



LAWS AND REGULATIONS

PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

*In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances,
the Secretary-General has the honour to communicate the following legislative texts*

MAURITIUS

Communicated by the Government of Mauritius

NOTE BY THE SECRETARIAT

- (a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [] have been added or changed by the Secretariat.
- (b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

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*Note by the Secretariat: These documents are a direct reproduction of the texts communicated to the Secretariat.

E/NL.2003/01

THE ECONOMIC CRIME AND ANTI-MONEY LAUNDERING ACT 2000

Act No. 14 of 2000

I assent

30 June 2000

CASSAM UTEEM
President of the Republic

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An Act

To provide for the establishment of an Economic Crime Office and for the prevention and punishment of money laundering and economic offences

ENACTED by the Parliament of Mauritius, as follows –

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Economic Crime and Anti-Money Laundering Act 2000.

2. Interpretation

In this Act—

“bank”—

(a) has the same meaning as in the Banking Act 1988; and

(b) includes—

(i) an offshore bank;

(ii) any person engaged in deposit-taking business and authorized to do so under the Banking Act 1988; and

(iii) any person who carries on any business or activity regulated by the Bank of Mauritius;

(iv)

“Bank of Mauritius” means the Bank of Mauritius established under the Bank of Mauritius Act;

“cash”—

(a) means money in notes or coins of Mauritius or in any other currency; and

(b) includes any cheque which is neither crossed nor made payable to order, whether in Mauritius currency or in any other currency;

“cash dealer” means a person authorized under the Foreign Exchange Dealers Act 1995 to carry on the business of foreign exchange dealer or money changer;

“crime”—

(a) has the same meaning as in the Criminal Code; and

(b) includes an activity carried out outside Mauritius and which, had it taken place in Mauritius, would have constituted an offence;

“Director” means the Director of the Economic Crime Office referred to in section 3;

“economic offence”—

(a) means any offence or fraud referred to in the First Schedule; and

(b) includes—

(i) any suspected offence which appears to the Director, on reasonable grounds, to involve serious or complex fraud;

(ii) an activity carried out outside Mauritius and which, had it taken place in Mauritius, would have constituted an offence referred to in the First Schedule; but

(c) does not include any offence under the revenue Acts;

“exempt transaction” means a transaction—

(a) between the Bank of Mauritius and any other person;

(b) between a bank and another bank;

(c) between a bank and a financial institution;

(d) between a bank or a financial institution and a customer, where—

(i) the customer is, at the time the transaction takes place, an established customer of the bank or financial institution; and

(ii) the transaction consists of a deposit into, or withdrawal from, an account maintained by the customer with the bank or financial institution,

provided that the transaction does not exceed an amount that is reasonably commensurate with the lawful business activities of the customer; or

(e) between such other persons as may be prescribed;

“financial institution” means any institution or person regulated by any of the enactments specified in Part I of the Second Schedule;

“material” means documentary material of any kind and includes information stored in a computer, disc, cassette, or on microfilm, or preserved by any mechanical or electronic device;

“Minister” means the Minister to whom responsibility for the subject of economic crime is assigned;

“money laundering offence” means an offence under section 17;

“offshore bank” has the same meaning as in the Banking Act 1988;

“property”—

(a) means property of any kind, nature and description, whether movable or immovable, tangible or intangible; and

(b) includes—

(i) any currency, whether or not the currency is legal tender in Mauritius, and any bill, security, bond, negotiable instrument or any instrument capable of being negotiated which is payable to bearer or endorsed payable to bearer, whether expressed in Mauritius currency or in any other currency;

(ii) money in Mauritius currency or in any other currency in accounts with any bank which carries or has carried on business in Mauritius or elsewhere;

(iii) money in any currency in accounts with any bank outside Mauritius;

(iv) motor vehicles, ships, aircraft, boats, works of art, jewellery, precious metals or any other item of value; and

(v) any right or interest in property;

“relevant profession” means any profession, trade or business specified in Part II of the Second Schedule;

“revenue Acts” has the same meaning as in the Unified Revenue Act 1983;

“suspicious transaction” means a transaction which—

(a) gives rise to a reasonable suspicion that it may involve the laundering of money or the proceeds of any crime;

(b) is made in circumstances of unusual or unjustified complexity;

(c) appears to have no economic justification or lawful objective;

(d) is made by or on behalf of a person whose identity has not been established to the satisfaction of the officer or employee performing the transaction; or

(e) gives rise to suspicion for any other reason;

“transaction” includes opening any account or issuing a passbook, entering into a fiduciary relationship, renting a safe deposit box or establishing any other business relationship, whether electronically or otherwise.

PART II - ECONOMIC CRIME OFFICE

3. Director of the Economic Crime Office

(1) There shall be for the purposes of this Act an Economic Crime Office.

(2) The head of the Economic Crime Office shall be the Director who shall be a public officer.

(3) The Director shall be assisted by such other public officers as may be necessary.

(4) The Director may, for the purposes of conducting any investigation under this Act, use the services of any police officer or other public officer designated for that purpose by the Commissioner of Police or the Head of the Civil Service, as the case may be.

4. Functions of the Economic Crime Office

(1) The Economic Crime Office shall, subject to the provisions of this Act and notwithstanding any other enactment—

(a) investigate economic offences;

(b) investigate any matter relating to suspicious transactions—

(i) on receiving reports under Part IV; or

(ii) on receiving complaints or information which give rise to a suspicion that an offence, which it has power to investigate, may have been, is being or is about to be committed;

(c) gather, process and evaluate information relating to suspicious transactions;

(d) analyse and disseminate to other law enforcement authorities, information relating to suspicious transactions;

- (e) ensure co-ordination and co-operation between law enforcement agencies, Government departments and private institutions and members of relevant professions in evolving methods and policies to prevent, detect and suppress money laundering and economic offences;
 - (f) take such measures as may be necessary to counteract money laundering and economic offences; and
 - (g) co-operate with foreign authorities in the fight against money laundering and economic offences.
- (2) The Director may, on his own initiative, investigate any suspicious transaction or any economic offence.
 - (3) The Commissioner of Police may refer to the Economic Crime Office, for the purposes of investigation under this Act, any suspected economic offence.
 - (4) The Commissioner of Police shall give such assistance as may be necessary to the Director to enable him to discharge his functions under this Act.
 - (5) The Director or any officer of the Economic Crime Office shall not be liable to any prosecution, action or suit in respect of any matter or thing done by him in the discharge of his functions under this Act.

5. Confidentiality and oath

- (1) The Director and every officer of the Economic Crime Office—
 - (a) shall take the oath specified in the Third Schedule;
 - (b) shall not, except in accordance with this Act or otherwise as authorized by law -
 - (i) divulge any information obtained in the exercise of a power or in the performance of a duty under this Act;
 - (ii) divulge the source of such information or the identity of any informer or the maker, writer or issuer of a report given to the Director;
 - (c) shall maintain and aid in maintaining confidentiality and secrecy of any matter, document, report and other information relating to the administration of this Act or any regulations made under this Act that becomes known to him or comes in his possession or under his control.
- (2) Notwithstanding subsection (1), the Director may, for the purpose of an enquiry into any matter under this Act, with the concurrence of the Director of Public Prosecutions, impart to an agency in Mauritius or abroad, such information, other than the source of the information, as may appear to him to be necessary to assist an investigation into money laundering or any economic offence.
- (3) Any person who without lawful excuse, contravenes this section 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 2 years.

6. Declaration of assets

- (1) Subject to subsection (2), the Director and every officer of the Economic Crime Office shall file with the Minister a declaration of his assets and liabilities in the form specified in the Fourth Schedule—
 - (a) not later than 30 days of his appointment; and
 - (b) on the termination of his appointment.
- (2) Where subsequent to a declaration made under subsection (1), the state of assets and liabilities is so altered as to be reduced or increased in value by a minimum of 200,000 rupees, the Director or officer shall make a fresh declaration.
- (3) No declaration of assets filed under subsection (1) or (2) shall be disclosed to any person except with the express consent of the Director or officer concerned or by order of a Judge on reasonable grounds.

7. Powers of Director

The Director shall have such powers as may be necessary to carry out the functions of the Economic Crime Office under this Act and, in particular—

- (a) to investigate into suspected cases of money laundering or any economic offence;
- (b) to enforce compliance with this Act by banks, financial institutions, cash dealers and members of relevant professions; and
- (c) to co-operate with the Bank of Mauritius in the supervision of compliance with this Act and any regulations made under this Act.

8. Powers to obtain information

- (1) The Director may, by notice in writing, require—
 - (a) a person whose affairs are to be investigated to attend, at a specified time and place, and answer questions or otherwise furnish information or produce such documents as may be required with respect to any matter relevant to an investigation by him; and
 - (b) any public officer to furnish information or to produce any document in his custody or under his control.
- (2) The Director may take copies or extracts from any document produced under subsection (1) and may require the person producing it to give any explanation relating to such document.
- (3) Where material to which an investigation relates consists of information stored in a computer, disc, cassette, or on microfilm, or preserved by any mechanical or electronic device, the request from the Director shall be deemed to require the person named therein to produce or give access to it in a form in which it can be taken away and in which it is visible and legible.
- (4) A person required to attend and answer questions or otherwise furnish information or to produce any specified documents or any documents of a specified class shall not, without reasonable excuse, fail to answer a question or furnish information or produce a document or class of documents.
- (5) Subject to subsection (6), it shall be a reasonable excuse, for the purposes of subsection (4), for a person to refuse or fail to answer a question put to him or to refuse or fail to produce a document or a class of documents that he was required to produce, where the answer to the question or the production of the document or class of documents might tend to incriminate him.
- (6) It shall not be a reasonable excuse, for the purposes of subsection (4), for a person to refuse or fail to answer a question put to him or to refuse or fail to produce a document or a class of documents that he was required to produce, where the answer to the question or the production of the document or class of documents might tend to incriminate him and where the Director of Public Prosecutions has given to the person an undertaking in writing that any answer given or document or class of documents produced will not be used in evidence in any proceedings against him for an offence other than proceedings in respect of falsity of evidence given by the person.

9. Orders to search banks, financial institutions and cash dealers

The Director may, on application to a Judge in Chambers and satisfying him that there are reasonable grounds to believe that -

- (a) a bank, financial institution or cash dealer has failed to keep a business transaction record as provided by section 21(2)(b); or
- (b) a bank, financial institution or cash dealer has failed to report any business transaction as provided for under Part IV,

obtain an order to enter any premises belonging to, in the possession or control of the bank, financial institution or cash dealer and to search the premises and remove there from any document or material as may be ordered by the Judge in Chambers and specified in the order.

