

Annex 1

  **Updated May 2019**

 **Independent Commission Against Corruption**



**DECLARATION OF ASSETS AND LIABILITIES**

**UNDER**

**THE DECLARATION OF ASSETS ACT 2018**

**GUIDELINES**

1. **Introduction**

The Declaration of Assets Act 2018 (hereinafter referred to as the **“Act”**) was enacted by the National Assembly on 12 December 2018 (copy of the law and relevant documents are available on the website of the ICAC). The object of this Act is to provide for a new legal framework governing the declaration of assets in Mauritius. The Act will take effect as from 01 June 2019.

In this context, the Independent Commission Against Corruption (hereinafter referred to as ICAC) has been vested with a three-tier mandate under the Act to:

1. be the custodian of the declarations;
2. monitor the assets and liabilities of any declarant for purposes defined in section 9, 10 and 11 of the Act (see below); and
3. disclose to the public those declarations as required under section 7 of the Act.

In order to ensure compliance with the provisions of the Act, the ICAC is empowered to issue directives to any person to whom the Act applies and to impose penalties for late submission of declarations.

These guidelines are intended to assist declarants in complying with their obligations in relation to the filing of their declarations. They are intended for information only and should not be regarded as a substitute for the law.

1. **Who should make a Declaration and When?**
2. **New Declarants**

Any person referred to under section 3 of the Act, as listed in the table below, has an obligation under section 4 of the Act to file his declaration of assets and liabilities with the ICAC, including the assets and liabilities of his spouse and minor children. *(Sections 3 and 4 of the Act is at Annex).* The different timelines are referred to in the Table below.

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|  **Who should declare ?** | **When to declare ?** | **How to declare?** |
| National Assembly | Every member | Not later than 30 days after:* the first sitting of the National Assembly
* being elected to the National Assembly, following a by-election
* his seat becomes vacant pursuant to section 35 of the Constitution
 | **By way of affidavit** on the Declaration of Asset Form set out in **the First Schedul**e, sworn before the Supreme Court  |
| Speaker  |
| Every Minister | Not later than 30 days after:* being appointed
* his office becomes vacant pursuant to section 60 of the Constitution
 |
| Rodrigues Regional Assembly | Every member | Not later than 30 days after:* the first sitting of the Rodrigues Regional Assembly
* being elected to the Rodrigues Regional Assembly, following a by-election
* his seat becomes vacant pursuant to section 19 of the Rodrigues Regional Assembly Act
 | **By way of affidavit** on the Declaration of Asset Form set out in the **First Schedule** , sworn before the Magistrate for Rodrigues |
| Chairperson |
| Every Commissioner | Not later than 30 days after:* being appointed
* his office becomes vacant pursuant to section 37 of the Rodrigues Regional Assembly Act
 |
| Municipal City CouncilMunicipal Town CouncilDistrict Council | Every Councillor | Not later than 30 days after:* the first sitting of the Municipal City Council, Municipal Town Council or District Council
* being elected to Municipal City Council, Municipal Town Council or District Council, following a by-election
* his seat becomes vacant pursuant to section 40 of the Local Government Act
 | **By way of affidavit** on the Declaration of Asset Form set out in the **First Schedule** , sworn before the Supreme Court |
| * Every Lord Mayor
* Deputy Lord Mayor
* Mayor
* Deputy Mayor
* Chairperson
* Vice-Chairperson
 | Not later than 30 days after:* being elected
* his office becomes vacant pursuant to section 41 of the Local Government Act
 |
| Every Chief Executive | Not later than 30 days after:* being appointed
* his office becomes vacant
 | On the Declaration of Asset Form set out in the **Second Schedule** |
| Every Officer drawing salary at the level of Deputy Permanent Secretary (DPS) and above |
| Judicial Officer | In the grade of District Magistrate and above |
| Senior Public Officer | In the grade of, or drawing salary at the level of DPS and above |
| State-owned enterprisesStatutory bodies | * Chairperson
* Chief Executive Officer
* Every Officer drawing salary at the level of DPS and above
 |
| Every adviser and officer employed on a contractual basis in Ministries, drawing salary at the level of Deputy Permanent Secretary and above |
| Such other persons as may be prescribed |  |

