)(i)-(iii) of the IBA Act prohibits a broadcasting licence from being given to a company registered in a foreign country or where 20% or more of the shares are owned or controlled by a foreign national or company or where 20% or more of the directors are foreign nationals.

Limitations on the number of broadcasting licences a single entity can control

Section 19(3)(a) of the IBA Act prohibits a broadcasting licence from being given to an applicant that already holds a licence or who has an interest in a company that already holds a licence.

Limitation on cross-media control of broadcasting services

Section 19(3)(h)(iv) of the IBA Act prohibits a broadcasting licence from being given to an applicant where 20% or more of the shares in that company are owned or controlled by an individual or entity which owns or controls a newspaper or magazine.

3.4.10 Is the IBA an independent regulator?

The IBA Act contains specific statements about the IBA's independence. Section 3(2) of the IBA Act states that the IBA 'shall not, in the exercise of its functions, be subject to the control of any person, body or other authority'. However, this is subject to section 3(3) which empowers the minister responsible for broadcasting to issue directions to the IBA in matters affecting national security and public order, and the IBA is required to comply with those directions. While the obligation to

comply with ministerial directions does undermine the independence of the IBA, the grounds on which the minister may issue such directions are narrow.

The IBA does appear to have substantive independence concerning its main broadcasting regulatory functions:

- ▶ *Licensing:* The IBA is entitled to consider applications for broadcasting licences and to issue such to broadcasters on its own without any role being played by the executive.
- ▶ *Regulation making:* The IBA is entitled to make its own without any role being played by the executive.

However, there are certain regulatory functions that the IBA is not entirely free to regulate.

- ▶ *Ministerial policy directions:* Although the IBA Act is required to comply with ministerial policy directions, the minister's discretion to make such policy directions is limited to matters relating to national security and public order.
- ▶ *Frequency spectrum management:* Although the IBA Act recognises the importance of the IBA's role in promoting efficient spectrum use, monitoring the availability of segments of broadcasting frequency bands and making recommendations for the allocation of frequencies to licensees, this is done together with ICTA, so the IBA does not act alone.

Further, the process for appointing the members of the IBA undermines its independence because the Minister for Broadcasting has the power to ensure that the majority of members are representatives of the executive branch of government.

3.4.11 Proposed amendments to strengthen the regulation of broadcasting

The single biggest problem with the IBA Act is that the appointments provisions give the minister responsible for broadcasting a great deal of leeway concerning the appointments of the IBA. For example, the minister can determine whether there is an equal number of members who are not themselves members of the executive or fewer such members. The make-up of the members of the IBA is a critical factor in assessing independence. If the IBA Act were amended to provide that the members of the IBA are appointed by process of public nominations, shortlisting and recommendations being made by the National Assembly and appointed by the president, this would significantly strengthen the independence of the broadcasting regulator in line with international best practice.

3.5 Legislation that regulates the public broadcasting sector

3.5.1 Introduction

The Mauritius Broadcasting Corporation (MBC) is Mauritius' public broadcaster providing several DTT channels and sound services.

The principal statutes governing the affairs of the MBC are the:

- ▶ Mauritius Broadcasting Corporation Act, Act 22 of 1982 (MBC Act)
- ▶ Mauritius Broadcasting Corporation (Collection of Licence Fees) Act 1984.

3.5.2 Establishment of the MBC

Section 3 of the MBC Act establishes the MBC as a body corporate.

3.5.3 The mandate of the MBC

The mandate of the MBC is set out in different provisions of the MBC Act. Section 3(3) provides that the MBC 'shall be a principal medium for the dissemination of information, education and entertainment'. Section 4 sets out the objects of the MBC and these include:

- ▶ to provide independent and impartial broadcasting services of information, education culture and entertainment which cater for the aspirations needs and tastes of the population in Creole, Bhojpuri, French, Hindustani, English and other languages spoken in Mauritius determined by the board with the approval of the minister responsible for information
- ▶ to ensure that broadcasting services assist the development of the knowledge, sense of initiative, civic rights, duties and responsibilities of the Mauritian population, including cultural exchanges and a Mauritian identity
- ▶ to provide a high standard of broadcasting programmes in respect of content and quality covering a broad subject matter range
- ▶ to ensure that programming, including advertising, does not offend against decency, good taste or public morality and is not likely to encourage or incite crime, disorder or violence
- ▶ to provide both local and foreign news that is accurate and impartial
- ▶ to observe neutrality and impartiality on current affairs, matters of public policy and controversial issues relating to culture, politics and religion.

An unusual aspect of the MBC Act is section 19 which grants any person whose honour, character or reputational goodwill has been adversely affected by a broadcast by the MBC, including a political broadcast during an election campaign, to apply, in writing, to exercise his or her right of reply. The prescribed form for such application is set out in regulations which are dealt with in section 4.4.1 below.

3.5.4 Appointment of the MBC board and the general advisory council

In terms of section 6 of the Broadcasting Act, the MBC is controlled by a board of seven members. The board is made up of a chairperson appointed by the minister responsible for information, the supervising officer of the Ministry of Information, the Director of Information Services, and four other people appointed

by the minister responsible for information including two people with experience in education and broadcasting, one with experience in administration and labour relations and one with expertise in economy and finance. Except for the *ex officio* members, members hold office for up to two years, are eligible for reappointment and are required to be Mauritian citizens who are not members of a political party or the National Assembly.

Non-*ex officio* MBC board members may be removed from the board if they were appointed while being disqualified, engage in any political activity or acquire an interest in a company providing radio communication or equipment or advertising services.

Note that the director-general, who is the chief executive officer of the MBC and is appointed by the minister, is required to attend every meeting of the board and take part in its deliberations. However, he or she is not entitled to vote on any question before the board, in terms of sections 13 and 10 of the MBC Act.

Importantly the MBC Act, at section 12, provides for a general advisory council (GAC) to advise the minister and the board on any matter relating to the programming or services of the MBC including making proposals for content standards and programming. The GAC is made up of 23 members appointed by the minister. It includes representatives of a broad cross-section of society including the agricultural community, commerce and industry, students, women and youth, trade unions, religious interests, the arts, consumers, local authorities, benevolent associations, Rodrigues and the Outer Islands, the press and the general public.

3.5.5 Funding for the MBC

The MBC Act provides at section 21 that the MBC is to operate two funds into which all monies received by the board are paid:

- ▶ Capital Fund: for income received for capital expenditure including transmitting stations and installations, section 22
- ▶ Revenue Fund: for income derived from fees, charges, dues or other sums payable to the Corporation, grants made by the government for operating expenses and all other income, section 23.

The Broadcasting Act does not contain a single clear statement on how the MBC is funded. The MBC is required to keep separate accounts for its public services and public, commercial services divisions, in terms of section 9 of the Broadcasting Act. Its public services division is entitled to draw revenue from a range of sources, including advertising and sponsorships, grants and donations, licence fees and state grants, in terms of section 10(2) of the Broadcasting Act.

In terms of section 24 of the MBC Act, the MBC is to submit an estimate of the revenue and expenditure of the MBC for the next financial year to the minister at least three months before the end of the financial year. The minister must approve the estimate but may approve only part of it or direct the corporation to amend the estimate.

Importantly, section 25 provides that every person is to pay a licence fee in respect of television broadcasts of the MBC following the Mauritius Broadcasting Corporation (Collection of Licence Fees) Act 1984 (Licence Fees Act).

Section 3 of the Licence Fees Act requires every person who is liable to pay an electricity bill for domestic consumption is to pay a television licence fee unless they do not possess a television set. The television licence fee is paid to the Central Electricity Board (CEB) and is remitted to the MBC as agreed between them.

In terms of section 9 of the Licence Fees Act, not paying the television licence fees is an offence and the penalty is a fine and, perhaps more importantly, the defaulting payer is liable to have his or her electricity disconnected by the CEB.

3.5.6 MBC: public or state broadcaster?

The MBC does not operate as a public broadcaster because the minister responsible for information plays several critical roles concerning the MBC, including:

- ▶ making five of the seven board appointments
- ▶ making all 23 of the GAC appointments
- ▶ appointing the director-general of the MBC
- ▶ having the power, in terms of section 29 of the MBC Act, to give directions of a general character to the board which the minister considers necessary in the public interest, and with which the board is required to comply.

3.5.7 Amending the legislation to strengthen the public broadcaster

International best practice requires state broadcasters to be transformed into genuine public broadcasters. This ought to be done to the MBC Act by requiring the board and the GAC to act independently in the public interest. Further, the MBC Act ought to be amended to provide that members of the board and the GAC are appointed following a public nominations process, shortlisting and recommendation for appointment to be made by the National Assembly and appointed by the president.

3.6 Legislation governing broadcasting signal distribution

Broadcasting signal distribution is the technical process of ensuring that the content-carrying signal of a broadcaster is distributed so that it can be heard and viewed by its intended audience.

Section 28 of the IBA Act grants Multicarrier (Mauritius) Ltd the exclusive right to act as the Multiplex Operator for the operation and management of digital broadcasting, including DTT, and it also has the exclusive right to carry on the business of terrestrial broadcasting transmission.