10. Powers of entry and search for purposes of investigation

- (1) Where the Director has reasonable grounds to believe that an offence has been, is being or is about to be committed, he may apply to a Judge in Chambers, for an order to authorize him or any of his officers to enter and search, at all reasonable times, any premises or place of business, other than those of a bank or of a financial institution, and remove there from any document or material which may provide evidence relevant to an investigation being conducted by the Director.
- (2) In the exercise of any powers under this section, an authorized officer shall when so requested by any person affected, produce to that person the order from the Judge in Chambers evidencing his authority to exercise the powers so conferred.

11. Property tracking and monitoring order

Where the Director -

- (a) for the purposes of an investigation, needs to determine whether any property belongs to, is in the possession or under the control of any person; or
 - (b) has reasonable grounds for suspecting that a person has committed, is committing, or is about to commit an offence which the Director has power to investigate,
- he may apply to a Judge in Chambers for an order—
- (i) that any document relevant to—

- (A) identifying, locating or quantifying any property; or
- (B) identifying or locating any document necessary for the transfer of any property, belonging to, or in the possession or under the control of that person be delivered forthwith to the Director; or
- (ii) that a bank, financial institution or cash dealer or member of a relevant profession forthwith produces to the Director all information obtained by it about any business transaction conducted by or for that person with it during such period before or after the date of the order as the Judge may direct.

12. Enforcement of property tracking and monitoring order

A Judge in Chambers may, on good cause shown by the Director that any person is failing to comply with, is delaying or is otherwise obstructing an order made in accordance with section 11, order that the Director or any officer authorized by him may enter any premises of the bank, financial institution or cash dealer or member of a relevant profession, search the premises and remove any document, material or other thing therein for the purposes of executing such order.

13. Attachment order

- (1) Notwithstanding any other enactment, where the Director has reasonable ground to suspect that a person has committed, is committing or is about to commit a money laundering offence or any economic offence, he may apply to a Judge in Chambers for an attachment order and the Judge may, subject to subsection (3), grant the application.
- (2) Notwithstanding any other enactment, an attachment order shall—
 - (a) attach in the hands of any person named in the order all moneys and other property due or owing or belonging to or held on behalf of the suspect;
 - (b) require that person to declare in writing to the Director within 48 hours of service of the order, the nature and source of all moneys and other property so attached; and
 - (c) prohibit the person from transferring, pledging or otherwise disposing of any money or other property so attached except in such manner as may be specified in the order.
- (3) The Judge in Chambers shall not make an order under subsection (1) unless he is satisfied that the suspect has committed, is committing or is about to commit a money laundering offence or any economic offence.
- (4) An attachment order under this section shall take effect forthwith and the Director shall—
 - (a) cause notice of the order to be published in the next issue of the Gazette and in at least 2 daily newspapers published and circulated in Mauritius; and
 - (b) give notice of the order to -
 - (i) all notaries;
 - (ii) all banks, financial institutions and cash dealers; and
 - (iii) any other person who may hold or be vested with property belonging to or held on behalf of the suspect.

14. Features of attachment order

- (1) An attachment order shall be served on each of the persons named in the order and on the suspect by an usher of the Supreme Court.
- (2)
 - (a) Subject to subsection (3), an attachment order shall, unless revoked by order of a Judge in Chambers, remain in force for 60 days from the date on which it is made.
 - (b) An attachment order may be renewed for successive periods of 60 days on application made by the Director, where the Judge in Chambers is satisfied that substantial new information relating to a money laundering offence or any economic offence has become available or is likely to become available.
- (3) Any period of time during which the suspect is absent from Mauritius, as certified to the Judge in Chambers by the Director, shall not be reckoned as part of any period of validity of an attachment order.

15. Submission of report to Director of Public Prosecutions

- (1) The Director shall submit a report on every investigation he makes to the Director of Public Prosecutions.
- (2) The report under subsection (1) shall include—

- (a) all the material, information, statements and other documents obtained in the course of investigation except the articles of evidence which shall remain in the custody of the Director to be produced by him in Court; and
- (b) the appropriate recommendations of the Director.

16. Request for further inquiries by Director of Public Prosecutions

Where a report is submitted under section 15, the Director of Public Prosecutions may, where he thinks necessary, require the Director to have further inquiries made into the matter.

PART III - THE OFFENCE OF MONEY LAUNDERING

17. Money laundering offence

- (1) Any person who—
 - (a) engages in a transaction that involves property which is, or in whole or in part directly or indirectly represents, the proceeds of any crime; or
 - (b) receives, possesses, conceals, disguises, transfers, converts, disposes of, removes from or brings into Mauritius any property which is, or in whole or in part directly or indirectly represents, the proceeds of any crime,

where he suspects or has reasonable grounds for suspecting that the property is derived or realized, in whole or in part, directly or indirectly from any crime, shall commit an offence.

- (2) Any bank, financial institution, cash dealer or member of a relevant profession who—
 - (a) engages in a transaction that involves property which is, or in whole or in part directly or indirectly represents, the proceeds of any crime; or
 - (b) receives, possesses, conceals, disguises, transfers, converts, disposes of, removes from or brings into Mauritius any property which is, or in whole or in part directly or indirectly represents, the proceeds of any crime,

and who fails to take such measures as are reasonably necessary to ensure that neither it nor any service offered by it, is capable of being used by a person to commit or to facilitate the commission of any act of money laundering shall commit an offence.

- (3) Notwithstanding section 109 of the Criminal Code (Supplementary) Act, any person who agrees with one or more other persons to commit any act specified in subsections (1) and (2), shall commit an offence.
- (4) For the purposes of subsections (1), (2) and (3), references to a crime shall be deemed to include references to any act or omission which occurred outside Mauritius which, had it taken place in Mauritius, would have constituted a money laundering offence or any other crime.
- (5) Any person may be convicted of a money laundering offence under this section notwithstanding the absence of a conviction in respect of a crime which generated the proceeds alleged to have been laundered.
- (6) Any person may, upon a single information or upon a separate information, be charged with and convicted of both the offence of money laundering and of the offence which generated the proceeds alleged to have been laundered.
- (7) In any proceedings against a person for an offence under this section, it shall be sufficient to aver in the information that the property is, in whole or in part directly or indirectly the proceeds of a crime, without specifying any particular crime, and the Court, having regard to all the evidence, may reasonably infer that the proceeds were in whole or in part directly or indirectly the proceeds of a crime.

18. Jurisdiction

- (1) Notwithstanding any other enactment, the Intermediate Court shall have jurisdiction to try any offence under this Act or any regulations made thereunder and may, on conviction, impose any penalty including forfeiture.
- (2) Any property belonging to or in the possession or under the control of, any person who is convicted of an offence under this section shall be deemed, unless the contrary is proved, to be derived from a crime and the Court may, in addition to any penalty imposed, order that the property be forfeited.

- (3) Sections 150, 151 and Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a conviction under this Act.

19. Penalty

Any person who—

- (a) commits an offence under section 17; or
- (b) disposes or otherwise deals with property subject to a forfeiture order under section 18(2), shall, on conviction, be liable to a fine not exceeding 2 million rupees and to penal servitude.

PART IV - PREVENTION OF MONEY LAUNDERING

20. Limitation of payment in cash

- (1) Notwithstanding sections 30 and 31 of the Bank of Mauritius Act but subject to subsection (2), no person shall make or accept any payment in cash in excess of 350,000 rupees or an equivalent amount in foreign currency or such other amount as may be prescribed.
- (2) Subsection (1) shall not apply to an exempt transaction.

21. Obligations of banks, financial institutions, cash dealers and members of relevant professions

- (1) Every bank, financial institution, cash dealer or member of a relevant profession shall take such measures as are reasonably necessary to ensure that neither it nor any service offered by it is capable of being used by a person to commit or facilitate the commission of a money laundering offence.
- (2) Without limiting the generality of subsection (1), every bank, financial institution or cash dealer shall—
 - (a) verify, in such manner as may be prescribed, the true identity of all customers and persons with whom they conduct transactions;
 - (b) keep such records, registers and documents as may be required under this Act or any regulations made under this Act;
 - (c) upon a Court order, make available such records, registers and documents as may be required; and
 - (d) forthwith report every suspicious transaction.
- (3) Every member of a relevant profession shall forthwith report every suspicious transaction.
- (4) Nothing in subsection (3) shall be construed as requiring a law practitioner to report any transaction of which he has acquired knowledge in privileged circumstances unless it has been communicated to him with a view to the furtherance of a criminal or a fraudulent purpose.
- (5) Where it appears to the Bank of Mauritius that any bank or cash dealer, subject to its supervision, has failed to comply with any requirement imposed by this Act and any regulations made under this Act on that bank or cash dealer and that such failure is caused by a negligent act or omission or by a serious defect in the implementation of any requirement under the Act or the regulations, the Bank of Mauritius may, in the absence of any reasonable excuse—
 - (a) in the case of a bank, proceed against it under section 7 or 8 of the Banking Act 1988 on the ground that it is carrying on business in a manner which is contrary to the interests of the public;
 - (b) in the case of a person carrying on deposit-taking business, cancel its authorization under section 13A of the Banking Act 1988; or
 - (c) in the case of a cash dealer, inform the Minister to whom responsibility for the subject of finance is assigned that it has reason to believe that the cash dealer is carrying on business under the Foreign Exchange Dealers Act 1995 in a manner which is not conducive to the orderly operation or development of the foreign exchange market in Mauritius.
- (6) Where it appears to the Bank of Mauritius that any financial institution has refrained from complying or negligently failed to comply with any requirement of this Act or any regulations made under this Act, it shall refer the matter to the regulatory body which may take action against the financial institution under any enactment empowering it so to do.
- (7) Where it appears or where it is represented to any disciplinary body that any member of a relevant profession over which it exercises control, has refrained from complying or negligently failed to comply with any requirement of this Act or any regulations made under this Act, the disciplinary body may, under any enactment empowering it so to do, take action against the member for professional misconduct.

22. Lodging of reports of suspicious transactions

- (1) Every report under section 21(2)(d) or (3) shall be lodged—
 - (a) in the case of a bank, financial institution or cash dealer, with the Bank of Mauritius;
 - (b) in the case of a member of a relevant profession, with the Director.
- (2) For the purposes of this section, every report shall include -
 - (a) the identification of a party or parties to the transaction;
 - (b) the amount of the transaction, the description of the nature of the transaction and all the circumstances giving rise to the suspicion;
 - (c) the business relationship of the suspect to the bank, financial institution, cash dealer or member of relevant profession, as the case may be;
 - (d) where the suspect is an insider, any information as to whether the suspect is still affiliated with the bank, financial institution, cash dealer or member of the relevant profession, as the case may be;
 - (e) any voluntary statement as to origin or source of the proceeds;
 - (f) the impact of the suspicious activity on the financial soundness of the reporting institution or person; and
 - (g) the names of all the officers, employees or agents dealing with the transaction.