1. **Persons (declarants) in Office at Commencement of the Act**

Every declarant in office at the commencement of the Act is required to make his declaration under section 16(1) and (2) coupled with section 3 of the Act. Declarants covered under section 16, that is, those in office at the commencement of the Act, have a period of 90 days from the commencement of the Act to make their declarations. Officers taking post after the date of commencement of the Act have to abide by the period of filing referred to in the table above.

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| ***Section 16 - Transitional provisions*** *(1) Every person referred to in section 3(1) and in office at the commencement of this Act shall, within* ***90 days of the commencement of this Act****, make a declaration of his assets and liabilities with ICAC, including the assets and liabilities of his spouse, his minor children and, subject to section 4(4), his children of age and grandchildren.* *(2) Where, before the commencement of this Act, a person referred to in section 3(2) is required to make a declaration of his assets and liabilities under any other enactment –* 1. *he shall, notwithstanding that other enactment, make a declaration of his assets and liabilities under this Act; and*
2. *any declaration made under paragraph (a) shall be deemed to meet the requirements of that other enactment.*
 |

1. **Officers who were previously required to declare their assets and liabilities under any other enactment.**

The Act brings under the present regime any declaration made by a declarant under another enactment. Accordingly, any person referred to in section 3(1) (declarant) who has an obligation to make a declaration of his assets and liabilities under any other enactment, shall now be required to make his declaration of assets and liabilities under the 2018 Act. That person no longer has that obligation under the other enactment given that the declaration under the new (2018) Act shall be deemed to meet the requirements of that other enactment.

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| **Case Study**For example, an officer of the MRA drawing a salary at the level of DPS and above (e.g. salary of Rs. 75,000) is now required to declare his assets and liabilities with the ICAC, under the Act. However, other officers drawing salaries below the level of the DPS will continue to declare their assets and liabilities with the MRA. |

1. **What to Declare?**
2. **Assets and Liabilities to be declared**

The types of assets and liabilities to be declared, their nature, as well as the types of assets exempted from the definition, are covered in section 2 and section 5 of the Act, are as follows:

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| ***As per Section 2 of the Act “assets” means*** *-* 1. *money, in any currency, in local banks and foreign banks;*
2. *cash in hand exceeding one million rupees in any currency accepted as legal tender in any country;*
3. *securities, including stocks, bonds, treasury bills or other units held in Mauritius or abroad;*
4. *shares or any interest in a company, société or partnership;*
5. *any item of jewellery, precious stone or metal, or watch, exceeding 500,000 rupees in value;*
6. *any freehold or leasehold immovable property –*
	1. *registered in Mauritius or abroad;*
	2. *which, at the time of declaration, has been purchased but is still subject to registration in Mauritius or abroad;*
7. *motor vehicles, boats, ships or aircrafts;*
8. *assets held by a person for and on behalf of the declarant in the declarant’s capacity as ultimate beneficiary.*

**Pursuant to section 5 (2), a declarant shall, in relation to a declaration made under section 4 –** 1. *not be required to specify the value of any asset included in the declaration, except where such asset consists of cash;*
2. *specify the nature of his interests in the assets, including any joint ownership; and*
3. *specify the nature of –*
4. *any liabilities in relation to those assets, including any joint liability; and*
5. *any other liabilities which are not in relation to those assets.*
 |

1. **Assets of Spouse and Minor Children (Section 4)**

A declarant has the obligation, when making his declaration of his assets and liabilities, to include the assets and liabilities of his spouse and his minor children.

1. **Children of Age and Grandchildren- Section 4 (4) of the Act**

A declarant has the obligation, when making his declaration, to specify any property sold, transferred or donated to his children of age and grandchildren.