3.7 Legislation that regulates the internet

Although there are no statutes that regulate the internet in the sense of requiring licensing to distribute content online, it is important to note that the Information and Communication Technologies Act, Act 44 of 2001 (the ICT Act) does deal with certain, narrow, internet-related issues.

Although the ICT Act is generally concerned with telecommunications services, including the provision of network and related issues such as interconnection, the ICT Act does refer to the internet in several places. Sections 12 and 13 of the ICT Act establish the Internet Management Committee (IMC) which is a committee of ICTA established in terms of section 4 of the ICT Act. Sections 12 and 13 provide for the following:

- ▶ The minister responsible for the ICT Act is to appoint the chairperson and the other ten members of the IMC after consultation with the board of ICTA.
- ▶ The members of the IMC shall be selected from among representatives of the public and private sectors, non-governmental organisations and academia and by the qualifications, expertise and experience in information and communication technologies, computer science, broadcasting and telecommunication law, business and finance, internet, electronic commerce and related educational and training services.
- ▶ The functions of the IMC are to:
 - ▶ advise ICTA on internet and related policies, including domain names
 - ▶ provide a forum for stakeholder discussions on the administration of the internet
 - ▶ administer domain names.
- ▶ Section 46 sets out offences, several of which relate to online content. These are dealt with in detail in section 3.9.7 below.

3.8 Legislation that undermines a journalist's duty to protect his or her sources

A journalist's sources are the lifeblood of his or her profession. Without trusted sources, a journalist cannot obtain information that is not already in the public domain. However, sources will often be prepared to provide critical information only if they are confident that their identities will remain confidential and will be respected and protected by a journalist. This is particularly true of whistleblowers, inside sources that can provide journalists with information regarding illegal activities, whether by company or government personnel. Consequently, democratic countries often offer special protection for journalist's sources. It is recognised that, without such protection, information that the public needs to know would not be given to journalists.

3.8.1 The Commissions of Enquiry Act, Act 7 of 1944

Section 10 of the Commissions of Enquiry Act entitles a commissioner to summon witnesses and call for the production of documents. Any person who, without sufficient cause, refuses to appear or to produce documents as per the summons commits an offence. On conviction, the penalty is a fine.

3.8.2 The Courts Act, Act 5 of 1945

Section 128 of the Courts Act entitles any party to a civil or criminal case, inquiry or other proceedings before an intermediate or district court, to obtain summonses to witnesses with or without requiring the production of papers or writing in their possession from the court registry. Failing to appear as a witness or to produce any document referred to in the summons is an offence. On conviction, the penalty is imprisonment and a fine.

3.8.3 Criminal Procedure Act, Act 6 of 1853

Section 89 of the Criminal Procedure Act (CPA) empowers the Director of Public Prosecutions to summon witnesses for the prosecution in any criminal trial. The penalty for failing to appear as a witness is a fine and the person is liable to be apprehended and forcibly brought to court to give evidence. Thus, if a public prosecutor suspects that a journalist knows something about a crime, the journalist might be ordered to reveal his or her sources of information relating to that crime in terms of section 89 of the CPA.

Section 90 of the CPA empowers the defendant in any criminal proceedings to summon witnesses for the defence in any criminal trial. The penalty for failing to appear as a witness is a fine and the person is liable to be apprehended and forcibly brought to court to give evidence. Thus, if a criminal defendant suspects that a journalist knows something about a crime; in terms of section 90 of the CPA, such journalist might be ordered to reveal his or her sources of information relating to that crime.

3.8.4 The Data Protection Act, Act 13 of 2004

Section 13(1)(a) of the Data Protection Act empowers an investigating authority to apply to the Judge in Chambers for an order compelling any person to submit specified data stored on a computer system where the disclosure of the data is required for a criminal investigation or the prosecution of an offence.

Similarly, section 14(1) and (2) of the Data Protection Act empowers an investigating authority to apply to the Judge in Chambers for the issue of a search and seizure warrant to enter into any premises and search and seize stored data, a computer system or any information and communication technologies medium which would be relevant for an investigation or prosecution of an offence.

The Data Protection Act does not specify the penalties for the above offences.

3.8.5 The Good Governance and Integrity Reporting Act, Act 31 of 2015

Section 8(2)(c) of the Good Governance and Integrity Reporting Act authorises the Integrity Reporting Board to call for the communication and production of any relevant record, document or article from any person. The person is required to comply with the call within 14 days, but the statute is silent as to the consequences for non-compliance.

3.8.6 The Protection of Human Rights Act, Act 19 of 1998

Section 6 of the Protection of Human Rights Act (Human Rights Act) authorises the Human Rights division of the National Human Rights Commission to summon witness and call for the production of any document. Failure to comply with the summons or produce a document is an offence in terms of section 13, and the penalty is a fine and imprisonment.

3.8.7 The Information and Communication Technologies Act, Act 44 of 2001

Section 40(4)(a) of the Information and Communication Technologies Act (ICT Act) empowers the ICT Appeal Tribunal (established in terms of section 36(1) of the ICT Act) to make orders requiring the attendance of persons and the production of articles, documents or other electronic records as it thinks necessary or expedient. The role of the ICT Appeal Tribunal is to hear and dispose of appeals against decisions of ICTA regarding information and communications technologies, in terms of section 39(1) of the ICT Act.

3.8.8 The National Assembly (Privileges, Immunities and Powers) Act, Act 22 of 1953

Section 10(1) of the National Assembly Powers Act allows a committee of the National Assembly to order any person to appear before the committee and give evidence or produce any documents under his or her control. Failing to comply with an order in terms of the National Assembly Powers Act is an offence in terms of section 6(1)(a), (b) and (c) and the penalty, on conviction, is imprisonment or a fine in terms of section 6(3). Giving false evidence in response to an order is also an offence and the penalty, on conviction, is imprisonment in terms of section 13 of the National Assembly Powers Act.

3.8.9 The Prevention of Corruption Act, Act 5 of 2002

Section 50(1) of the Prevention of Corruption Act authorises the Director-General of the Independent Commission against Corruption to order any person to produce a document, record or article if the Director-General decides to proceed with a corruption investigation. The person is required to comply with the order. Failure to comply, without reasonable excuse is an offence in terms of section 50(6) and on conviction, the penalty is imprisonment.

3.8.10 The Prevention of Terrorism Act, Act 2 of 2002

Section 8(1) of the Prevention of Terrorism Act makes it an offence to fail to disclose to a police officer any information which a person knows or believes might be of material assistance in preventing an act of terrorism or in securing the arrest, prosecution or conviction of another person for an offence under the Prevention of Terrorism Act. However, it is important to note that section 8(2) of the Terrorism Act allows a person charged with failing to disclose such information to raise the defence that he or she has 'reasonable excuse for not making the disclosure'. On conviction, the penalty for the offence is imprisonment.

It is important to note that, whether or not requiring a journalist to reveal a source is an unconstitutional violation of the right to freedom of expression, will depend on the particular circumstances in each case, particularly whether or not the information is available from any other source. It is, therefore, extremely difficult to state that any of the above provisions are, by themselves, a violation of the right to freedom of expression under the constitution.

3.9 Legislation that prohibits the publication of certain kinds of information

Several statutes contain provisions which, when examined closely, undermine the public's right to receive information and the media's right to publish it. These statutes are targeted and prohibit the publication of certain kinds of information, including:

- ▶ certain types of information regarding legal proceedings
- ▶ information that constitutes incitement to high treason
- ▶ information that constitutes misdemeanours against the public peace:
 - ▶ protection of the flag
 - ▶ publishing without a description of the author
 - ▶ publishing matter conducive to a crime
 - ▶ where publishing constitutes outrage against public and religious morality
- ▶ information that constitutes offences against the person:
 - ▶ stirring up racial hatred
 - ▶ inciting to disobedience or resistance to law
 - ▶ importing seditious publications
 - ▶ defamation
 - ▶ criminal intimidation
 - ▶ insult

- ▶ false news
- ▶ information that constitutes contempt of the National Assembly
- ▶ indecent photographs of children
- ▶ certain kinds of information posted online or sent via an information and communications service.

It is often tough for journalists to find out how laws that would seem to have no direct relevance to the media can affect their work. Critical provisions of these kinds of laws are, therefore, set out below.

3.9.1 Prohibition on the publication of certain information relating to legal proceedings

Section 9 of the Protection from Domestic Violence Act, Act 6 of 1997 provides that all legal proceedings held in terms of its provisions, subject to section 10(10) of the constitution which deal with when legal proceedings may be held *in camera*, are to be held *in camera*. The effect of this is that the press, as a general rule, is barred from attending and reporting on such proceedings. For example, proceedings regarding protection orders, occupation and tenancy orders and the like.

3.9.2 Prohibition on the publication of information that constitutes incitement to high treason

Chapter I of Title I of Book III of the Criminal Code, Act 6 of 1838 (Criminal Code) is headed Offences of a Public Nature and Title I is headed Offences against the State. Section 71 of the Criminal Code is headed Inciting to High Treason. It makes it an offence to incite the commission of the offences listed in sections 50, 51 and 57-70 of the Criminal Code by any writing or printing and the crime is punishable as if the inciter was guilty of the crimes themselves, unless the incitement produced no effect, in which case the penalty is less.