23. Consideration of reports of suspicious transactions

Notwithstanding sections 39 and 39A of the Banking Act 1988 or any other enactment, where the Bank of Mauritius receives a report under this Part, it shall consider the report and where the report and any information available gives rise to a reasonable suspicion that a person may have committed, is committing or is about to commit an offence which the Director has power to investigate, it shall refer the report to the Director together with any such information as may appear to it to be necessary to assist an investigation into money-laundering or any economic offence.

24. Legal consequences of reporting

- (1) No person directly or indirectly involved in the reporting of a suspicious transaction under this Part shall communicate to any person involved in the transaction or to an unauthorized third party that the transaction has been reported.
- (2) No proceedings shall lie against any person for having reported in good faith under this Part any suspicion he may have had whether or not the suspicion proves to be well founded following investigation or any prosecution or other judicial action.
- (3) No officer of the Bank of Mauritius shall incur liability under any provision of the Bank of Mauritius Act or the Banking Act 1988 for any disclosure made in compliance with this Act.
- (4) No officer who receives reports made under this Part shall incur liability for any breach of confidentiality for any disclosure made in compliance with this Act.
- (5) For the purposes of this section, “officer” includes a director, employee, agent or other legal representative.

PART V - RESTRAINT AND FORFEITURE OF PROCEEDS OF ECONOMIC CRIME**25. Freezing of assets**

- (1) Where a person is charged or is about to be charged in any Court with a money laundering offence or any economic offence, the Supreme Court may, on an application by the Director of Public Prosecutions, make an order, subject to such conditions as to the duration of the order or otherwise as the Court deems fit—
 - (a) attaching in the hands of any person named in the order all moneys and other property due or owing or belonging to or held on behalf of the accused; and
 - (b) prohibiting the accused or any person acting on his behalf or any person named in the order from transferring, pledging or otherwise disposing of any money or other property so attached.
- (2) The Supreme Court may, in respect of an order under subsection (1), specify moneys or salaries, wages, pensions or other benefits that shall be paid to or received by the accused indicating the source, manner and circumstance of payment or receipt.
- (3) In making an order under subsection (1), the Supreme Court may authorize—

- (a) the payment of debts incurred in good faith due to creditors of the accused, before the request for the order was made by the Director of Public Prosecutions;
 - (b) the sale, transfer or disposal of any property by the accused where the Supreme Court is satisfied that such sale, transfer or disposal is necessary in order to safeguard the property rights of any other person claiming an interest in the property.
- (4) The Supreme Court may appoint the Official Receiver of the Supreme Court or any suitable person to manage the assets of the accused under the supervision of the Supreme Court.
- (5) An order under this section shall take effect forthwith and the Director of Public Prosecutions shall -
- (a) cause notice of the order to be published in the next issue of the Gazette and in at least 2 daily newspapers published and circulated in Mauritius; and
 - (b) give notice of the order to—
 - (i) all notaries;
 - (ii) banks, financial institutions and cash dealers; and
 - (iii) any other person who may hold or be vested with property belonging to or held on behalf of the accused.
- (6) An order under this section shall, subject to any condition to the contrary imposed under subsection (1), remain in force—
- (a) until the Director of Public Prosecutions decides not to proceed with a charge or intended charge under subsection (1);
 - (b) until the final determination of the charge under subsection (1); or
 - (c) in the event of a conviction, until an order for forfeiture is made by the Court under section 18(2) or any proceedings relating thereto are concluded.
- (7) Where an order under this section ceases to have effect or is revoked, the Director of Public Prosecutions shall cause notice to be published in the Gazette and in at least 2 daily newspapers published and circulated in Mauritius.
- (8) Any payment, transfer, pledge or other disposition of property made in contravention of an order made under this section shall be void.
- (9) In this section “accused” means a person who is charged or is about to be charged with money laundering or any economic offence.

26. Proceedings consequent on forfeiture

- (1) Where an order for forfeiture of property has been made pursuant to section 18 or as a result of an application made under section 33, the convicted person or any other person claiming an interest in the property may apply by way of motion to the Supreme Court for a declaration that the property subject of the order is not the proceeds of a money laundering offence or of any economic offence nor otherwise involved in such an offence, nor acquired nor obtained directly or indirectly from, by, or through, any such proceeds.
- (2) An application under subsection (1) shall be filed in the Registry of the Supreme Court not later than 3 months after the date of the order for forfeiture, in default of which the order shall become final.
- (3) The Supreme Court, after hearing the application, may—
- (a) if the applicant has satisfied it, on the balance of probabilities, that the property is not the profits or proceeds of a money laundering offence or of any economic offence, grant the application and annul the order of forfeiture or any part of such order; or
 - (b) if not so satisfied, dismiss the application, and confirm the order of forfeiture which shall thereupon become final.
- (4) Where the Supreme Court grants an application under subsection (3) in respect of any property forfeited, such property shall cease to be forfeited and shall revert to the applicant in virtue of the judgment, and the applicant shall thereupon be entitled to the recovery of any income received by the Government from such property during the period of its forfeiture.

27. Payment in lieu of forfeiture

Where the Supreme Court is satisfied that the order for forfeiture under section 18(2) or pursuant to a request made under section 33 cannot be enforced and, in particular the property—

- (a) cannot, with due diligence, be located;
- (b) has been transferred to a third party in circumstances which give rise to a reasonable inference that the property has been transferred for the purpose of avoiding the forfeiture of that property;
- (c) is located outside Mauritius;

- (d) has been substantially diminished in value and rendered worthless; or
 - (e) has been commingled with other property that cannot be divided without difficulty,
- the Supreme Court may, instead of ordering the property or part thereof or interest therein to be forfeited, order the person to pay an amount equal to the value of the property, part or interest.

PART VI - MUTUAL ASSISTANCE IN RELATION TO MONEY LAUNDERING OR ECONOMIC OFFENCES

28. Authentication of documents

For the purposes of this Part, a document is authenticated if—

- (a) it purports to be signed or certified by a Judge, Magistrate or officer in or of the requesting State; and
- (b) it purports to be authenticated by the oath or affirmation of a witness or to be sealed with an official or public seal—
 - (i) of a Minister, Department of State or Department, or officer in or of the Government of the requesting State; or
 - (ii) in the case of a territory, protectorate or colony, of the person administering the Government of the requesting territory, protectorate or colony, or of a person administering a department of that territory, protectorate or colony.

Sub-Part I - Providing assistance to foreign States

29. Co-operation with foreign States

Subject to section 34, where a foreign State makes a request for assistance in the investigation or prosecution of a money laundering offence or any economic offence, the Director shall, with the concurrence of the Director of Public Prosecutions—

- (a) execute the request; or
- (b) inform the foreign State making the request of any reason—
 - (i) for not executing the request forthwith;
 - (ii) for delaying the execution of the request.

30. Power of Director to obtain search order

- (1) Where the Director decides to execute a request for assistance under section 29, the Director may apply to a Judge in Chambers for an order to—
 - (a) enter any premises belonging to, in the possession or control of any person named in the application and search the premises;
 - (b) search any person named in the application; and
 - (c) remove any document or material for the purpose of executing the request.
- (2) The Judge shall not make an order unless he is satisfied that –
 - (a) the documents emanating from the foreign State and accompanying the request in support of the application are duly authenticated;
 - (b) there are reasonable grounds to believe that a money laundering offence or any economic offence has been committed in the requesting State; and
 - (c) that the order sought is necessary for the purpose of the investigation or prosecution, as the case may be.

31. Order for property tracking

- (1) Where the Director decides to execute a request for assistance from a foreign State, the Director may apply to a Judge in Chambers for an order under section 11.
- (2) An application for the issue of an order under this section shall be supported by a copy of the request from the foreign State.

32. Order for freezing of property

- (1) Where the Director decides to execute a request for assistance from a foreign State, the Director may apply to a Judge in Chambers for an order to freeze the property of or in the possession or under the control of the person named in the request for such period as may be specified in the order.
- (2) An application under subsection (1) shall be accompanied by the request from the foreign State and—
 - (a) either an authenticated copy of an order of a Court in the requesting foreign State ordering the freezing of property of a person who has been charged with a relevant offence in the requesting State; or
 - (b) an affidavit of a competent officer in or of the requesting State stating that a person has been charged with a relevant offence in that State.
- (3) For the purposes of this section, a relevant offence is an offence constituted by any act or omission which, had it occurred in or within the jurisdiction of Mauritius, would have constituted an offence of money laundering or any economic offence.
- (4) The Judge in Chambers may, in an order under subsection (1), authorize—
 - (a) the payment of debts incurred in good faith due to creditors of the accused, before the request for the order was made; or
 - (b) the sale, transfer or disposal of any property by the accused where the Judge in Chambers is satisfied that such sale, transfer or disposal is necessary in order to safeguard the property rights of any other person claiming an interest in the property.
- (5) The provisions of section 25(5) relating to the giving of notice of orders for the freezing of assets shall apply mutatis mutandis to orders made under this section.

33. Order for forfeiture of property

- (1) Where the Director decides to execute a request from a foreign State for assistance, the Director may apply to a Judge in Chambers for an order to forfeit the property of, or in the possession, or under the control of, the person named in the request.
- (2) An application under subsection (1) shall be accompanied by—
 - (a) the request from the foreign State;
 - (b) an authenticated copy of an order of a Court in the requesting State ordering the forfeiture of property of a person who has been convicted of a relevant offence in the requesting State; and
 - (c) an affidavit of a competent officer of the requesting State stating that the conviction and the forfeiture order are final and that no further appeal lies in respect of either.
- (3) For the purposes of this section, a relevant offence is an offence constituted by any act or omission which, had it occurred in or within the jurisdiction of Mauritius, would have constituted an offence of money laundering or any economic offence.

34. Limitations on compliance with request

- (1) The Director may refuse to comply with a request where—
 - (a) the action sought by the request contravenes or is likely to contravene any provision of the Constitution;
 - (b) the execution of the request is likely to prejudice the national interest; or
 - (c) the requesting State has not provided an undertaking that it would comply with a similar request made by Mauritius.
- (2) An undertaking of reciprocity is not required in any case where—
 - (a) there is a treaty between Mauritius and the requesting State relating to the provision of assistance in relation to the proceeds of money laundering or economic offences; or
 - (b) the law of the requesting State permits it to grant assistance to Mauritius in similar circumstances.

35. Relationship with Letters of Request Rules

Nothing in this Part shall affect the operation of the Letters of Request Rules 1985.

Sub-Part II - Obtaining assistance from foreign States**36. Requests to foreign States**

- (1) The Director may, with the concurrence of the Director of Public Prosecutions, make a request to any foreign State—
 - (a) which he considers may be able to provide evidence or information relevant to a matter which it

- has power to investigate;
- (b) for the restraint and forfeiture of property located in that State and which is liable to be forfeited by reason of it being the proceeds of a money laundering offence or any economic offence.
- (2) Where the foreign State, to which a request for assistance is made under subsection (1), requires the request to be signed by an appropriate competent authority, the Director shall, for the purposes only of making such a request be considered as the appropriate competent authority.