1. **Declarant Holding Different Positions – Section 4(5) of the Act**

A declarant who simultaneously holds different positions and required to make a declaration under section 4, shall make only one declaration under this Act.

Sections 4(4) and 4(5) are:

*(4) Where a person makes a declaration under this section, he shall specify any property sold, transferred or donated to his children of age and grandchildren, in any form or manner whatsoever, including income or benefits from any account, partnership or trust.*

*(5) Where a person simultaneously holds different positions in relation to which he is required to make a declaration under this section, he shall make only one declaration with ICAC.*

1. **Fresh Declaration be made under section 6(a):**

The Act prescribes for two instances where a fresh declaration has to be made, one being where the category of declarants specified under section 6 (a) acquires or disposes of the types of assets specified in that section, and the other being those declarants specified under section 6 (b). There are two time limits for the submission of a fresh declaration.

1. **Section 6(a) of the Act requires that:**

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| Every member of the **National Assembly** including the Speaker and every Minister | **Shall within a period of 30 days, inform ICAC, in writing, where he acquires or disposes of:*** **any freehold or leasehold immovable property in Mauritius or abroad;**
* **a motor vehicle, boat, a ship or an aircraft.**
 |
| Every member of the **Rodrigues Regional Assembly**, including the Chairperson and Every Commissioner |
| Every Councillor, Lord Mayor, Deputy Lord Mayor, Mayor, Deputy Mayor, Chairperson and Vice-Chairperson of a **Municipal City Council, Municipal Town Council or District Council** |
| Every Chairperson and Chief Executive Officer of S**tate-owned enterprises and statutory bodies**, and every officer drawing salary at the level of DPS and above. |
| **Every adviser and officer employed on a contractual basis in Ministries, drawing salary at the level of Deputy Permanent Secretary and above** |
| **Such other persons as may be prescribed** |

1. **Section 6(b) of the Act requires that:**

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| Every **Judicial Officer** in the grade of District Magistrate and above | **Make a fresh declaration with ICAC :*** **at every interval of 5 years following the date of the first declaration**
* **within a period of 30 days after leaving office**
 |
| Every **Senior Public Officer** in the grade of, or drawing salary at the level of DPS and above |
| Every Chief Executive Officer of **Municipal City Council, Municipal Town Council or District Council** and every officer of such councils drawing salary at the level of DPS and above. |

1. **Mandate of the ICAC with respect to Monitoring of the Declarations**
2. **Failure to Make a Declaration and Wilful False Declaration**

The Commission is vested with the power to verify the following instances of non-compliance with the provisions of the Act: a) where a declarant fails, without reasonable excuse, to make a declaration within a specified timeframe; b) failure to make a declaration; and c) wilfully making a false declaration. Those persons shall, in either case, commit an offence.

1. **Suspicion of Corruption, Money Laundering and Illicit Enrichment**

By virtue of its functions of investigating and prosecuting corruption and money laundering, the Commission is also empowered under the Act to monitor the assets and liabilities of any declarant for the purpose of detecting and investigating corruption and money laundering offences or illicit enrichment.

1. **Disclosure to the public and Duty of Confidentiality**
	1. The Commission has the obligation to disclose the declarations made by a category of persons specified under the Act. Pursuant to section 7 (1) of the Act, the ICAC shall disclose to the public the declarations made by:
* Members of the National Assembly, including the Speaker
* Members of the Rodrigues Regional Assembly, including the Chairperson of the Rodrigues Regional Assembly, and
* Councillors of a Municipal City Council, Municipal Town Council or District Council.
	1. However, the ICAC shall not disclose the following information with respect to the above:
* money, in any currency, in local banks and foreign banks;
* any item of jewellery, precious stone or metal, or watch, exceeding 500,000 rupees in value; and
* cash in hand not exceeding one million rupees in any currency accepted as legal tender in any country.
	1. The ICAC shall keep confidential and not disclose to the public any declaration, other than the declaration mentioned above.
1. **Disclosure to any Enforcement Authority**

A Judge in Chambers may, upon being shown good cause, order the disclosure of the declaration to an enforcement authority as described below, following application made.