The crimes listed include inducing the president to exercise any lawful power, stirring up a war against the state, plotting with a foreign power, causing a risk of war, exposing a citizen to reprisal, inciting citizens to rise in arms, inciting an officer to mutiny, stirring up a civil war, raising an armed force, taking command of an armed force, destroying state property, plundering public property and harbouring an armed group.

3.9.3 Prohibition on the publication of information that constitutes misdemeanours against the public peace

Chapter III of Title I of Book III of the Criminal Code, Act 6 of 1838 (Criminal Code) is headed Misdemeanours against the Public Peace and Title I is headed Offences against the State. Several of these misdemeanours could impact the media and are set out below.

Protection of the flag

Section 181A of the Criminal Code is headed 'Protection of Flag', and it makes it an offence to bringing into hatred or ridicule the flag of Mauritius or any other state. The penalty, upon conviction, is a fine and imprisonment.

Publishing without a description of the author

Section 202 of the Criminal Code is headed Publishing Matter without Description of Author. It makes it an offence to contribute knowingly to the publication or distribution of a publication, newspaper and periodical without the name, profession and address of the author or printer. On conviction, the penalty is a fine and imprisonment. Section 205 also provides that any copies of the publication seized shall be forfeited.

Publishing matter conducive to a crime

Section 204 of the Criminal Code is headed 'Publishing Matter Conducive to a Crime'. It makes it an offence to sell or distribute knowingly printed writing containing any instigation to a crime or a misdemeanour. The penalty, upon conviction, is to punishment as an accomplice of the instigator, unless the seller or distributor provides information about the person from whom he or she received the printed writing, in which case the penalty is lesser. Section 205 also provides that any copies of the publication seized shall be forfeited.

Outrage against public and religious morality

Section 206 of the Criminal Code is headed 'Outrage against Public and Religious Morality' and section 206(1)(ii) it makes it an offence for a person to commit an outrage against any legally established religion, good morals or public and religious morality in a newspaper or to sell such newspaper. On conviction, the penalty is a fine and imprisonment. Section 206(3) also provides that any copies of a publication seized shall be forfeited.

3.9.4 Prohibition on the publication of information that constitutes offences against the person

Chapter I of Title II of Book III of the Criminal Code, Act 6 of 1838 (Criminal Code) is headed Offences against the Person and Title II is headed Offences against Individuals. Several of these offences could impact on the media and are set out below.

Stirring up racial hatred

Section 282 of the Criminal Code is headed Stirring up Racial Hatred. Section 282(1) (a) and (c) makes it an offence to publish any writing in a newspaper or broadcast any matter which is threatening, abusive or insulting with the intent to stir up contempt or hatred against any section or part of any section of the public, distinguished by race, caste, place of origin, political opinions, colour or creed. On

conviction, the penalty is a fine and imprisonment. Section 206(3) also provides that any copies of a publication seized shall be forfeited.

Sedition

Section 283 of the Criminal Code is headed Sedition, and section 283(1) read with section 206, makes it an offence in writing or printed matter:

- ▶ to bring into hatred or contempt or excite disaffection to the government or the administration of justice
- ▶ to raise discontent or disaffection among the citizens of Mauritius or promote feelings of ill-will and hostility between different classes of citizens.

On conviction, the penalty is a fine and imprisonment. Section 287 of the Criminal Code empowers the court convicting the person of sedition to order that publication is suspended for up to a year and that the printing press used in the production of the newspaper be used only for specific purposes or be seized and detained by the police for up to one year, either instead of the penalty or in addition to it. Section 287A empowers a judge to order that a seditious publication would be likely to lead to unlawful violence or to promote feelings of hostility between different classes of the community, to prohibit the distribution and require every person having a copy of the prohibited publication to deliver every such copy into the custody of the police on application by the Director of Public Prosecutions.

Importantly, section 283(2) specifically states that it is not an offence under section 283 where the writing shows that the intention was to express disapprobation of the measures or administration of the government to obtain the alteration by lawful means or without exciting hatred contempt or disaffection.

Inciting to disobedience or resistance to law

Section 284 of the Criminal Code is headed Inciting to Disobedience or Resistance to Law. Read with section 206, it makes it an offence to instigate disobedience or resistance to laws or the authorities entrusted with the execution in writing or printed matter. On conviction, the penalty is a fine and imprisonment.

Importantly, section 283(2) specifically states that it is not an offence under section 284 where the writing shows that the intention was to express disapprobation of the measures or administration of the government to obtain the alteration by lawful means or without exciting hatred contempt or disaffection.

Importing seditious publications

Section 286 of the Criminal Code is headed Importing Seditious Publications and section 286(2) makes it an offence to distribute, print or publish any publication whose importation has been prohibited by proclamation in terms of section 286(1). Section 287B provides that the penalty, on conviction, is a fine and imprisonment. Section 286(2) provides for the publication to be forfeited.

Section 287 of the Criminal Code empowers the court convicting the person of sedition to order that publication is suspended for up to a year and that the printing press used in the production of the newspaper be used only for specific purposes or seized and detained by the police for up to one year either instead of the penalty or in addition to it. Section 287A empowers a judge to order that a seditious publication would be likely to lead to unlawful violence or promote feelings of hostility between different classes of the community, prohibit the distribution and require every person having a copy of the prohibited publication to deliver every such copy into the custody of the police on application by the Director of Public Prosecutions.

Besides the Criminal Code's provisions, note that the crime of printing, distributing or publishing a publication which has been prohibited from importation, is also provided for in the Importation of Publications (Prohibition) Ordinance, Ordinance No. 61 of 1953. The penalties are similar.

Defamation

Section 288 of the Criminal Code is headed Interpretation of Defamation Section 288(3) read with section 206 makes it an offence to defame a person in writing or printed matter. The penalty is imprisonment or a fine.

Defamation is defined in section 288(1) as 'any imputation or allegation of a fact prejudicial to the honour, character or reputation of the person to whom such fact is imputed or alleged'. Section 288(2) provides that defamation of a deceased person is also defamation 'where it is calculated to throw discredit on or be hurtful to the feelings of the family or relatives of the deceased'.

The defences to a charge of defamation are set out in section 288(4) and, in brief, are:

- ▶ the publication of truth for the public good
- ▶ fair comment and criticism of the conduct of a public servant in the discharge of his public functions or respect of his or her character in so far as his or her character appears in that conduct
- ▶ fair comment and criticism on the conduct of any person touching any public question or in respect of his or her character in so far as his or her character appears in that conduct
- ▶ impartial and accurate reports of court proceedings unless the court itself has prohibited publication or the subject matter of the trial is unfit for publication, or the subject matter of the proceedings is blasphemous or obscene. Note that, in terms of section 290, no civil or criminal proceedings for defamation can be launched against any person who is a party to, or witness in, court proceedings
- ▶ fair comments or criticism on the merits of any civil or criminal case which has been decided by a court or respecting the conduct of any person as a party or witness in the case

- ▶ fair comment or criticism of the merits of any performance which its author has submitted to the judgement of the public
- ▶ good faith comments on the conduct of a person written by another person in lawful authority over such conduct or published in a newspaper if there was no other way for the writer to protect his or her or society's interests to which the lawful authority relates
- ▶ an accusation made in good faith to any person who has lawful authority over the person whose conduct is complained of
- ▶ an allegation on the character of another person provided the allegation is made in good faith for the protection of the interests of the person making it or of any other person or for the public good
- ▶ conveying a caution in good faith to a person against another provided the caution is intended for the good of the person to whom it is conveyed or for the public good
- ▶ publication of an impartial and accurate report of the proceedings of a public meeting or any open meeting of the National Assembly or a municipal council.

Criminal intimidation

Section 291 of the Criminal Code is headed Criminal Intimidation. It makes it an offence to threaten another, including in writing, with a disclosure which may cause injury to his or her person, reputation or property or that of his or her family with the intention that the person concerned engages in illegal conduct. The penalty is imprisonment and a fine.

Insult

Section 292 of the Criminal Code is headed Insult, and it makes it an offence to use any: 'injurious expression or any term of contempt or infective, or other abusive language, not carrying with it the imputation of a fact' using printed matter. The penalty is imprisonment and a fine.

False news

Section 299 of the Criminal Code is headed Publishing False News. It makes it an offence to publish false news or news which, although accurate in substance, has been altered in one or more parts or falsely attributed to some other person in a newspaper if the publication disturbs public order or public peace. It is a defence to show that the publication was made in good faith and after making sufficient enquiries to ascertain its truth. On conviction, the penalty is a fine or imprisonment.

3.9.5 Prohibition on the publication of contempt of the National Assembly

Section 6 of the National Assembly (Privileges, Immunities and Powers) Act, Act 22 of 1953 lists several acts that constitute the offence of contempt of the National

Assembly. The penalty for such offences is imprisonment or a fine. The offences that are of particular relevance to the media include:

Defamation

Publishing any defamatory statement about the assembly or any committee or the conduct or character of any member concerning actions performed or words uttered by him or her in the National Assembly, section 6(1)(n).