37. Issuing order against a person resident in a foreign State

The Director may, in respect of any proceedings for money laundering or any economic offence, apply to a Judge in Chambers for an order directed to any person resident in a foreign State to deliver himself or any document or material in his possession or under his control to the jurisdiction of the Supreme Court or, subject to the approval of the foreign State, to the jurisdiction of the Court of the foreign State for the purpose of giving evidence in relation to those proceedings.

38. Evidence pursuant to a request

Evidence taken pursuant to a request in any proceedings in a Court of a foreign State may, if it is authenticated, be prima facie admissible in any proceedings to which such evidence relates.

Sub-Part III - General

39. Requests

- (1) A request under this Part shall be in writing and shall be dated and signed by or on behalf of the person making the request.
- (2) A request may be transmitted by facsimile or by any other electronic device or means.

40. Requirements for request

A request shall -

- (a) confirm either that an investigation or prosecution is being conducted in respect of a suspected money laundering or any economic offence or that a person has been convicted of a money laundering offence or any economic offence;
- (b) state the grounds on which any person is being investigated or prosecuted for money laundering or any economic offence or details of the conviction of the person;
- (c) give sufficient particulars of the identity of the person;
- (d) give particulars sufficient to identify any bank, financial institution, cash dealer or other person believed to have information, documents or material which may be of assistance to the investigation or prosecution;
- (e) request assistance to obtain from a bank, financial institution, cash dealer or other person all and any information, document or material which may be of assistance to the investigation or prosecution;
- (f) specify the manner in which and to whom any information, document or material obtained pursuant to the request is to be produced;
- (g) state whether a freezing order or forfeiture order is required and identify the property to be the subject of such an order; and
- (h) contain such other information as may assist the execution of the request.

41. Request not to be invalidated

A request shall not be invalidated for the purposes of this Act or any legal proceedings by virtue of any failure to comply with any provisions of this Part where the Director is satisfied that there is sufficient compliance to enable him to execute the request.

42. Asset sharing

Where the Minister to whom responsibility for the subject of finance is assigned considers it appropriate, either because an international arrangement so requires or permits or in the public interest, he may order that the whole or any part of any property forfeited under this Part, or the value thereof, be given or remitted to the requesting State.

PART VII - EXTRADITION

43. Money laundering offence for extradition purposes

Any money laundering offence or any economic offence shall be considered to be an extradition crime for which extradition may be granted or obtained under the Extradition Act.

PART VIII - OFFENCES**44. Offences under Part II**

- (1) Any person who directly or indirectly discloses to a person subject to an investigation or to any unauthorized person, that such an investigation is being conducted by the Director, or makes any other disclosure likely to prejudice the investigation shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 2 years.
- (2) Any person who -
 - (a) fails, without reasonable excuse as provided for in section 8(5) or 8(6), to comply with any requirement under section 8;
 - (b) resists, opposes, hinders, obstructs or otherwise prevents the execution of an order under section 9, 10, 12 or 13;
 - (c) fails to produce any document or any information required to be produced by an order under section 11;
 - (d) knowingly gives false information or gives information which he knows to be misleading to the Director; or
 - (e) destroys or conceals or falsifies any material which is relevant to an investigation, 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.

45. Offences under Part IV

Any bank, financial institution, cash dealer or any director or employee thereof or member of a relevant profession who knowingly—

- (a) fails to verify, identify, keep records, registers or documents or lodge a report as required under section 21;
 - (b) destroys or removes any record, register or document which is required under this Act or any regulations made under this Act;
 - (c) warns the owner of the funds of any report required to be made in respect of any transaction or any action taken on such transaction or who deliberately refrains from reporting any suspicious transaction as required under Part IV;
 - (d) facilitates or permits the performance under a false identity of any transaction specified in Part IV; or
 - (e) makes or accepts a payment in contravention of section 20,
- 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.

46. Offences under Part V

- (1) Subject to subsection (2), any person who disposes of, or otherwise deals with, property subject to an attachment order under this Act of which public notice has been given, 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) Where the offence consists of the payment of money or delivery of movable property by the person named in the order to a person subject to an investigation under this Act or the transfer or disposal of, or dealing by, the latter with, any property, the fine imposed under subsection (1) shall be not less than double the money or the value of the property concerned in the commission of the offence.

47. Offences under Part VI

Any person who—

- (a) falsifies, conceals, destroys or otherwise disposes of or causes or permits the falsification, concealment, destruction or disposal of any information, document or material which is or is likely to be relevant in the execution of any order made in accordance with Part VI; or
- (b) knowing or suspecting that an investigation into a money laundering offence or any economic offence has been, is being or is about to be conducted, divulges that fact or other information to another person

whereby the making or execution of a request under Part VI is likely to be prejudiced, 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.

PART IX - MISCELLANEOUS

48. Regulations

- (1) Subject to subsection (2), the Minister may -
 - (a) make such regulations as he thinks fit for the purposes of this Act;
 - (b) by regulations, amend the First Schedule, the Third Schedule and the Fourth Schedule.
- (2) The Minister may, with the concurrence of the Minister to whom responsibility for the subject of finance is assigned—
 - (a) make such regulations as he thinks fit for the purpose of facilitating the operation of section 21; and
 - (b) by regulations, amend the Second Schedule.
- (3) Any person who fails to comply with any regulations made under subsection (1) or (2) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 2 years.
- (4) Any regulations made under this section may provide for the levying of fees and taking of charges.

49. Consequential amendments

- (1) The Banking Act 1988 is amended -
 - (a) in section 39 -
 - (i) in subsection (5), by inserting immediately after the words “a police officer” the words “, the Director “;
 - (ii) by deleting subsection (12) and replacing it by the following subsection -
 - (12) For the purposes of this section -
 - “Director” has the same meaning as in the Economic Crime and Anti-Money Laundering Act 2000;
 - “professional relationship” includes a relationship between a bank and a computer bureau or a printer, being a relationship that has been approved by the central bank.
 - (b) in section 40, by deleting subsection (1) and replacing it by the following subsection—
- (1) Every bank shall, before opening any account, issuing a passbook, entering into a fiduciary relationship, renting a safe deposit box or establishing any other business relationship, verify the true identity and address of its customer in accordance with the Economic Crime and Anti-Money Laundering Act 2000 and any regulations made thereunder.
- (2) The Foreign Exchange Dealers Act 1995 is amended in section 6, in subsection (2)(a)(i)(E), by inserting immediately after the words “this Act”, the words “or the Economic Crime and Anti-Money Laundering Act 2000”.
- (3) The Mauritius Offshore Business Activities Act 1992 is amended in section 18, in subsection (2)(a), by deleting subparagraph (i) and replacing it by the following subparagraph -
 - (i) in contravention of this Act or the Economic Crime and Anti-Money Laundering Act 2000 or any regulations made under those Acts;

50. Commencement

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

Passed by the National Assembly on the thirteenth day of June two thousand.

ANDRÉ POMPON
Clerk of the National Assembly

FIRST SCHEDULE
(section 2)
ECONOMIC OFFENCES

Any offence -

- (a) in respect of which the money or other property at risk, gained or lost exceeds a value of 500,000 rupees or such other sum as may be prescribed; and
- (b) whose investigation requires a specialised financial, information technology, accountancy or legal expertise.

SECOND SCHEDULE

(section 2)

PART I

ENACTMENTS

1. The Insurance Act 1987
2. The International Companies Act 1994
3. The Mauritius Offshore Business Activities Act 1992
4. The Offshore Trusts Act 1992
5. The Securities (Central Depository, Clearing and Settlement) Act 1996
6. The Stock Exchange Act 1988
7. The Unit Trust Act 1989
8. The Immigration Act in so far as it relates to section 5A

PART II

RELEVANT PROFESSIONS

1. Accountants
2. Attorneys-at-Law
3. Barristers
4. Casinos, Bookmakers and Totalisator under the Gaming Act
5. Chartered Secretaries
6. Notaries

THIRD SCHEDULE
(section 5)
OATH

I being Director/officer of the Economic Crime Office do hereby swear/solemnly affirm that I will, to the best of my judgment, act in accordance with the Economic Crime and Anti-Money Laundering Act 2000 and any regulations made thereunder and shall not, on any account and at any time, disclose, otherwise than in the performance of my duties any confidential information obtained by me in virtue of my official capacity.

.....
Signature

Taken before me, the Master and Registrar of the Supreme Court on
.....

***Master and Registrar
Supreme Court***

FOURTH SCHEDULE
(section 6)
DECLARATION OF ASSETS AND LIABILITIES

I, Economic Crime Office
make oath/solemn affirmation as a..... and declare that—

1. I am unmarried/married under the system of..... (matrimonial regime)
2. My assets and those of my spouse and minor children (extent and nature of interests therein) in Mauritius and outside Mauritius are as follows—
 - (a) immovable property—
 - (i) freehold
 - (ii) leasehold
 - (b) motor vehicles
 - (c) interest in any partnership, société, joint venture or succession.....
 - (d) securities including treasury bills, units, etc.....
 - (e) cash in bank
 - (f) cash in hand exceeding 50,000 rupees
 - (g) jewellery and precious metals.....
 - (h) other assets exceeding 50,000 rupees in the aggregate (specify)
.....

3. My liabilities and those of my spouse and minor children are as follows—
.....
.....

.....
Signature

Sworn/solemnly affirmed by the above named before me atthis.....day of
.....

***Master and Registrar
Supreme Court***

E/NL.2003/02

THE PREVENTION OF CORRUPTION ACT 2002

[Extracts]

Act No. 5 of 2002

I assent

27 February 2002

K. A. OFFMAN
President of the Republic

[...]