***“Enforcement Authority***” *means the Police, the Enforcement Authority under the Asset Recovery Act, the Mauritius Revenue Authority, ICAC, the Financial Intelligence Unit, the Integrity Reporting Services Agency under the Good Governance and Integrity Reporting Act, or such other body as may be prescribed.*

1. **How to submit the Declaration?**

Declarations made on the prescribed Asset Declaration Forms of the First Schedule (affidavit sworn before the Supreme Court/Magistrate for Rodrigues) or Second Schedule of the Declaration of Assets Regulations (Prescribed Form) should be submitted to the ICAC, addressed to the Director-General, as follows:

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| Address | Mauritius | From Rodrigues/Overseas |
| The Director-General, Independent Commission Against Corruption, Reduit Triangle, Moka  | * By registered post or,
* Deposited at the reception desk of the ICAC.
 | * By registered post
 |
| *Declaration of Assets*, clearly mentioned on the top left hand corner of the envelope |
| *The Return Address* clearly written at the back of the envelope in block letters |

*Note:*

* Upon reception of the Asset Declaration Form, the Declaration of Assets Unit of the ICAC will issue an acknowledgement receipt.
* Each declarant will also be allocated a unique reference number (ICAC reference) which should be used by the declarant in any subsequent correspondence or declaration.

The prescribed Asset Declaration forms, under the First and Second Schedules of the Declaration of Assets Regulations can be downloaded from the ICAC website [www.icac.mu](http://www.icac.mu) or collected at the reception desk of the ICAC, Reduit Triangle, Moka.

1. **What are the penalties for late submission of Declaration? (Section 10 of the Act)**

Section 10 of the Act has made provisions for penalty for late submission of declaration. The relevant section is reproduced below:

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| 1. *Where a person fails, without reasonable excuse, to submit a declaration within the specified period, he shall be liable to pay to ICAC a penalty representing 5,000 rupees per month or part of the month, until such time as the declaration is submitted, provided that the total penalty payable shall not exceed 50,000 rupees.*
2. *Any person who is dissatisfied with a decision of ICAC relating to the imposition of a penalty pursuant to subsection (1), may, within 28 days of the imposition of the penalty, apply to the Supreme Court for a judicial review of such decision.*
 |

1. **Failure to Make a Declaration Submission or Wilfully Making a False Declaration**

Failures for making a declaration as well as wilfully making a false declaration or contravening any regulation made under the Act, constitute different offences under the Act. Failure to collaborate by a spouse, without any reasonable excuse, also constitutes an offence under the Act.

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| *Section 11 – Offences*1. *Any person who fails to make a declaration or who wilfully makes a false declaration shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 5 years.*
2. *Any person who, in any other manner contravenes the Declaration of Assets Act 2018 or any regulations made under it, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees.*
3. *Any spouse who, without any reasonable excuse, fails to collaborate in disclosing his or her assets and liabilities for the purpose of fulfilling a requirement under this Declaration of Assets Act 2018, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 6 months.*
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1. **What if I have Questions?**

If you have any query, kindly contact the **Help Desk** of the **Declaration of Assets Unit** at the ICAC Headquarters, Reduit Triangle, Moka during office hours (08 00 – 16 30 from Monday to Friday) on

* Tel:4026693/4026984
* Email: doa@icac.mu

**Disclaimer: - These guidelines are intended to be informative only. It does not represent legal advice. Whilst reasonable endeavours are taken to ensure that information provided is accurate and up-to-date as at the date of publication, ICAC and its officers do not accept liability or responsibility for any loss or damage or any criminal action occasioned to any person acting or refraining from acting on any information contained therein. Specialist legal or other professional advice should be sought before entering (or refraining from entering) into any specific action. In case of any ambiguity please refer to the Declaration of Assets Act 2018.**