Note that a person cannot be held liable for defamation under section 6(1)(n) of the Powers Act unless the publication is also punishable as defamation under section 288 of the Criminal Code dealt in paragraph 3.9.4 above, section 6(2).

Biased reports of National Assembly proceedings

Publishing any perverted or biased reports of debates or proceedings of the National Assembly or any of its committees, or gross misrepresentations of the speeches of particular members, section 6(1)(o).

An accusation of impartiality of the speaker, deputy speaker or chairperson of any committee

Publishing any statement reflecting on the conduct or character of, or constituting an accusation of partiality in the discharge of his or her duty by, the speaker, deputy speaker or chairperson of any National Assembly committee, section 6(1)(s).

3.9.6 Prohibition on the publication of indecent photographs of children

Section 15 of the Child Protection Act, Act 30 of 1994, makes it an offence to distribute an indecent photograph or pseudo-photograph (where the impression conveyed is that the person shown is a child) of a child or to publish any advertisement likely to be understood as conveying that the advertiser distributes such indecent photographs or pseudo-photographs or intends to do so. The penalty is a fine and imprisonment.

3.9.7 Prohibition on certain kinds of information posted online or sent via an information and communication service

Section 46 of the Information and Communication Technologies Act, Act 4 of 2001 (ICT Act) sets out a list of offences under the ICT Act regarding content posted online, including via the social media platforms and websites of media outlets. In brief, the offences include:

- ▶ using telecommunication equipment to deliver a message which is obscene, indecent, abusive, threatening, false or misleading, or is likely to cause distress and anxiety
- ▶ using an information and communication service to transmit a message:
 - ▶ which is grossly offensive or indecent, obscene or menacing

- ▶ which is likely to endanger or compromise state defence, public safety or public order.

In terms of section 47(1), the penalty on conviction for the above offences is a fine and imprisonment.

It is important to note that the definitions of ‘message’, ‘information and communication service’ and ‘telecommunication equipment’ are all sufficiently broad to encompass media activities which take place online. Consequently, these offences are too broadly framed to follow international good practice as they could, theoretically, contain journalistic activities that are in the public interest, including the publication of important information that is untrue or only particularly true, despite reasonable efforts being taken.

3.10 Legislation governing the interception of communication

For the media, the legality of monitoring, recording and intercepting communications both of and by the media, is an important issue and, in Mauritius, is governed by the Computer Misuse and Cybercrime Act, Act 22 of 2003 (the Cybercrime Act).

In this section, we deal only with those aspects of the Cybercrime Act, which are of relevance to the media.

Although the Cybercrime Act refers to a computer system throughout, the definition is sufficiently broad to include electronic communication devices such as a cell phone.

Section 3 makes it an offence to access a computer system to cause it to perform a function when such access is unauthorised, that is, he or she is not entitled to access the computer system and does not have the consent of the person who is allowed to access it. The penalty is a fine and imprisonment.

Section 5(1)(b) read with section 5(4) of the Cybercrime Act makes it an offence to intercept any function of or data in a computer system (for example, an email or voice communication), unless both the sender and recipient consent to the interception or it is done under a statutory power. On conviction, the penalty is a fine and imprisonment in terms of section 5(2)(a).

3.11 Legislation that protects personal data

The media needs to be aware of the provisions of the Data Protection Act, Act 13 of 2004 (the DPA). It contains several detailed provisions regarding how personal data is to be collected, stored and used.

Importantly for the media’s purposes, section 49 of the DPA specifically grants an exemption from compliance with several of the provisions of the DPA for journalistic, literary or artistic purposes. Section 49(1) provides that the processing of personal data for journalistic purposes is exempt from numerous provisions of the DPA where processing is undertaken with a view to the publication of any

journalistic material in the public interest and compliance with the provisions of the DPA would be incompatible with those purposes.

The exemption is from:

- ▶ the second, third, fourth, fifth and eighth data principles contained in the first schedule to the DPA which deal with personal data use and processing;
- ▶ the provisions of sections 23-29 which deal with the accuracy, processing, use, security, duty to destroy and the unlawful disclosure of personal data and the processing of sensitive personal data;
- ▶ Part VI of the DPA concerns blocking, which is defined as suspending the modification of data or suspending the provision of information to a third party where such provision is suspended or restricted per the DPA.

In all other respects, the provisions of the DPA apply to the media and will require that much greater attention be paid to how personal data is acquired, stored and maintained.

3.12 Legislation that specifically assists the media in performing its functions

In countries that are committed to democracy, governments pass legislation which specifically promotes the accountability and transparency of public and private institutions as well as human rights. Such statutes, while not specifically designed for use by the media, can be, and often are, used by the media to uncover and publicise information in the public interest and to protect the media from threats to freedom of expression. Although Mauritius has passed some crucial pieces of legislation of this kind, we note that the country has yet to pass an access to information statute.

3.12.1 The Good Governance and Integrity Reporting Act, Act 31 of 2015

Section 4 of the Governance and Integrity Reporting Act establishes an Integrity Reporting Services Agency which operates as a focal point for receiving, evaluating and processing reports and disclosures of positive acts of good governance and integrity, as well as acts of malpractices and unexplained wealth.

Importantly, section 20 is headed Protection of Persons making Reports and offers protections to whistleblowers, i.e. persons who make a disclosure or report to the agency which he or she had reasonable grounds to believe was genuine at the time the disclosure or report was made.

Section 20(1) provides that a whistleblower (note that the term is not used in the statute) shall incur no civil or criminal liability as a result of the disclosure or report. Further, section 20(2) makes it an offence to victimise or retaliate against a whistleblower and, on conviction, the penalty is a fine and imprisonment. 'Victimisation' and 'retaliation' are defined as meaning an act:

- ▶ which causes injury, damage or loss
- ▶ of intimidation or harassment
- ▶ of discrimination, disadvantage or adverse treatment concerning a person's employment
- ▶ amounting to threats of reprisals.

Section 20(3) makes it an offence to knowingly make a false, malicious or vexatious disclosure to the Integrity Reporting Services Agency and, on conviction, the penalty is a fine and imprisonment.

3.12.2 The Prevention of Corruption Act, Act 5 of 2002

Section 19 of the Prevention of Corruption Act establishes the Independent Commission against Corruption and section 20 sets out its functions which include:

- ▶ detecting and investigating any act, or allegation of an act, of corruption including the conduct of any public official connected with corruption
- ▶ monitoring the implementation of any contract awarded by a public body, to ensure that no irregularity or impropriety is involved
- ▶ educating the public against corruption
- ▶ enlisting and fostering public support in combating corruption.

The last two are of particular importance to the media because of the role that it plays in stimulating public debate on matters of governance. Another important provision is section 46 which requires the commission, once it becomes aware that corruption or money-laundering offence may have been committed, to refer the matter to the Director of the Corruption Investigation Division for preliminary investigation. The effect of this is that investigative journalism can contribute to making the commission aware of corruption and securing investigations into corruption.

Importantly, section 49 is headed Protection of Witnesses, and it offers protection to whistleblowers, persons who make a disclosure or report which is genuine or which he or she had reasonable grounds to believe was genuine at the time the disclosure or report was made. Section 49(1) provides that a whistleblower (note that the term is not used in the statute) shall incur no civil or criminal liability as a result of the disclosure or report. Section 20(5) makes it an offence to victimise or retaliate against a whistleblower and, on conviction, the penalty is a fine and imprisonment. 'victimisation' and 'retaliation' are defined as meaning an act:

- ▶ which causes injury, damage or loss
- ▶ of intimidation or harassment
- ▶ of discrimination, disadvantage or adverse treatment concerning a person's employment

- ▶ amounting to threats of reprisals.

Section 49(6) makes it an offence to knowingly make a false, malicious or vexatious disclosure concerning corruption and, on conviction, the penalty is a fine and imprisonment.

3.12.3 The Protection of Human Rights Act, Act 19 of 1998

The Protection of Human Rights Act (Human Rights Act) establishes the National Human Rights Commission (the commission) in terms of section 3. Section 3A sets out the functions of the commission relevant to the media, and the important ones include:

- ▶ promoting and protecting human rights;
- ▶ publicising human rights to combat all forms of discrimination by increasing public awareness, especially by information and education and by making use of all press organs.

Section 4(1) empowers the human rights division of the commission to enquire into any written complaint alleging a human rights violation or to initiate an enquiry of its own accord.

3.12.4 The National Assembly (Privileges, Immunities and Powers) Act, Act 22 of 1953

The National Assembly (Privileges, Immunities and Powers) Act sets out the privileges and immunities that are given to the National Assembly. Section 5 provides that no civil or criminal proceedings may be instituted against any person for any act done by him or her under the lawful authority of the National Assembly. This is important because it encourages people to speak freely in the National Assembly, which assists the media in reporting matters relating to the National Assembly.