PART VII – RESTRAINT AND FORFEITURE OF PROCEEDS OF CORRUPTION AND MONEY LAUNDERING

62. Freezing of assets

- (1) Where a person is charged or is about to be charged in any Court with a corruption offence or a money laundering offence, the Supreme Court may, on an application by the Director of Public Prosecutions, order, subject to such conditions as to the duration of the order or otherwise as the Court deems fit -
 - (a) the attachment in the hands of any person named in the order all moneys and other property due or owing or belonging to or held on behalf of the accused; and
 - (b) the prohibition of the accused or any person acting on his behalf or any other person named in the order from transferring, pledging or otherwise disposing of any money or other property so attached.
- (2) The Supreme Court may, in respect of any order under subsection (1), specify moneys or salaries, wages, pensions or other benefits that shall be paid to or received by the accused indicating the source, manner and circumstance of payment or receipt.
- (3) In making an order under subsection (1), the Supreme Court may authorize -
 - (a) the payment of debts incurred in good faith and due to creditors of the accused, before the request for the order was made by the Director of Public Prosecutions;
 - (b) the sale, transfer or disposal of any property by the accused where the Supreme Court is satisfied that such sale, transfer or disposal is necessary in order to safeguard the property rights of any other person claiming an interest in the property.
- (4) The Supreme Court may appoint the Official Receiver or any suitable person to manage the assets of the accused under the supervision of the Supreme Court.
- (5) An order under this section shall take effect forthwith and the Director of Public Prosecutions shall -
 - (a) cause notice of the order to be published in the next issue of the Gazette and in at least 2 daily newspapers published and circulated in Mauritius; and
 - (b) give notice of the order to -
 - (i) all notaries;
 - (ii) banks, financial institutions and cash dealers; and
 - (iii) any other person who may hold or be vested with property belonging to or held on behalf of the accused.
- (6) An order under this section shall, subject to any condition to the contrary imposed under subsection (1), remain in force -
 - (a) until the Director of Public Prosecutions decides not to proceed with a charge or intended charge under subsection (1);
 - (b) until the final determination of the charge under subsection (1); or
 - (c) in the event of a conviction, until an order for forfeiture is made by the Court under section 82 of this Act or section 8(2) of the Financial Intelligence and Anti-Money Laundering Act 2002 or any proceedings relating thereto are concluded.

- (7) Where an order under this section ceases to have effect or is revoked, the Director of Public Prosecutions shall cause notice to be published in the Gazette and in at least 2 daily newspapers published and circulated in Mauritius.
- (8) Any payment, transfer, pledge or other disposition of property made in contravention of an order made under this section shall be void.
- (9) In this section, "accused" means a person who is charged or is about to be charged with a corruption offence or a money laundering offence.

63. Proceedings consequent on forfeiture

- (1) Where an order for forfeiture of property has been made pursuant to section 82 of this Act or section 8(2) of the Financial Intelligence and Anti-Money Laundering Act 2002¹, or as a result of an application made under section 70, the convicted person or any other person claiming an interest in the property may apply by way of motion to the Supreme Court for a declaration that the property subject of the order is not the proceeds of a corruption offence or a money laundering offence nor otherwise involved in such an offence, nor acquired nor obtained directly or indirectly from, by, or through, any such proceeds.
- (2) An application under subsection (1) shall be filed in the Registry of the Supreme Court not later than 3 months after the date of the order for forfeiture, in default of which the order shall become final.
- (3) The Supreme Court, after hearing the application, may -
 - (a) if the applicant has satisfied it, on the balance of probabilities, that the property is not the profits or proceeds of a corruption offence or a money laundering offence, grant the application and annul the order of forfeiture or any part of such order; or
 - (b) if not so satisfied, dismiss the application, and confirm the order of forfeiture which shall thereupon become final.
- (4) Where the Supreme Court grants an application under subsection (3)(a) in respect of any property forfeited, such property shall cease to be forfeited and shall revert to the applicant in virtue of the judgment, and the applicant shall thereupon be entitled to the recovery of any income received by the Government from such property during the period of its forfeiture.

64. Payment in lieu of forfeiture

Where the Supreme Court is satisfied that the order for forfeiture under section 82 of this Act or section 8(2) of the Financial Intelligence and Anti-Money Laundering Act 2002, or pursuant to an application made under section 70, cannot be enforced and, in particular that the property -

- (a) cannot, with due diligence, be located;
 - (b) has been transferred to a third party in circumstances which give rise to a reasonable inference that the property has been transferred for the purpose of avoiding the forfeiture of that property;
 - (c) is located outside Mauritius;
 - (d) has been substantially diminished in value and rendered worthless; or
 - (e) has been commingled with other property that cannot be divided without difficulty,
- the Supreme Court may, instead of ordering the property or part thereof or interest therein to be forfeited, order the person to pay an amount equal to the value of the property, part or interest.

PART VIII – MUTUAL ASSISTANCE IN RELATION TO CORRUPTION OR MONEY LAUNDERING OFFENCES

Sub-Part I – Authentication of documents

65. Authentication of documents

For the purposes of this Part, a document is authenticated if –

- (a) it purports to be signed or certified by a Judge, Magistrate or officer in or of the requesting State; and
- (b) it purports to be authenticated by the oath or affirmation of a witness or to be sealed with an official or public seal –

¹ Note by the Secretariat: E/NL.2003/03

- (i) of a Minister, Department of State or Department or officer in or of the Government of the requesting State; or
- (ii) in the case of a territory, protectorate or colony, of the person administering the Government of the requesting territory, protectorate or colony, or of a person administering a department of that territory, protectorate or colony.

Sub-Part II – Providing assistance to foreign State

66. Co-operation with foreign States

- (1) Subject to section 71, where a foreign State makes a request for assistance in the investigation or prosecution of a corruption offence, the Commissioner shall, after consultation with the Minister responsible for foreign affairs and the Attorney-General –
 - (a) execute the request; or
 - (b) inform the foreign State making the request of any reason –
 - (i) for not executing the request forthwith; or
 - (ii) for delaying the execution of the request.
- (2) Where a request relating to a money laundering offence is referred to the Commission under the Financial Intelligence and Anti-Money Laundering Act 2002, the Commission shall execute the request by making, if necessary, any application that he is empowered to make under sections 67 to 70 as if the application were an application in relation to a money laundering offence.

67. Power of Commissioner to obtain search order

- (1) Where the Commissioner decides to execute a request under section 66, the Commissioner may apply to a Judge in Chambers for an order to –
 - (a) enter any premises belonging to, or in the possession or control of, any person named in the application and search the premises;
 - (b) search any person named in the application; and
 - (c) remove any document or material for the purpose of executing the request.
- (2) The Judge shall not make an order unless he is satisfied that –
 - (a) the documents emanating from the foreign State and accompanying the request in support of the application are duly authenticated;
 - (b) there are reasonable grounds to believe that a corruption offence has been committed in the requesting State; and
 - (c) that the order sought is necessary for the purpose of the investigation or prosecution, as the case may be.

68. Order for property tracking

- (1) Where the Commissioner decides to execute a request for assistance from a foreign State, the Commissioner may apply to a Judge in Chambers for an order under section 54.
- (2) An application for the issue of an order under this section shall be supported by a copy of the request from the foreign State.

69. Order for freezing of property

- (1) Where the Commissioner decides to execute a request for assistance from a foreign State, the Commissioner may apply to a Judge in Chambers for an order to freeze the property of or in the possession or under the control of the person named in the request for such period as may be specified in the order.
- (2) An application under subsection (1) shall be accompanied by the request from the foreign State and –
 - (a) an authenticated copy of an order of a Court in the requesting foreign State ordering the freezing of property of a person who has been charged with a relevant offence in the requesting State; or
 - (b) an affidavit of a competent officer in or of the requesting State stating that a person has been charged with a relevant offence in that State.
- (3) For the purposes of this section, a relevant offence is an offence constituted by any act or omission which, had it occurred in or within the jurisdiction of Mauritius, would have constituted a corruption offence or money laundering offence.
- (4) The Judge in Chambers may, in an order under subsection (1), authorize –
 - (a) the payment of debts incurred in good faith and due to creditors of the accused, before the request

- for the order was made; or
- (b) the sale, transfer of, disposal of, any property by the accused where the Judge in Chambers is satisfied that such sale, transfer or disposal is necessary in order to safeguard the property rights of any other person claiming an interest in the property.

70. Order for forfeiture of property

- (1) Where the Commissioner, after consultation with the Minister responsible for foreign affairs and the Attorney General, decides to execute a request from a foreign State for assistance, the Commissioner may apply to a Judge in Chambers for an order to freeze the property of, or in the possession or under the control of, the person named in the request.
- (2) An application under subsection (1) shall be accompanied by –
- (a) the request from the foreign State;
 - (b) an authenticated copy of an order of a Court in the requesting State ordering the forfeiture of property of a person who has been convicted of a relevant offence in the requesting State; and
 - (c) an affidavit of a competent officer of the requesting State stating that the conviction and the forfeiture order are final and that no further appeal lies in respect of either.
- (3) For the purposes of this section, a relevant offence is an offence constituted by any act or omission which, had it occurred in or within the jurisdiction of Mauritius, would have constituted a corruption offence or a money laundering offence.

71. Limitations on compliance with request

- (1) The Commissioner may refuse to comply with a request made under section 66 where –
- (a) the action sought by the request contravenes, or is likely to contravene, the Constitution;
 - (b) the execution of the request is likely to prejudice the national interest; or
 - (c) the requesting State has not provided an undertaking that it would comply with a similar request made by Mauritius.
- (2) An undertaking of reciprocity is not required in any case where –
- (a) there is a treaty between Mauritius and the requesting State relating to the provision of assistance in relation to the proceeds of money laundering or corruption offences; or
 - (b) the law of the requesting State permits it to grant assistance to Mauritius in similar circumstances.

72. Relationship with Letters of Request Rules

Nothing in this Part shall affect the operation of the Letters of Request Rules 1985.

Sub-Part III – Obtaining assistance from foreign States

73. Request to foreign States

- (1) The Commissioner may, after consultation with the Minister responsible for foreign affairs and the Attorney General, make a request to a foreign State –
- (a) which he considers may be able to provide evidence or information relating to a corruption offence; or
 - (b) for the restraint and forfeiture of property located in that State and which is liable to be forfeited by reason of it being the proceeds of a corruption offence.
- (2) Where the foreign State, to which a request for assistance is made under subsection (1), requires the request to be signed by an appropriate competent authority, the Commissioner shall, for the purposes only of making such a request, be considered as the appropriate competent authority.

74. Issuing order against a person resident in a foreign State

The Commissioner may, in respect of any proceedings for corruption offence or money laundering offence, apply to a Judge in Chambers for an order directed to any person resident in a foreign State to deliver himself or any document or material in his possession or under his control to the jurisdiction of the Supreme Court or, subject to the approval of the foreign State, to the jurisdiction of the Court of the foreign state for the purpose of giving evidence in relation to those proceedings.

75. Evidence pursuant to a request

Evidence taken pursuant to a request in any proceedings in a Court of a foreign State may, if it is authenticated, be prima facie admissible in any proceedings to which such evidence relates.

Sub-Part IV - General

76. Requests

- (1) A request under this Part shall be in writing and shall be dated and signed by or on behalf of the person making the request.
- (2) A request may be transmitted by facsimile or by any other electronic device or means.

77. Requirements for request

A request shall -

- (a) confirm either that an investigation or prosecution is being conducted in respect of a suspected corruption offence or that a person has been convicted of any such offence;
- (b) state the grounds on which any person is being investigated or prosecuted for any corruption offence, or give details of the conviction of the person;
- (c) give sufficient particulars of the identity of the person;
- (d) give particulars sufficient to identify any bank, financial institution, cash dealer or other person believed to have information, documents or material which may be of assistance to the investigation or prosecution;
- (e) request assistance to obtain from a bank, financial institution, cash dealer or other person all and any information, documents or material which may be of assistance to the investigation or prosecution;
- (f) specify the manner in which and to whom any information, document or material obtained pursuant to the request is to be produced;
- (g) state whether a freezing order or forfeiture order is required and identify the property to be the subject of such an order; and
- (h) contain such other information as may assist the execution of the request.