**Annex**

**Relevant sections of the Act**

***Section 3 - Application of Act***

*(1) Subject to subsection (2), this Act shall apply to –*

1. *every member of the National Assembly, including the Speaker of the National Assembly, and every Minister;*
2. *every member of the Rodrigues Regional Assembly, including the Chairperson of the Rodrigues Regional Assembly, and every Commissioner;*
3. *every Councillor of a Municipal City Council, Municipal Town Council or District Council;*
4. *every Lord Mayor, Deputy Lord Mayor, Mayor, Deputy Mayor, Chairperson and Vice-Chairperson of a Municipal City Council, Municipal Town Council or District Council, as the case may be;*
5. *every judicial officer and senior public officer;*
6. *every Chief Executive of a Municipal City Council, Municipal Town Council or District Council, and every officer of such Councils drawing salary at the level of Deputy Permanent Secretary and above;*
7. *every Chairperson and Chief Executive Officer of State-owned enterprises and statutory bodies, and every officer of such enterprises and statutory bodies drawing salary at the level of Deputy Permanent Secretary and above;*
8. *every adviser and officer employed on a contractual basis in Ministries, drawing salary at the level of Deputy Permanent Secretary and above; and*
9. *such other persons as may be prescribed.*

*(2) Where a person referred to in subsection (1) is required to make a declaration of his assets and liabilities under any other enactment –*

1. *he shall, notwithstanding that other enactment, not be required to make a declaration of his assets and liabilities under that enactment; but*
2. *he shall make a declaration of his assets and liabilities under this Act; and*
3. *any declaration made under paragraph (b) shall be deemed to meet the requirements of that other enactment.*

*(3) In this section –*

*“statutory body” –*

*(a) means a body incorporated by an Act; but*

*(b) does not include such body as may be prescribed.*

***Section 4- Obligation to make declaration of assets and liabilities***

*(1) Every member of the National Assembly, every member of the Rodrigues Regional Assembly and every Councillor of a Municipal City Council, Municipal Town Council or District Council shall, not later than 30 days –*

1. *after the first sitting of the National Assembly, the Rodrigues Regional Assembly, or any Municipal City Council, Municipal Town Council or District Council, as the case may be; or*
2. *after being elected to the National Assembly, the Rodrigues Regional Assembly, or a Municipal City Council, Municipal Town Council or District Council, following a by-election, as the case may be; and*
3. *after his seat becomes vacant pursuant to section 35 of the Constitution, section 19 of the Rodrigues Regional Assembly Act or section 40 of the Local Government Act, as the case may be,*

*make a declaration of his assets and liabilities with ICAC, including the assets and liabilities of his spouse and his minor children.*

*(2) Where a person is appointed a Minister or a Commissioner or is elected as Lord Mayor, Deputy Lord Mayor, Mayor, Deputy Mayor, Chairperson or Vice-Chairperson of a Municipal City Council, Municipal Town Council or District Council, as the case may be, he shall, not later than 30 days after –*

1. *being appointed a Minister or a Commissioner or being elected a Lord Mayor, Deputy Lord Mayor, Mayor, Deputy Mayor, Chairperson or Vice-Chairperson; and*
2. *his office becomes vacant pursuant to section 60 of the Constitution, section 37 of the Rodrigues Regional Assembly Act or section 41 of the Local Government Act,*

*make a declaration of his assets and liabilities with ICAC, including the assets and liabilities of his spouse and his minor children.*

*(3) Every person referred to in section 3(1)(e) to (i) shall, not later than 30 days after –*

*(a) being appointed; and*

*(b) his office becomes vacant,*

*make a declaration of his assets and liabilities with ICAC, including the assets and liabilities of his spouse and his minor children.*

*(4) Where a person makes a declaration under this section, he shall specify any property sold, transferred or donated to his children of age and grandchildren, in any form or manner whatsoever, including income or benefits from any account, partnership or trust.*

*(5) Where a person simultaneously holds different positions in relation to which he is required to make a declaration under this section, he shall make only one declaration with ICAC.*