4 Regulations affecting the media

In this section, you will learn:

- ▷ definition of regulations
- ▷ key regulations governing broadcast licences
- ▷ key regulations governing general broadcasting content
- ▷ key regulations governing the Mauritius Broadcasting Corporation

4.1 Definition of regulations

Regulations are a type of subordinate legislation. They are legal rules that are made in terms of a statute. Regulations are a legal mechanism for allowing ministers, or even organisations such as the IBA, to make legally binding rules governing an industry or sector without parliament having to pass a specific statute.

The empowering statute will allow the minister or a body such as the IBA to make regulations, rules or both on particular matters within the scope of the functions and powers of that minister or body.

4.2 Key regulations governing broadcast licences

In 2002 the types of broadcasting licences available in Mauritius were amended by the IBA via the Independent Broadcasting Authority (Amendment of Schedule) Regulations 2002 (Amendment of Schedule Regulations), published in Gazette No 38 of 2002.

Another essential regulation concerning broadcast licences is the Independent Broadcasting Authority (Licence Fees) Regulations, 2002 (Licence Fees Regulations), published in Gazette No 39 of 2002. The regulations were made by the IBA under section 38(3) of the Independent Broadcasting Authority Act, 2000 (IBA Act) and prescribe the licence fees that can be charged for broadcasting licences in Mauritius.

4.2.1 Types of broadcasting licences

The broadcasting licences are:

- ▶ Radio Broadcasting Licences:
 - ▶ Public Radio Medium Wave Broadcasting Licence: to establish and operate a radio broadcasting service in the medium wave frequency band.
 - ▶ Public Radio FM Broadcasting Licence: to establish and operate a radio broadcasting service in the VHF FM band.
 - ▶ Private Commercial Free-to-Air Medium Wave Radio Broadcasting Licence: to establish and operate a private commercial free-to-air radio broadcasting service in the medium wave frequency band.
 - ▶ Private Commercial Free-to-Air FM Radio Broadcasting Licence: to establish and operate a private commercial free-to-air broadcasting service in the VHF FM band.
 - ▶ Community Free-to-Air Radio Broadcasting Licence: to establish and operate a community free-to-air radio broadcasting service in either the medium wave or VHF FM band.
 - ▶ Narrowcasting Radio Licence: to establish and operate a private radio broadcasting service whose reception is limited to:
 - › a specific audience in a precise location
 - › specific events held over a limited time

- › programmes of limited appeal.
- ▶ Terrestrial Television Broadcasting Licences:
 - ▶ Public Television Broadcasting Licence to establish and operate a private television broadcasting service in the VHF/UHF television frequency band.
 - ▶ Private Commercial Television Broadcasting Licence, to establish and operate a private television broadcasting service in the VHF/UHF television frequency band.
- ▶ Subscription Television Broadcasting Licences:
 - ▶ Subscription Television Rebroadcasting Licence: to establish and operate subscription television rebroadcasting services whereby television signals received from satellites via large receive-only dish antennas are retransmitted for direct reception by the public on payment of a monthly subscription fee.
 - ▶ Subscription Television Direct to Home Satellite Broadcasting Providers Licence: to provide television services to the public whereby television signals are transmitted by satellites for direct reception by the public via receive-only dish antennas and decoders managed by the services provider on payment of a monthly subscription fee.
 - ▶ Subscription Cable Television Broadcasting Provider Licence: to provide television services to the public via a cable network to which the public is connected on payment of a monthly subscription fee.
- ▶ Other Licences:
 - ▶ Community Television Free-to-Air Broadcasting Licence: to establish and operate a community free-to-air television service in the VHF/UHF television band.
 - ▶ Narrowcasting Television Licence: to establish and operate a private narrowcasting television service whose reception is limited to:
 - › a specific viewership in a precise location
 - › specific events held over a limited time
 - › programmes of limited appeal.

4.2.2 Fees for broadcasting licences

Section 4(1) of the Licence Fees Regulations provides that, any person receiving a new broadcasting licence must pay the licence fee specified on the schedule of the regulations on or before the date the licence is issued. Payment for the renewal of a broadcasting licence must be made 15 days before the licence expires. Section 4(2)(a) provides that, where a licensee has failed to meet the deadline for renewal payments, payment can be made up to the date of expiration; however, a 10% surcharge will be added in addition to the renewal fees.

It should be noted that should a broadcasting licensee pay his or her renewal fee after the expiration of his or her broadcasting licence, but before the expiry of 90 days from the expiration date, the IBA may revoke the licence.

4.3 Key regulations governing broadcast content

Several different regulations in Mauritius control broadcasting content, depending on the type of content being broadcast. The regulations are the Independent Broadcasting Authority Code of Ethics and the Independent Broadcasting Authority Code of Advertising Practice

4.3.1 The Independent Broadcasting Authority Code of Ethics

The IBA Act makes provision for the development of a Code of Ethics (Code) for broadcasters. The Code applies to radio broadcasters, television broadcasters and internet broadcaster or content providers. The key provisions of the Code are as follows:

Offence to good taste and decency

Language

- ▶ Broadcasters must consider people's religious, social and political sensitivities, as well as the time of the broadcast when using strong language.
- ▶ Offence is most likely to be taken during family viewing hours without warning.
- ▶ Programmes aimed at children should contain the appropriate language.
- ▶ Broadcasting Licensees should be aware of the connotations of language concerning religion, culture, race and gender.
- ▶ Language offensive to persons with disabilities should not be used.
- ▶ Subtitles must be presented in the correct form.

Sex and Nudity

Sex and nudity must not be portrayed gratuitously and should always be shown in a contextualised manner and appropriately scheduled.

Violence

- ▶ Broadcasters must ensure portrayals of violence are kept to an acceptable minimum.
- ▶ Broadcasters must be cognisant that the consequences of violence, both revealed and concealed, can be equally harmful.
- ▶ Violence that be easily replicated must be avoided.

- ▶ Unavoidable violence in news or current affairs programmes must be shown only when essential and for the integrity and completeness of the programme.
- ▶ Broadcasters must be aware that violence can affect children, and special care must be taken in its presentation.
- ▶ Scheduling: viewers and listeners have the right to know what sort of programming to expect at what times when preparing their programming schedule.
- ▶ Broadcasters have a duty not to expose children to offensive material.
- ▶ Broadcasters must make use of the watershed period (21:00–05:30) to broadcast adult material. It should be noted that the change from family viewing to adult viewing should not be abrupt and so broadcasters should make use of the second watershed of 23:00 to adjust their programme content gradually.
- ▶ Sufficient warnings concerning the type of content being broadcast must be displayed, including minimum ratings for films.
- ▶ Times when children are likely to stay up later, public holidays, weekends and school holidays must be considered when programming schedules are being made.
- ▶ Advertising content must be suitable for the likely audience at the time they are transmitted.
- ▶ Radio broadcasters should take care when scheduling their broadcast content that their content does not offend. This is particularly true of times when children may be listening, even though the radio does not have a watershed period.

Impartiality and accuracy

Citizens have the right to access information and broadcasters have the right to provide that information. The only restriction to a broadcaster's rights is the obligation to present the material that is balanced, fair, accurate and impartial.

Different types of factual programmes must ensure that accuracy and impartiality are preserved. These programmes include:

- ▶ News:
 - ▶ reporting should be dispassionate and even-handed
 - ▶ mistakes must be acknowledged and corrected on the same channel at the first available opportunity.
- ▶ Particular impartiality for news and other programmes is required where these include matters of political or industrial controversy, issues of public policy and debates between politicians.
- ▶ Personal view programmes:

- ▶ programmes that include personal views must be identified before the start of the programme containing personal opinions and before any announcement of personal views
- ▶ facts must be respected, and personal views should not rest on false evidence.
- ▶ Drama and drama-documentary must be clearly labelled and where a drama attempts to recreate actual events, factual and fictional elements must be carefully labelled to ensure they are not misleadingly presented.
- ▶ Conduct of interviews:
 - ▶ interviewees should be made aware of the format, subject matters and purpose of the interview and how their contributions are likely to be used
 - ▶ in programmes dealing with political or industrial controversy, all participants should be informed of the identities and intended roles of all involved
 - ▶ an impartial account must be given of the subject matter.
- ▶ Live phone-in programmes:
 - ▶ care must be taken to maintain the principles of fairness, integrity, objectivity and balance by securing a broad range of views
 - ▶ presenters must moderate discussions and not present their personal opinions on air
 - ▶ presenters must treat all callers fairly
 - ▶ presenters must ensure that the pressure groups or irresponsible people do not capture the programme.
- ▶ Autofill broadcast delay:
 - ▶ Broadcasters must make use of delay equipment with at least 30 seconds delay for all live and call-in programmes
 - ▶ The delay should permit the station to bleep, pixilate or otherwise pre-empt offending materials before they are broadcast.

Matters relating to privacy

Private lives of individuals typically have no legitimate interest to the public and must be protected from the public gaze. However, collective interests prevail over those of the individual when society's wellbeing is threatened and in certain well-defined conditions for the public's interest.

Broadcasters must take care to respect the privacy of citizens during the process of collecting material and the way the material is used in a programme.

