

## **Law Association's Comments on the Payments into Court Bill, 2018**

1. The Law Association repeats and incorporates herein the comments made in its letter to the Honourable Attorney General dated 29<sup>th</sup> June 2018. The following comments are to be read along with that letter.

### **Electronic Filing and fee payments**

2. The Law Association applauds the move to introduce e-filing (s.13) and the payment of court fees electronically (s.4). The Law Association awaits the production of the proposed Draft Rules of Court and Practice Direction to give effect to these measures and reserves its further comments until then.

### **Custodial Bank Accounts**

3. The Law Association has no objection in principle to the establishment of Custodial Bank Accounts but registers the following concerns.
4. First of all, the potential is that large sums of money emanating from a number of sources – maintenance payments, fees payable to the Court, fines payable by law, any other payments which are payable into Court – will be deposited into bank accounts in the name of the Judiciary. It is imperative that rules be developed for the management of these accounts, with clear and firm lines of accountability and oversight, and with regular, timely and effective independent audit requirements. Inevitably, if those accounts are mismanaged or subject to fraudulent activities, the name of the Judiciary will be besmirched and public confidence in the administration of justice undermined.
5. We assume that such mechanisms are intended to be put in place through the rules of Court which the Rules Committee is empowered to make under s 15(1)(b) "for carrying into effect the provisions of this Act". To the extent that this assumption is correct, we recommend the following:
  - i) That it be made clear by an appropriate provision in the Act that Custodial Accounts are not to be established until Rules of Court are made; and

- ii) That instead of these rules being subject to negative resolution of Parliament, they be subject to positive resolution in order to ensure that they are subject to the widest scrutiny and debate and to a system of controls and oversight which receives the widest possible consensus.
6. With regard to the number of accounts which are to be created, we recommend further that separate accounts be created for each type of payment in order to minimise inter-mingling and to provide for greater ease of reconciliation. It may be that this is what is envisaged by s. 7 which requires that each account identify the nature of funds to be deposited in the account, but we see great advantage to making it mandatory that separate accounts must be created for each type of fund.
  7. We, however, register deep concern about creating an account in the name of the Judiciary into which fines are to be payable.
  8. The separation of powers doctrine dictates that the judiciary must at all times be and appear to be impartial and independent of the state. In the case of criminal trials leading to the imposition of fines, the separation between the judiciary, which is to impartially and independently adjudicate on the guilt or innocence of accused persons, and the prosecution, whose duty it is, on behalf of the public, to detect and prosecute criminal offences, must be strictly maintained. We perceive that a law which provides for the payment of fines imposed by the Judiciary at the end of a criminal trial into an account in the name of the Judiciary, blurs these strict lines of separation, and may give the appearance that the Judiciary is a beneficiary of and therefore has a pecuniary interest in the outcome of a criminal trial.
  9. We therefore recommend that s. 5(c) be deleted altogether.
  10. We have already made known our concerns about the method of appointment of the Deputy Court Executive Administrator and the lack of independence which the system of appointment and the lack of security of tenure this will engender. This point is underscored by the fact that the Deputy Court Executive Administrator may be deputised to be a signatory to the account.
  11. The Bill also brings into sharp relief the comments we made on **The Criminal Division and District Criminal and Traffic Courts Act** in relation to the office of Court Executive Administrator. We said:

"As yet, the overall powers of the Court Executive Administrator have not been established in any one place. The post of Court Executive Administrator is created under the Judicial and Legal Services Act and the functions of the holder of the office are set out, no doubt, in an administrative document established for the purpose.

It is assumed that the Court Executive Administrator reports to the Chief Justice but the time is now ripe to examine and set out in one place, in law, the powers of the office holder of what is becoming an expanding enterprise, and that office holder's relationship with the judiciary and other statutorily established judicial officers.

Matters which need to be addressed are:

- i) The relationship between the CEA and the Chief Justice;
- ii) The relationship between the CEA and other judges of the Supreme Court;
- iii) The relationship between the CEA and the Registrar, Deputy Registrars and Masters;
- iv) The relationship between the CEA and other members of judiciary staff.

These relationships have been allowed to evolve over time without any clear guidance and have depended largely upon the personality of the office holder. The time has come to debate and enshrine in law the functions and authority of this increasingly important office-holder."

- 12. The CEA is now being put in charge of substantial sums of money and we repeat the need to regularise the office.
- 13. The Definition of "Court" in the Bill ought to be revised and expanded to specifically identify the Courts in respect of which the Bill is being passed.
- 14. The Bill does not amend existing legislation. In this regard please note s. 24A and s. 24B of the Supreme Court of Judicature Act Ch. 4:01 and s. 14 to 21 of the Summary Courts Act Ch. 4:20. In this regard it is submitted that a thorough review be conducted of all legislation which may be impacted by the Bill in order to ensure that all necessary amendments to such legislation are included in the Bill.
- 15. There are in addition amendments proposed to the Family Law (Guardianship of Minors Domicile and Maintenance) Act Ch. 26:08 by Bill No. 7 of 2018 (refer to s. 12 of Bill NO. 7 of 2018) which appear to be inconsistent with provisions of the Payments into Court Bill. The two Bills need to be revised together to ensure that

there is no conflict in their operation and further, to ensure consistent use of terminology so as to avoid uncertainty and confusion as to the manner in which maintenance payments are to be collected and monitored.

20<sup>th</sup> August 2018