78. Request not to be invalidated

A request shall not be invalidated for the purposes of this Act or any legal proceedings by virtue of any failure to comply with any provisions of this Part, where the Commissioner is satisfied that there is sufficient compliance to enable him to execute the request.

79. Asset sharing

Where the Minister to whom responsibility for the subject of finance is assigned considers it appropriate, either because an international arrangement so requires or permits or in the public interest, he may order that the whole or any part of any property forfeited under this Part, or the value thereof, be given or remitted to the requesting State.

PART IX - EXTRADITION

80. Corruption offence extraditable

Any corruption offence shall be deemed to be an extradition crime for which extradition may be granted or obtained under the Extradition Act.

PART X – MISCELLANEOUS

81. Confidentiality

- (1) Every Member and every officer shall take the oath specified in the Second Schedule.
- (2) No member or officer shall, except in accordance with this Act, or as otherwise authorized by law-
 - (a) divulge any information obtained in the exercise of a power, or in the performance of a duty, under this Act;

- (b) divulge the source of such information or the identity of any informer or the maker, writer or issuer of a report given to the Director of the Corruption Investigation Division.
- (3) Every Member and every officer shall maintain confidentiality and secrecy of any matter, document, report and other information relating to the administration of this Act that becomes known to him, or comes in his possession or under his control.
- (4) Notwithstanding subsections (2) and (3), the Commissioner may disclose, for the purposes of publication in the press, such information as he considers necessary in the public interest.
- (5) For the purpose of an investigation in respect of an offence committed in Mauritius under this Act and the Financial Intelligence and Anti-Money Laundering Act 2002, the Commissioner may, with the express written concurrence of the Director of Public Prosecutions, impart to an agency in Mauritius or abroad, such information, other than the source of the information, as may appear to him to be necessary to assist an investigation into money laundering or any other offence.
- (6) Any person who, without lawful excuse, contravenes this section 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 2 years.

82. Prosecution, conviction and forfeiture

- (1) Subject to subsection (2), no prosecution for an offence under this Act shall be instituted except by, or with the consent of, the Director of Public Prosecutions.
- (2) The Commissioner, the Director of the Corruption Investigation Division, or any other officer designated by the Commission, may swear an information and conduct the prosecution in respect of any offence under this Act.
- (3) Subsection (2) shall be without prejudice to the Chief Legal Adviser, or any officer of the Legal Division designated by him conducting any prosecution as specified in that subsection.
- (4) Where a person is convicted of an offence under this Act, the Court may, in addition to any penalty imposed, order the forfeiture of the property the subject-matter of the offence.

83. Burden of proof

In the course of a trial of an accused for a corruption offence, it shall be presumed that at the time a gratification was received, the recipient knew that such gratification was made for a corrupt purpose.

84. Possession of unexplained wealth

- (1) The Commission may –
 - (a) order any public official or any person suspected of having committed a corruption offence to make a statement under oath of all his assets and liabilities and of those of his relatives and associates;
 - (b) investigate whether any public official or any person suspected of having committed a corruption offence –
 - (i) has a standard of living which is commensurate with his emoluments or other income;
 - (ii) owns, or is in control of, property to an extent which is disproportionate to his emoluments or other income; or
 - (iii) is able to give a satisfactory account as to how he came into ownership, possession, custody or control of any property.
- (2) Where, in proceedings for an offence under this Act, it is established that the accused –
 - (a) was maintaining a standard of living which was not commensurate with his emoluments or other income;
 - (b) was in control of property to an extent which is disproportionate to his emoluments or other income;
 - (c) held property for which he, his relative or associate, is unable to give a satisfactory account as to how he came into its ownership, possession, custody or control,
 that evidence shall be admissible to corroborate other evidence relating to the commission of the offence.

85. Civil proceedings

Where the Commission is satisfied that a person has been a party to corruption and has benefited from it, the Commission shall refer the matter to the Attorney-General who may enter civil proceedings for damages for any prejudice caused to the State.

86. Donations and legacies

Article 910 of the Code Napoleon shall not apply to the Commission.

87. Regulations

- (1) The Prime Minister may make such regulations as he thinks fit for the purposes of this Act.
- (2) Regulations made under this Act may provide for –
 - (a) the levying of fees by the Commission;
 - (b) rules of procedure governing the exercise of its functions by the Commission;
 - (c) rules governing the communication of information to the press;
 - (d) rules governing the interrogation of persons in the course of hearings held by the Commission.

88. Consequential amendments

- (1) The Banking Act is amended in section 39 –
 - (a) in subsection (2), by adding the following new paragraph, the full stop at the end of paragraph (f) being deleted and replaced by a semi-colon –
 - (g) the bank has been directed to produce any information pursuant to a directive issued by the Independent Commission Against Corruption under the Prevention of Corruption Act 2002.
 - (b) in subsection (5), by deleting the words “the Director or”;
 - (c) in subsection (12), by deleting the definition of “Director”.
- (2) The Declarations of Assets Act is amended –
 - (a) by deleting the word “Clerk” wherever it appears and replacing it by the word “Commission”;
 - (b) in section 2 –
 - (i) by deleting the definition of “Clerk”;
 - (ii) by inserting in its appropriate alphabetical place, the following new definition -
“Commission” means the Independent Commission Against Corruption established under the Prevention of Corruption Act 2002.
- (3) The Trusts Act 2001 is amended by repealing sections 53 and 54, and replacing them by the following sections –

53. Constructive trust

- (1) A person holding any fiduciary obligations who –
 - (a) derives a profit from a breach of his fiduciary duties; or
 - (b) obtains property as a result of such a breach,shall be deemed to be a trustee of the profit or property for the person to whom the duties are owed.
- (2) A trustee who –
 - (a) derives a profit from a breach of trust; or
 - (b) obtains property as a result of such a breach,shall be deemed to be a trustee of the profit or property for the beneficiary of the trust.
- (3) Without prejudice to any other remedy provided by law, the person referred to in subsection (1) to whom fiduciary duty is owed, or the beneficiary referred to in subsection (2), may apply to the Court for an order that the profit or property obtained from the breach of fiduciary duties or of trust be traced and recovered to him.
- (4) A person shall not be liable for breach of trust or of fiduciary duty under this section where he established that the profit or property was obtained in good faith.
- (5) This section does not exclude any other circumstances in which a constructive trust may arise.

54. Tracing

Without prejudice to the personal liability of a trustee, or a person in breach of his fiduciary duty, trust property which has been charged or dealt with in breach of trust or fiduciary duty, or the property into which it has been converted, may be followed and recovered unless –

- (a) it is no longer identifiable;
- (b) it is in the hands of a bona fide purchaser for value without notice of the breach of trust, or of any other defect in the title;
- (c) it has been charged in favour of a person who bona fide acquired his rights therein for value and without notice of the breach of trust or any other defect in the title;
- (d) a person, other than the trustee, derived his title through a bona fide purchaser or charge holder for value without notice of the breach of trust or defect.

89. Repeal

The following enactments are repealed -

- (a) the Economic Crime and Anti Money Laundering Act; and
- (b) sections 125 to 133A of the Criminal Code.

90. Savings and transitional provisions

- (1) Notwithstanding section 89, any judicial proceedings to which the Economic Crime Office or its Director, or the Revenue Authority or its Director-General by virtue of the Economic Crime and Anti Money Laundering (Temporary Provisions) Act 2001, was a party shall continue as if the Commission established under this Act, or the Commissioner referred to under section 19, were a party to the proceedings.
- (2) The Commissioner of Police may -
 - (a) commence any investigation, swear any information or conduct any prosecution in respect of an offence committed or alleged to be committed against an enactment repealed by section 89 of this Act as if this Act had not come into operation;
 - (b) continue or do any act, thing or investigation commenced by him and which was pending before the coming into operation of this Act.
- (3) Subject to subsection (4), the Commission shall take over and continue any investigation commenced under the Economic Crime and Anti-Money Laundering Act or commenced or taken over, pursuant to the Economic Crime and Anti-Money Laundering (Temporary Provisions) Act 2001, and any prosecution in respect of any Act, or allegation, so investigated may be instituted under an enactment repealed by section 89 of this Act as if this Act had not come into operation.
- (4) No investigation in respect of a money laundering offence shall be proceeded with under this section, unless the prior approval is obtained.
- (5) The Court shall, in respect of any proceedings instituted following any investigation under subsections (2) and (3), have all the powers that it could exercise pursuant to the enactments repealed by section 89.

91. Commencement

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

Passed by the National Assembly on the fourth day of February two thousand and two.

ANDRÉ POMPON
Clerk of the National Assembly

FIRST SCHEDULE
(section 25)

I,, of make oath/solemn affirmation as a and declare that –

1. I am unmarried/married under the system of(matrimonial regime).
2. My assets are as follows:
 - (a) landed property:
 - (b) residential, commercial or industrial building
 - (c) motor vehicles
 - (d) boats
 - (e) shares
 - (f) bank accounts
 - (g) interest in partnerships, sociétés, companies or trusts
3. My liabilities are:
4. The assets of my spouse, minor children, grand-children are:
 - (a) landed property:
 - (b) residential, commercial or industrial building
 - (c) motor vehicles
 - (d) boats
 - (e) shares
 - (f) bank accounts.....
 - (g) interest in partnerships, sociétés, companies or trusts
5. The liabilities of my spouse, minor children, grand-children are:
.....

.....
Signature

Sworn/solemnly affirmed by the abovenamed before me atthis day
..... of20

Master and Registrar
Supreme Court

SECOND SCHEDULE
(section 81)
Oath of Secrecy

I hereby make oath/solemn affirmation as a and declare that in the discharge of my duties under the Prevention of Corruption Act 2002, I will deal with and regard all documents and information relating to the operations of the Commission and to which I have access as SECRET AND CONFIDENTIAL and refrain from disclosing any such documents and information to any unauthorized person.

Sworn solemnly affirmed by the deponent in Chambers,

This 20.....

Before me,
District Magistrate for

Note: This Act was published in Government Gazette No. 5 of 2002 and came into operation on 1 April 2002 as per Proclamation No. 18 of 2002.

E/NL.2003/03

**THE FINANCIAL INTELLIGENCE AND ANTI-MONEY
LAUNDERING ACT 2002**

Act No. 6 of 2002

I assent

27 February 2002

K. A. OFFMAN
President of the Republic

ARRANGEMENT OF SECTIONS

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An Act

To provide for the establishment and management of a Financial Intelligence Unit and a Review Committee to supervise its activities; to provide for the offences of money laundering; to provide for the reporting of suspicious transactions; to provide for the exchange of information in relation to money laundering; to provide for mutual assistance with overseas bodies in relation to money laundering; and for matters connected therewith and incidental thereto.