Infringement of privacy is only justified by an overriding public interest in disclosure of information such as:

- ▶ revealing or detecting crime or disreputable behaviour
- ▶ protecting public health or safety
- ▶ exposing misleading claims by individuals or organisations
- ▶ disclosing significant incompetence in public office.

Special circumstances

- ▶ Public places:
 - ▶ When people are caught up in events which hit the headlines for a short time, their situation should not be abused or exploited.
 - ▶ When covering events in public places, broadcasters should ensure that the content of their programme is sufficiently in the public domain to justify their inclusion without the consent of the individuals concerned.
 - ▶ In sensitive situations such as hospitals, prisons or police stations, the consent of the individuals involved must be obtained, unless their identity has been concealed.
 - ▶ Not everything which interests the public is in the public interest. People who are in the public eye, their relatives and friends, do not forfeit their right to privacy unless their private behaviour raises broader public issues.
 - ▶ The location of a person's home or family should not be revealed unless strictly relevant to the behaviour under investigation.
- ▶ Secrecy:
 - ▶ The use of hidden microphones and cameras can be unfair to those recorded, as well as infringe their privacy; hence it should only be considered when it is necessary to the credibility and authenticity of the story.
 - ▶ An unattended recording device should not be left or placed on private property without the full and informed consent of the occupiers or their agents unless seeking such permission might frustrate the investigation into matters of overriding public interest. Even then such use must be appropriate to the importance or nature of the story.
 - ▶ When secretly obtained material is being broadcast, the privacy of innocent bystanders must be protected.
 - ▶ For secret recordings as part of an entertainment programme, broadcasters should seek the consent of the subjects of a recorded deception, before the material is broadcast.
 - ▶ In a live broadcast, special care should be taken to avoid offence to the individuals concerned.

- ▶ Door stepping:
 - ▶ People who are in the news cannot reasonably object to being questioned and recorded by the media when in public places.
 - ▶ If a broadcaster phones a person in the news, he or she should make it clear who is calling and for what purpose.
 - ▶ People in the news have the right to make no comment or to refuse to appear in a broadcast. The decision and the reason given should appear in any relevant broadcast.
 - ▶ Besides the urgency of the daily news context, surprise can be a legitimate device to elicit the truth.
 - ▶ Care must be taken not to make it easy to locate or identify the refuser's address unless it is strictly relevant to the behaviour under investigation, and there is an overriding public interest.
- ▶ Telephone calls:
 - ▶ Broadcasters should generally identify themselves to telephone interviewees from the outset, or seek the agreement of the other party if they wish to broadcast the recording of a telephone call.
 - ▶ Recording a call for broadcast purposes without prior warning is the equivalent of door stepping and similar rules apply.
- ▶ Suffering and distress:
 - ▶ Broadcasters should not add to the distress of people involved in emergencies or personal tragedies. The use of material which infringes their privacy or is distressing can only be justified by overriding public interest.
 - ▶ Broadcasters should not reveal the identity of a person who has died, or victims of accidents or violent crimes unless and until the next of kin has been notified.
 - ▶ Broadcasters should refrain from causing additional anxiety or distress when filming or recording people who are already extremely upset or under stress.
 - ▶ Broadcasters should ask themselves whether the repeated use of traumatic library material is justified if it features identifiable persons who are still alive or who have died recently.
- ▶ Children:
 - ▶ Children's vulnerability needs special protection from broadcasters, regardless of the status or actions of their parents.
 - ▶ Children's gullibility or trust must not be abused.
 - ▶ Children should not be questioned about private family or other matters beyond their understanding.

- ▶ The consent of parents should be obtained before interviewing children under 16 on matters of significance.
- ▶ Where consent has not been obtained or been refused, only overriding public interest can justify a decision to go ahead with an interview.
- ▶ Children under 16 involved in police enquiries or court proceedings relating to sexual offences should not be identified in news or other programmes.
- ▶ Agency operations:
 - ▶ When accompanying operations of police, emergency services or other social bodies, broadcasting crews should declare for whom they are working and what they are doing as soon as practicable.
 - ▶ When asked by owners or occupiers to stop filming on private premises or leave, broadcasters should comply, unless there is an overriding public interest.
 - ▶ Bystanders caught on camera should have their identities obscured where unfairness might arise.

Human rights

Broadcasting licensees enjoy the privilege of licences issued by the IBA to operate using frequencies that are public property. This privilege is granted on the understanding that licensees have a responsibility for the programmes they broadcast and are subject to the requirements of the laws of Mauritius, and any conditions of the licence that may be imposed by the IBA pursuant to the IBA Act.

Rights and Freedoms

- ▶ The fundamental rights and freedoms of the individual are enshrined in Chapter II of the constitution and other laws of Mauritius.
- ▶ The international community has stated its commitment to the right to free expression in a series of fundamental agreements, to which Mauritius has agreed to adhere, such as the:
 - ▶ Universal Declaration of Human Rights and
 - ▶ International Covenant on Civil and Political Rights.
- ▶ Building on the constitutional rights and principles expressed in international human rights instruments, broadcasters must be guided by the following:
 - ▶ the right of the individual's private and family life, his or her home and his or her correspondence.
 - ▶ the right to freedom of thought, conscience and religion
 - ▶ the right to freedom of expression, including the right to hold opinions and receive and impart information and ideas without interference.

- ▶ There shall be no interference with the exercise of the rights of the individual except:
 - ▶ following the law
 - ▶ where it is necessary in a democratic society
 - ▶ in the interests of national security
 - ▶ in the interests of public safety
 - ▶ in the interests of the economic well-being of the country
 - ▶ for the prevention of disorder or crime
 - ▶ for the protection of health or morals
 - ▶ for the protection of the rights and freedoms of others.
- ▶ The IBA recognizes the importance of the principle of freedom of expression. The freedom of expression of broadcasters is thus counterbalanced by the right of listeners and viewers to programming that complies with the IBA Act and associated regulatory requirements.

Abusive and offensive comments

- ▶ Broadcasters must ensure that their programming does not contain abusive or offensive comments and discriminatory remarks on material about race, colour, age, sex, religion, social origin, marital status or physical or mental disability.
- ▶ Remarks which are abusive or offensive and risk exposing an individual or a group to contempt or hatred, contravene the objectives of the broadcasting policy set out in the Code.
- ▶ Programming should be of a high standard, and the Mauritian licensees broadcasting system should reflect the circumstances and aspirations of Mauritian citizens, including the linguistic, cultural and ethnic plurality of the Mauritian society by programming.
- ▶ The IBA recognizes the right of licensees to criticize and question on air the actions of individuals, groups and institutions in the interest of community via their employees.
- ▶ The IBA considers that the right to criticize does not give anyone the right to degrade others, to be unduly fierce in his or her criticism, or to use the air-waves to make personal attacks.

Protection of children

- ▶ Licensees should be alert to the likely effects of all live broadcast materials of children. There should be a balanced mix of programmes to cater for the needs of children of different age groups.

- ▶ Materials that might seriously impair the physical, mental or moral development of children must not be broadcast.
- ▶ Children must also be protected from material that is unsuitable for them by appropriate scheduling.
- ▶ Radio broadcasters must have particular regard to times when children are particularly likely to be listening.
- ▶ No advantage should be taken of children's natural credulity and sense of loyalty. The licensees should ensure that scenes likely to frighten or cause pain to children be avoided in programmes targeting children.
- ▶ All scenes in which pleasure is taken in inflicting or accepting pain or humiliation on others should be avoided.
- ▶ The portrayal of dangerous behaviour easily imitated by children should be avoided. This applies especially to the use of knives and other offensive weapons, articles or substances which are readily accessible to children in a manner likely to cause serious injury.
- ▶ Ingenious and unfamiliar methods of inflicting pain or injury, which are capable of easy imitation, should be avoided. These include, for example, rabbit punches, suffocation, sabotage of vehicles and booby traps.
- ▶ Smoking, drinking of alcoholic beverages, use of illegal drugs, solvents and glues by minors must not be featured in programmes made for children. It must not be condoned, encouraged or glamorized.
- ▶ References to the consumption of illegal drugs should only be made where justified by the storyline or programme context.
- ▶ Representation of sexual intercourse must not occur during children and family viewing hours unless there is a serious educational purpose.
- ▶ Violence, its after-effects and descriptions of violence, whether verbal or physical, must not be featured in programmes made for children and must not be condoned, encouraged or glamorized.
- ▶ Care must be taken in the treatment of themes dealing with gambling, prostitution, crime, the paranormal, social or domestic conflict.
- ▶ Due care must be taken over the physical and emotional welfare and the dignity of children who take part or are otherwise involved in programmes.
- ▶ The rules as to the use of children in advertising materials are clearly defined in the Code of Advertising Practice (below).
- ▶ Disrespect for law and order, adult authority, good morals and clean living and downgrading or humiliating situations for children should be strictly disallowed.

- ▶ Children’s programmes should be wholesome and, in general, designed to impart a broader knowledge of the world around them, to encourage the habit of acquiring knowledge, to stimulate active interest in sports and hobbies and to promote appreciation of spiritual and moral values.

Religious programmes

- ▶ A balance must be struck between the fundamental human right to freedom of expression and the broadcasting of religious programmes.
- ▶ In the broadcast of religious programmes, licensees should be aware of what may offend.

Broadcasters must ensure that:

- ▶ They exercise a proper degree of responsibility concerning the content of religious programmes.
- ▶ Religious programmes do not involve any improper exploitation of susceptibilities of the audience for such a programme.
- ▶ Religious programmes do not involve any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination.
- ▶ Where a religion or religious denomination is the subject, or one of the subjects, of a religious programme, the identity of the religion, religious denomination or both, must be clear to the audience.
- ▶ During the broadcast of religious programmes, licensees must be aware of circumstances which may cause distress to sections of the audience, such as:
 - ▶ the casual use of names, words or symbols regarded as sacred by different sets of believers can cause hurt as well as offence
 - ▶ broadcast of programmes on the principal holy days of the main religions should not cause unnecessary offence in the way they are presented, though the same material may be more acceptable at other times
 - ▶ offence may be caused by profane references or disrespect whether verbal or visual, directed at deities, scriptures, holy days and rituals which are at the heart of various religions
 - ▶ the promotion of religious views or beliefs, directly or indirectly, must not be done by downgrading other faiths
 - ▶ religious programmes must not influence audience members and viewers to join a particular religion or religious denomination.

4.3.2 The Independent Broadcasting Authority Code of Advertising Practice

Advertising serves as an essential source of income for the media industry. The IBA Act makes provision for setting up the Code of Advertising Practice (Advertising Code) for regulating advertising in Mauritius.

- ▶ Section 1 of the Advertising Code provides that the Advertising Code aims to ensure that advertising does not:
 - ▶ cause harmful behaviour
 - ▶ cause offence
 - ▶ mislead viewers or listeners.

It also requires that advertisements:

- ▶ be differentiated from other programming
- ▶ the frequency and duration of commercial breaks be restricted
- ▶ sponsorship be regulated.
- ▶ Advertisements must consider the diversity of society and must be sensitive to gender and avoid the use of stereotypes. As far as possible, local individuals should be used in advertising.
- ▶ The editorial responsibility for advertisements rests on the licensee and not the IBA.
- ▶ Additional provisions of the Advertising Code are summarised below.

General principles

- ▶ Advertisements should be decent, honest and truthful.
- ▶ The content, presentation and placement of all advertising materials must comply with the Advertising Code.
- ▶ All advertisements must comply with the laws of Mauritius.
- ▶ Complaints concerning advertising can be made to the Complaints Committee of the IBA under section 30(4)(a). Non-compliance with the direction of the Complaints Committee constitutes an offence by sections 5(i) and 37 of the IBA Act and is punishable by a fine or imprisonment.

Identification of advertisements

Advertising must be identifiable from other broadcast content.

Unacceptable advertising

- ▶ Except for the announcement of political events, advertisements must not:
 - ▶ be directed towards any political end
 - ▶ be inserted by or on behalf of anybody whose objects are wholly or mostly of a political nature
 - ▶ have any relationship to any industrial dispute
 - ▶ show partiality in matters of political or industrial controversy or current public policy.
- ▶ No advertisement may contain extracts from parliamentary proceedings.
- ▶ Advertisements may not discredit the state and no person holding political office may be represented without authorisation.
- ▶ Advertisements may not be disrespectful to Mauritius,
- ▶ Advertisements must not refer to the use or appearance of any product or service which have already appeared in a non-commercial programme.

Good and bad taste

- ▶ Advertising matter should be presented with courtesy and good taste.
- ▶ Disturbing and offensive material should not be used in advertising.

Racism and stereotyping

Advertisers must take caution to avoid the promotion of any racist or stereotypical messages, which might offend.

Safety and caution

- ▶ Potential dangers and risks associated with using any product being advertised must be presented, and the safest way to use the product must be indicated.
- ▶ Advertising should not present any dangerous behaviour except to discourage it.
- ▶ Special care must be taken in advertising directed at children and teenagers.

Sound effects

- ▶ Advertisements should not include sounds likely to create safety hazards.
- ▶ Distracting or potentially alarming sound effects should be avoided.

Disparagement

Advertising matter should not contain any claims that have the effect of disparaging competitors, competing products or services of other industries, professions, or institutions.

Precision and clarity

Advertisements should be precise. Care should be taken to ensure that there is no ambiguity, and the message is clear and concise.

Truthful presentation

Advertising must be honest and should not mislead viewers or listeners about the product being advertised or its suitability for the purpose being recommended.

Imitation

Advertisements should not imitate or approximate the name or advertising slogans of competitors.

Appeals to prejudice

Advertisements should not appeal to prejudices, superstitions or religious sentiments to manipulate behaviour.

Acceptability of advertisement matters

- ▶ Licensees may refuse to advertise any matter where there is good reason to doubt the integrity of the advertiser or the truth or compliance with the Advertising Code of the message of the advertisement.
- ▶ Licensees may refuse to advertise material that he or she believes is objectionable to a substantial portion of the community.

Testimonial and endorsements

- ▶ Testimonials may be used in advertising as long as:
 - ▶ They are genuine and not misleading.
 - ▶ Licensees obtain satisfactory documentary evidence in support of any testimonial or claim before accepting it for inclusion in an advertisement.
 - ▶ Children must not testify about any product or service.
 - ▶ A person's credentials may be used to give credence to any testimonial he or she makes.
 - ▶ Presenters may not give testimonials on broadcasting channels or stations on which they appear.

Comparative advertising

- ▶ Comparative advertising concerns goods or services of the same nature, with the same characteristics.
- ▶ Advertising should be objective, truthful, loyal, correct and non-degrading and should be limited to essential, significant, relevant and verifiable characteristics of the products or services compared only.
- ▶ Advertising should compare products or services available in the same market.
- ▶ Advertising should give fair treatment (sound, images, copies or other means of comparable quality) to the different products compared.
- ▶ When comparison concerns prices, it should refer to identical products, sold under the same conditions.
- ▶ The validity of prices announced should be indicated.
- ▶ Comparative advertising cannot be based on opinions or appreciations, on aesthetics, taste or seduction of a product or service.

Programmes with limited or restricted advertisement

Advertisements must not be inserted during religious or school programmes in the Educational Television time slot or radio broadcast.

Claims to be substantiated

- ▶ Advertising must be very clear in the use of language to avoid unnecessary confusion, for example, the word:
 - ▶ ‘New’ may be used only during the first year of launch
 - ▶ ‘Happiness’ may not be used to indicate that the advertised product is required to attain happiness
 - ▶ ‘First’ or ‘best’ must include imperative reasons why the advertised product is first or best
 - ▶ ‘Guarantee’, ‘guaranteed’, ‘warranty’ or ‘warranted’ or words having the same meaning may not be used, unless the full terms of the guarantee are available for inspection by the licensee
 - ▶ ‘Free’ may not be used to describe goods, services or samples unless the goods, services or samples are supplied at no cost or no extra cost to the recipient, other than actual postage or carriage or incidental travel undertaken by the customer in collecting the offer. No additional charge for packing and handling may be made. A product may be described as ‘free’. However, the customer is expected to pay the cost of returning the goods, provided that the advertisement makes clear the customer’s obligation to do so. In the case of phone-in services, the use of the word ‘free’ should be properly defined, specifying exactly what service(s) is or are free

- ▶ 'Natural' or 'pure' may be used only if no additives or synthetic products have been added to the product
- ▶ 'Healthy' is only allowed when the product has been officially certified by a medical practitioner or nutritionist that the product advertised is good for health.
- ▶ Superlatives such as 'most popular', 'most favoured' when used in a manner which suggests a number one sales position, should be substantiated by independently audited sales figures, and reliable and valid sample surveys.
- ▶ Terms or words such as 'most successful', 'safest', 'quickest' or containing any similar use of superlative adjectives must not be used in statements unless the truthfulness is adequately substantiated.

Research claims

Where a factual claim is substantiated by research or testing based on the advertiser's assessment or work done at his or her request, the source and date of the assessment or research should be indicated in the advertisement.

Misleading claims

- ▶ No advertisement may claim or imply that the product or service advertised, or any ingredient of it, has some special feature or composition if these are incapable of being established and substantiated.
- ▶ References to the results of research surveys or tests relating to the product or service to be advertised should be presented carefully, so as not to mislead viewers.
- ▶ Information conveyed must be accurate and not misleading by concealing or failing to make clear significant facts.
- ▶ Visual and verbal presentations of advertisements indicating price, price comparisons or reductions or any pricing element must be accurate and must not be misleading.

Superimposed text

- ▶ When information is included in the form of captions, either standing alone or superimposed onto other images, the text must be legible and held long enough for the full message to be read by the average viewer on a standard domestic television set.
- ▶ Particular attention should be paid to the typeface, letter spacing, line spacing, background or other elements of presentation including, without limitation, the interaction with the background which may render the text blurred or otherwise indistinct.