ENACTED by the Parliament of Mauritius, as follows -

PART I - PRELIMINARY

1. Short title

This Act may be cited as the Financial Intelligence and Anti-Money Laundering Act 2002.

2. Interpretation

In this Act -

"bank" has the same meaning as in the Banking Act 1988, and includes -

- (a) any person engaged in a deposit-taking business and authorized to do so under that Act; and
- (b) any person carrying on any business or activity regulated by the Bank of Mauritius;

"Bank of Mauritius" means the Bank of Mauritius established under the Bank of Mauritius Act;
"cash" -

- (a) means money in notes or coins of Mauritius or in any other currency; and
- (b) includes any cheque which is neither crossed nor made payable to order whether in Mauritian currency or in any other currency;

"cash dealer" means a person authorized under the Foreign Exchange Dealers Act to carry on the business of foreign exchange dealer or money changer;

"Commission" means the Independent Commission Against Corruption established under the Prevention of Corruption Act 2002;¹

"crime" -

- (a) has the same meaning as in the Criminal Code;
- (b) includes an activity carried on outside Mauritius and which, had it taken place in Mauritius, would have constituted a crime; and
- (c) includes an act or omission which occurred outside Mauritius but which, had it taken place in Mauritius, would have constituted a crime;

"exempt transaction" means a transaction -

- (a) between the Bank of Mauritius and any other person;
- (b) between a bank and another bank;
- (c) between a bank and a financial institution;
- (d) between a bank or a financial institution and a customer where -
 - (i) the customer is, at the time the transaction takes place, an established customer of the bank or financial institution; and
 - (ii) the transaction consists of a deposit into, or withdrawal from, an account maintained by the Customer with the bank or financial institution, where the transaction does not exceed an amount that is commensurate with the lawful business activities of the customer; or
- (e) between such other persons as may be prescribed;

"financial institution" means any institution or other person regulated by the Insurance Act, the Securities (Central Depository, Clearing and Settlement) Act, the Stock Exchange Act, the Unit Trust Act, any management company or registered agent licensed under the Financial Services Development Act 2001 and any trustee managing a unit trust established under the Unit Trust Act;

"Financial Services Commission" means the Commission established under the Financial Services Development Act 2001;

¹ Note by the Secretariat: E/NL.2003/02

"FIU" means the Financial Intelligence Unit established by this Act;

"investigatory authorities" means the Commissioner of Police, the Comptroller of Customs and the Commission;

"member of the relevant profession or occupation" -

- (a) means an accountant, an attorney-at-law, a barrister, a chartered secretary, a notary; and
- (b) includes any person carrying on the business of a casino, a bookmaker or totalisator under the Gaming Act;

"Minister" means the Minister to whom responsibility for the subject of money laundering is assigned;

"money laundering" means an offence under Part II of this Act;

"overseas country" means a country or territory outside Mauritius;

"overseas financial intelligence units" means the financial intelligence units constituted in the overseas countries specified in the First Schedule and whose functions correspond to some or all of those of the FIU;

"property" means property of any kind, nature or description, whether moveable or immovable, tangible or intangible and includes -

- (a) any currency, whether or not the currency is legal tender in Mauritius, and any bill, security, bond, negotiable instrument or any instrument capable of being negotiated which is payable to bearer or endorsed payable to bearer, whether expressed in Mauritius currency or otherwise;
- (b) any balance held in Mauritius currency or in any other currency in accounts with any bank which carries on business in Mauritius or elsewhere;
- (c) any balance held in any currency with any bank outside Mauritius;
- (d) motor vehicles, ships, aircraft, boats, works of art, jewellery, precious metals or any other item of value; and
- (e) any right or interest in property;

"relevant enactments" means this Act, the Banking Act, the Bank of Mauritius Act, the Financial Services Development Act 2001 and the Prevention of Corruption Act 2002;

"Review Committee" means the Review Committee constituted under section 12.

"supervisory authorities" means the Bank of Mauritius and the Financial Services Commission;

"suspicious transaction" means a transaction which -

- (a) gives rise to a reasonable suspicion that it may involve the laundering of money or the proceeds of any crime including any offence concerning the financing of any activities or transactions related to terrorism, as specified in Part III of the Prevention of Terrorism Act 2002;
- (b) is made in circumstances of unusual or unjustified complexity;
- (c) appears to have no economic justification or lawful objective;
- (d) is made by or on behalf of a person whose identity has not been established to the satisfaction of the person with whom the transaction is made; or
- (e) gives rise to suspicion for any other reason.

"transaction" includes -

- (a) opening an account, issuing a passbook, renting a safe deposit box, entering into a fiduciary relationship or establishing any other business relationship, whether electronically or otherwise; and
- (b) a proposed transaction.

PART II - MONEY LAUNDERING OFFENCES

3. Money Laundering

(1) Any person who -

- (a) engages in a transaction that involves property which is, or in whole or in part directly or indirectly represents, the proceeds of any crime; or
- (b) receives, is in possession of, conceals, disguises, transfers, converts, disposes of, removes from or brings into Mauritius any property which is, or in whole or in part directly or indirectly represents, the proceeds of any crime,

where he suspects or has reasonable grounds for suspecting that the property is derived or realized, in whole or in part, directly or indirectly from any crime, shall commit an offence.

- (2) A bank, financial institution, cash dealer or member of a relevant profession or occupation that fails to take such measures as are reasonably necessary to ensure that neither it nor any service offered by it, is capable of being used by a person to commit or to facilitate the commission of a money laundering offence shall commit an offence.

4. Conspiracy to commit the offence of money laundering

Without prejudice to section 109 of the Criminal Code (Supplementary) Act, any person who agrees with one or more other persons to commit an offence specified in section 3(1) and (2) shall commit an offence.

5. Limitation of payment in cash

- (1) Notwithstanding sections 30 and 31 of the Bank of Mauritius Act, but subject to subsection (2), any person who makes or accepts any payment in cash in excess of 350,000 rupees or an equivalent amount in foreign currency, or such amount as may be prescribed, shall commit an offence.
- (2) Subsection (1) shall not apply to an exempt transaction.

6. Procedure

- (1) A person may be convicted of a money laundering offence notwithstanding the absence of a conviction in respect of a crime which generated the proceeds alleged to have been laundered.
- (2) Any person may, upon single information or upon a separate information, be charged with and convicted of both the money laundering offence and of the offence which generated the proceeds alleged to have been laundered.
- (3) In any proceedings against a person for an offence under this Part, it shall be sufficient to aver in the information that the property is, in whole or in part, directly or indirectly the proceeds of a crime, without specifying any particular crime, and the Court, having regard to all the evidence, may reasonably infer that the proceeds were, in whole or in part, directly or indirectly, the proceeds of a crime.

7. Jurisdiction

Notwithstanding any other enactment, the Intermediate Court shall have jurisdiction to try any offence under this Act or any regulations made thereunder and may, on conviction, impose any penalty including forfeiture.

8. Penalty

- (1) Any person who -
 - (a) commits an offence under this Part; or
 - (b) disposes or otherwise deals with property subject to a forfeiture order under subsection (2),shall, on conviction, be liable to a fine not exceeding 2 million rupees and to penal servitude for a term not exceeding 10 years.
- (2) Any property belonging to or in the possession or under the control of any person who is convicted of an offence under this Part shall be deemed, unless the contrary is proved, to be derived from a crime and the Court may, in addition to any penalty imposed, order that the property be forfeited.
- (3) Sections 150, 151 and Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a conviction under this Part.

PART III - THE FINANCIAL INTELLIGENCE UNIT

9. Establishment of the FIU

- (1) There is established for the purposes of this Act a Financial Intelligence Unit which shall have all the powers necessary to administer, and exercise its functions under, this Act.
- (2) The head of the FIU shall be the Director who shall be appointed by the President on the recommendation of the Prime Minister made in consultation with the Leader of the Opposition.
- (3) The Director shall be assisted by such persons as may be appointed by the Director to assist him.

10. Functions of the FIU

- (1) The FIU shall be the central agency in Mauritius responsible for receiving, requesting, analysing and disseminating to the investigatory and supervisory authorities disclosures of financial information -

- (a) concerning suspected proceeds of crime and alleged money laundering offences;
 - (b) required by or under any enactment in order to counter money laundering; or
 - (c) concerning the financing of any activities or transactions related to terrorism, as specified in Part III of the Prevention of Terrorism Act 2002.
- (2) For the purposes of subsection (1), the FIU shall -
- (a) collect, process, analyse and interpret all information disclosed to it and obtained by it under the relevant enactments;
 - (b) inform, advise and co-operate with the investigatory and supervisory authorities;
 - (c) supervise and enforce compliance by banks, financial institutions, cash dealers and members of the relevant professions or occupations, with the provisions of the relevant enactments;
 - (d) issue, to banks, financial institutions, cash dealers and members of the relevant professions or occupations, such guidelines as it considers appropriate to combat money laundering activities;
 - (e) promote the appointment of persons by banks, financial institutions, cash dealers and members of the relevant professions or occupations to specialise in measures to detect and counter money laundering activities; and
 - (f) provide assistance in the investigation or prosecution of money laundering offences to overseas countries.

11. Exercise of functions of the FIU

- (1) The functions of the FIU shall be exercised by the Director or such of the persons appointed under section 9(3) as the Director may determine.
- (2) In furtherance of the functions of the FIU, the Director shall consult with and seek such assistance from such persons in Mauritius concerned with combating money laundering, including law officers, the Police and other Government agencies and persons representing banks, financial institutions, cash dealers and members of the relevant professions or occupations, as the FIU considers desirable.

12. The Review Committee

- (1) There is established for the purposes of this Act a Review Committee which shall consist of -
 - (a) a Chairperson, who shall be a person who has -
 - (i) served as a Judge of the Supreme Court; or
 - (ii) served as a Magistrate, or been a law officer or practised as a barrister, in Mauritius for at least 10 years;
 - (b) 2 other members of high repute, of whom one shall be a person with substantial experience in the legal profession and the other shall be a person with substantial experience in the financial services industry.
- (2) The Chairperson and members of the Review Committee shall be appointed by the President on the recommendation of the Prime Minister made in consultation with the Leader of the Opposition.
- (3) The appointment of the Chairperson and each member of the Review Committee shall be on such terms as may be specified in the instrument of appointment of the Chairperson and each such member.
- (4) The Review Committee may act notwithstanding the absence of one of its members.
- (5) Subject to subsection (4), the Review Committee shall determine its own procedure.