Protection of children

- ▶ No product or service may be advertised, and no method of advertising may be used, in association with a programme intended for children which may result in physical, mental, moral or emotional harm to them. No method of advertising may be employed, which takes advantage of the natural credulity and sense of loyalty of children.
- ▶ Advertisements must not lead children to believe that they will be inferior in some way to other children or liable to be held in contempt or ridicule unless they acquire or use the product advertised.
- ▶ Advertisements must not misguide minors to obvious abuse or excess. They should clearly explain the use of the products advertised to avoid unfortunate incidents.
- ▶ Advertisements must not offer mail orders or sale on credit to children.
- ▶ If there is to be a reference to a competition for children in an advertisement, the value of the prizes and the chances of winning one must be fairly stated.

Children in advertisements

The appearance of children in advertising is subject to conditions that include:

- ▶ the safety of the child in the advertisement and the safety of the action being portrayed to viewers
- ▶ the protection of children, bearing in mind the provisions of the Child Safety Act
- ▶ the manners and behaviour of children, preferably children shown in advertisements should set a good example and should be shown in a family background
- ▶ any nudity or partial nudity be dealt with carefully and with restraint
- ▶ children may not be shown to be gambling.

Political advertising

Paid political advertisements and announcements on the radio must not exceed 15 seconds and must include only the name of the party, the place and time of events and the names of the speakers. Similar requirements are applied to television with a picture background showing only the official symbol, colours or both, of the political party.

Toys

- ▶ Advertisements must give an accurate and exact presentation of toys and must not create any doubt or confusion regarding the real contents of toy

boxes or packages. Advertisements should mention the minimum age for which the advertised toy is intended.

- ▶ A warning should accompany advertisements for toys and their components or detachable parts which may present a risk of physical injury or being swallowed or inhaled: 'To Be Used Under Adult Supervision'.
- ▶ Advertisements for 'electric toys', 'functional toys', 'chemical toys' and toys intended for use in water should bear a warning: 'For Use under Adult Supervision'.
- ▶ Food advertisements accompanied by small toys for children should mention that these toys are not edible.
- ▶ Advertisements for toys and articles such as slides, suspended swings and rings, trapezes and ropes should mention that these toys and articles should be correctly assembled, checked and maintained.
- ▶ Advertisements for skates and skateboards for children should indicate the recommended protective equipment to be worn by the user.
- ▶ Advertisements for video games should mention that it is not recommended that a child plays with them for long hours.
- ▶ Advertisements for fireworks should bear a warning: 'For Use Under Adult Supervision'.

Food

- ▶ Advertisements shall not contain any statement or visual presentation which directly or by implication, omission or exaggerated claim, is likely to mislead consumers concerning food.
- ▶ Advertisements must not:
 - ▶ contain generalised claims such as 'goodness' or 'wholesome' which may imply that a food product or ingredient has a more significant nutritional or health benefit than is the case unless supported by sound medical evidence
 - ▶ disparage good dietary practice; any comparison between foods shall not discourage the selection of foods such as fresh fruits and vegetables
 - ▶ encourage or condone excessive consumption of any food
 - ▶ encourage frequent consumption throughout the day (particularly of potentially carcinogenic products, such as those containing sugar) or depict situations which discourage the cleaning of teeth every night when addressed to children.
- ▶ Advertisements may be accepted:
 - ▶ for vitamins or minerals where they relate to restricted, un-supplemented

or low food energy diets, for the use of women who are pregnant or lactating and growing children and some people over 50

- ▶ for low-calorie food and drinks, if presented as, or as part of, slimming regimes or if using a slimming or weight control theme. It should not be claimed that the products can reduce weight by themselves without being part of a calorie or energy-controlled diet.

Tobacco and alcohol products

Advertisements for tobacco-related products and alcohol are prohibited.

Medicines, treatments and health claims

- ▶ The Pharmacy Act provides that no person shall advertise any pharmaceutical product intended for human or veterinary use, except in such technical or professional publications as may be approved by the Pharmacy Board.
- ▶ The Pharmacy Act defines such pharmaceutical products as medicines, drugs, preparations, poisons or therapeutic substances. Generally, all products making a 'clear therapeutic claim' are drugs, for this purpose.
- ▶ In case of doubt as to whether the advertisement of any drug on radio or television is permissible, the Pharmacy Board should be consulted
- ▶ No advertisement for pharmaceutical products may be directed at children under the age of 16.
- ▶ No advertisement may contain any offer to diagnose, advise, prescribe or treat by correspondence (including post, telephone, fax or email).
- ▶ Advertisements must not imply or encourage indiscriminate, unnecessary, or excessive use of any medical product or treatment.
- ▶ Advertisements must not make any exaggerated claims, by the selection of testimonials or other evidence unrepresentative of a product's effectiveness, or by claiming that it possesses some unique property or quality which cannot be substantiated.
- ▶ Advertisements must not make any exaggerated claims, by the selection of testimonials or other evidence unrepresentative of a product's effectiveness, or by claiming that it possesses some unique property or quality which cannot be substantiated.

Charity advertising

- ▶ Licensees must satisfy themselves that the association is registered as a charitable association or that its charitable status has otherwise been recognised.
- ▶ Charitable organisations proposing to advertise are required to undertake that:

- ▶ They are not involved in transactions in which members of their governing body or staff have a financial interest.
- ▶ The response to their proposed advertising, whether in cash or kind or services, will be applied solely for the purposes specified or implied in the advertisements.
- ▶ They will not publish or otherwise disclose the names of contributors without prior permission.
- ▶ The IBA reserves the right to seek other assurances on other matters, where appropriate.
- ▶ Advertising for charitable organisations must:
 - ▶ Handle likely to arouse strong emotions in the public with care and discretion matters.
 - ▶ Respect the dignity of those on whose behalf an appeal is being made.
 - ▶ Avoid presenting an exaggerated impression of the scale or nature of the social problem to which the work of the charity is addressed, for example, by illustrating the message with non-typical extreme cases.
 - ▶ Reveal the destination of the funds collected or indicate how the public can obtain this information, and the information should be made readily available to the public.
 - ▶ Not address any fund-raising message to children.
 - ▶ Not contain comparisons with other charities.
 - ▶ Not mislead in any way as to the field of activity of the charity, or the use to which donations will be put.
 - ▶ Not suggest that anyone will lack proper feeling or fail in one's responsibility by not supporting a charity.
 - ▶ Charitable organisations are not exempt from abiding by the general principles spelt out in the Code of Advertising Practice.
 - ▶ When reference made to a known personality may be understood by the public as a guarantee of the seriousness of the advertised association, the person's qualifications and exact relationship with the association must be indicated.
 - ▶ Commercial advertisers may promote, either as a primary or incidental purpose, the needs and objects of charitable organisations, in conformity with the Advertising Code, subject to the conditions that:
 - ▶ Evidence must be provided to the licensee that the charitable organisation concerned has given its consent to the proposed advertisement.

- ▶ In the case of an advertisement including an offer to donate part of the proceeds of sales to charity, such advertisement shall specify which organisation or organisations will benefit and make clear the basis on which the donation of the proceeds will be calculated.

4.4 Key regulations governing the MBC

- ▶ The Mauritius Broadcasting Corporation (Right of Reply) Regulations 1983 (Right of Reply Regulations), published in Gazette No 135 of 1983
- ▶ The Mauritius Broadcasting Corporation (Advertisement) Regulations 1982 (Advertising Regulations) published in Gazette No 79 of 1982.

4.4.1 The Mauritius Broadcasting Corporation (Right of Reply) Regulations 1983 (Right of Reply Regulations)

In terms of section 3 of the Right of Reply Regulations, any person who wishes to exercise the right to reply provided for under section 19 of the Mauritius Broadcasting Corporation Act must make a written application to the chairperson of the MBC in the form provided in the schedule to the Right of Reply Regulations.

4.4.2 The Mauritius Broadcasting Corporation (Advertisement) Regulations 1982 (Advertising Regulations)

In terms of section 3(2) of the Advertising Regulations, where a request for the sale of airtime for advertising is made to the MBC, and the director-general believes that the airtime should not be sold for the advertisement, the MBC or the director-general must refer the request to the minister responsible for information for his or her determination and the minister's decision shall be final.

5 Media self-regulation

- ▶ Given the size of the population and the limited number of media operators, Mauritius lacks self-regulatory mechanisms for content dispute resolution. Concerning broadcasting, complaints regarding content are processed by the Complaints Committee of the IBA.
- ▶ Concerning the print and online media, content disputes are presumably left to the courts to resolve.

6 Case law and the media

The common law is judge-made. It is made up of judgments handed down in cases adjudicating on disputes brought by people, whether natural (individuals) or juristic (for example, companies or government departments). In common law legal systems, judges are bound by the decisions of higher courts and by the rules of precedent, which require rules laid down by the court in previous cases to be followed unless they were wrongly decided. Legal rules and principles are, therefore, decided on an incremental, case-by-case basis.

However, Mauritius has a hybrid legal system using elements of both civil and common law practices due to its history as a colony of both France and the United Kingdom.

Notes

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- 2 <https://www.worldometers.info/world-population/mauritius-population/#:~:text=Mauritius%202020%20population%20is%20estimated,of%20the%20total%20world%20population.> [accessed 19 December 2020]
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