13. Dissemination of information to investigatory or supervisory authorities

Where the FIU considers that information on any matter should be disseminated to the investigatory or supervisory authorities, it shall refer the information to the Review Committee which shall consider the information and either -

- (a) consent to the FIU referring the information to such of the investigatory or supervisory authorities as may be specified by the Review Committee with a view to the determination of any criminal liability and the prosecution of or the action against, the persons accordingly; or
- (b) refer the information back to the FIU with a view to determining whether further supporting information can be found which would justify a subsequent reference to one of the investigatory or supervisory authorities.

**PART IV - REPORTING AND OTHER MEASURES
TO COMBAT MONEY LAUNDERING**

14. Reporting obligations of banks, financial institutions, cash dealers and members of relevant professions or occupations

- (1) Every bank, financial institution, cash dealer or member of a relevant profession or occupation shall forthwith make a report to the FIU of any transaction which the bank, financial institution, cash dealer or member of the relevant profession or occupation has reason to believe may be a suspicious transaction.
- (2) Nothing in subsection (1) shall be construed as requiring a law practitioner to report any transaction of which he has acquired knowledge in privileged circumstances unless it has been communicated to him with a view to the furtherance of a criminal or fraudulent purpose.

15. Lodging of reports of suspicious transactions

- (1) Every report under section 14 shall be lodged with the FIU.
- (2) For the purposes of this Part, every report shall be in such form as the FIU may approve and shall include -
 - (a) the identification of the party or parties to the transaction;
 - (b) the amount of the transaction, the description of the nature of the transaction and all the circumstances giving rise to the suspicion;
 - (c) the business relationship of the suspect to the bank, financial institution, cash dealer or member of relevant profession or occupation, as the case may be;
 - (d) where the suspect is an insider, any information as to whether the suspect is still affiliated with the bank, financial institution, cash dealer, or member of the relevant profession or occupation, as the case may be;
 - (e) any voluntary statement as to the origin, source or destination of the proceeds;
 - (f) the impact of the suspicious activity on the financial soundness of the reporting institution or person; and
 - (g) the names of all the officers, employees or agents dealing with the transaction.

16. Legal consequences of reporting

- (1) No person directly or indirectly involved in the reporting of a suspicious transaction under this Part shall communicate to any person involved in the transaction or to an unauthorized third party that the transaction has been reported.
- (2) No proceedings shall lie against any person for having reported in good faith under this Part any suspicion he may have had whether or not the suspicion proves to be well founded following investigation or any prosecution or other judicial action.
- (3) No officer who receives a report made under this Part shall incur liability for any breach of confidentiality for any disclosure made in compliance with the Act.
- (4) For the purposes of this section, "officer" includes a director, employee, agent or other legal representative.

17. Other measures to combat money laundering

Without prejudice to section 3(2), every bank, financial institution, cash dealer or member of the relevant profession or occupation shall -

- (a) verify, in such manner as may be prescribed, the true identity of all customers and other persons with whom they conduct transactions;
- (b) keep such records, registers and documents as may be required under this Act or by regulations; and
- (c) upon a Court order, make available such records, registers and documents as may be required by the order.

18. Regulatory action in the event of non-compliance

- (1) Where it appears to the Bank of Mauritius that any bank or cash dealer subject to its supervision has failed to comply with any requirement imposed by this Act or any regulations applicable to that bank or cash dealer and that the failure is caused by a negligent act or omission or by a serious defect in the implementation of any such requirement, the Bank of Mauritius, in the absence of any reasonable excuse, may -
 - (a) in the case of a bank, proceed against it under sections 7 and 8 of the Banking Act on the ground that it is carrying on business in a manner which is contrary to the interest of the public;
 - (b) in the case of a person carrying on a deposit-taking business, cancel that person's authorisation under section 13A of the Banking Act; and
 - (c) in the case of a cash dealer, inform the Minister to whom responsibility for the subject of finance is assigned that it has reason to believe that the cash dealer is carrying on business under the Foreign Exchange Dealers Act in a manner which is not conducive to the orderly operation or development of the foreign exchange market in Mauritius.
- (2) Where it appears or where it is represented to the Financial Services Commission that any financial institution has refrained from complying or negligently failed to comply with any requirement of this Act or regulations, the Financial Services Commission may proceed against the financial institution under section 7 of the Financial Services Development Act 2001 on the ground that it is carrying on its business in a manner which is contrary or detrimental to the interest of the public.
- (3) Where it appears or is represented to any disciplinary body that any member of a relevant profession or occupation over which it exercises control has refrained from complying or negligently failed to comply with any requirement of this Act or regulations, the disciplinary body may take, against the member concerned, any action which it is empowered to take in the case of professional misconduct by that member.

19. Offences relating to obligation to report and keep records and to disclosure of information prejudicial to a request

- (1) Any bank, financial institution, cash dealer or any director or employee thereof or member of a relevant profession or occupation who, knowingly or without reasonable excuse -
 - (a) fails to make a report, verify, identify or keep records, registers or documents, as required under section 17;
 - (b) destroys or removes any record, register or document which is required under this Act or any regulations;
 - (c) warns the owner of any funds of any report required to be made in respect of any transaction, or of any action taken or required to be taken in respect of any transaction, related to such funds; or
 - (d) facilitates or permits the performance under a false identity of any transaction falling within this Part,
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 -
 - (a) falsifies, conceals, destroys or otherwise disposes of or causes or permits the falsification, concealment, destruction or disposal of any information, document or material which is or is likely to be relevant to a request to which section 23 applies; or
 - (b) knowing or suspecting that an investigation into a money laundering offence has been or is about to be conducted, divulges that fact or other information to another person whereby the making or execution of a request to which section 23 applies is likely to be prejudiced,
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.

**PART V - PROVISION AND EXCHANGE OF INFORMATION IN RELATION
TO MONEY LAUNDERING AND FINANCIAL INTELLIGENCE INFORMATION**

20. Membership of international financial intelligence groups and provision of information to overseas financial intelligence units

- (1) The FIU shall be the only body in Mauritius which may seek recognition by any international group of overseas financial intelligence units which exchange financial intelligence information on the basis of reciprocity and mutual agreement.
- (2) Where it becomes a member of any such international group as is referred to in subsection (1), the FIU may exchange information with other members of the group in accordance with the conditions for such exchanges established by the group.
- (3) Without prejudice to subsections (1) and (2), where the FIU becomes aware of any information which may be relevant to the functions of any overseas financial intelligence unit, it may, with the consent of the Review Committee, offer to pass on that information to the overseas financial intelligence unit on terms of confidentiality requiring the consent of the FIU prior to the information being passed on to any other person.

21. Provision of information to investigatory or supervisory authorities

- (1) Where it becomes aware of any information, which -
 - (a) may be relevant to the functions of any of the supervisory authorities; and
 - (b) does not of itself justify a dissemination to any of the investigatory authorities under section 13, the FIU may, subject to subsection (4) and with the consent of the Review Committee, pass on the information to the relevant supervisory authority.
- (2) Where it becomes aware of any information which may be relevant to an investigation or prosecution being conducted by one of the investigatory authorities, the FIU shall, subject to subsection (4) and with the consent of the Review Committee, pass on the information to that investigatory authority.
- (3) Where it becomes aware of any information which may be relevant to a possible corruption offence, within the meaning of the Prevention of Corruption Act 2002, the FIU shall, subject to subsection (4), and with the consent of the Review Committee, pass on the information to the Commission.
- (4) If any information falling within subsections (1), (2) or (3) was provided to the FIU by a body outside Mauritius on terms of confidentiality, the information shall not be passed on as specified in those subsections without the consent of the body by which it was provided.

22. Reference of information by the supervisory authorities

- (1) If, at any time in the course of the exercise of its functions, any supervisory authority receives, or otherwise becomes aware of, any information suggesting the possibility of a money laundering offence or suspicious transaction, the supervisory authority, shall subject to subsection (2), forthwith pass on that information to the FIU.
- (2) If any such information as is referred to in subsection (1) was received by the supervisory authority on terms of confidentiality requiring the consent of the person from whom it was received before being passed on to another person, the information shall not be passed on to the FIU without the consent of the person from whom it was received, irrespective of whether that person is a bank, regulatory authority or any other person.
- (3) No liability shall be incurred under any enactment, whether for breach of confidentiality or otherwise, in respect of the disclosure of any information to the FIU pursuant to this section by the supervisory authority or any of its officers or members of its Board.
- (4) For the purposes of this subsection, "officer" includes a director, employee, agent or other legal representative.

**PART VI - MUTUAL ASSISTANCE AND EXTRADITION
IN RELATION TO CASES OF MONEY LAUNDERING**

23. Providing assistance to overseas countries

- (1) Where a request is received from an appropriate body in an overseas country seeking assistance in the investigation or prosecution of a money laundering offence the FIU, with the consent of the Review Committee, shall either -
 - (a) execute the request by referring it together with any accompanying documents to the Commission or any other investigatory authority;
 - (b) inform the body making a request -
 - (i) of any reason for not so referring the request forthwith;
 - (ii) of any reason for delaying the reference of the request; or
 - (iii) that it is refusing the request for one of the reasons specified in subsection (2).
- (2) Subject to subsection (3), the FIU, with the concurrence of the Review Committee, may refuse any request received under subsection (1) where -
 - (a) the action sought by the request contravenes or is likely to contravene any provision of the Constitution;
 - (b) the execution of the request is likely to prejudice the national interest; or
 - (c) the FIU, with the concurrence of the Review Committee, is not satisfied that a similar request made by Mauritius to an appropriate body in the overseas country concerned would be complied with.
- (3) Subsection (2)(c) shall not apply in any case where -
 - (a) there is a treaty between Mauritius and the overseas country concerned relating to the provision of assistance in relation to money laundering; or
 - (b) the law applicable in that overseas country permits the granting of assistance to Mauritius in similar circumstances.
- (4) In this section, "appropriate body", in relation to an overseas country, means an overseas financial intelligence unit or other body having legal competence and authority to make, in respect of that country, requests of the kind referred to in subsection (1).

24. Obtaining assistance from overseas countries

- (1) With the concurrence of the Review Committee, the FIU may seek assistance from an overseas financial intelligence unit or other body in an overseas country where the FIU considers that the unit or body may be able to provide evidence or information relevant to a possible money laundering offence or a suspicious transaction.
- (2) With the concurrence of the Review Committee, the FIU may direct a request to the authorities in an overseas country for the restraint and forfeiture of property which is located in that country and liable to be forfeited by reason of being the proceeds of a money laundering offence.
- (3) A request under subsection (1) or subsection (2) may be made on the initiative of the FIU or at the request of one of the investigatory authorities.
- (4) Where a body in an overseas country to which a request under this section is addressed requires the request to be signed or otherwise authenticated by an appropriate competent authority in Mauritius, the Director of the FIU shall be the appropriate competent authority for that purpose.

25. Requests

- (1) Subject to subsection (2), a request under section 23 shall be in writing and shall be dated and signed by or on behalf of the person making the request.
- (2) A request under section 23 may be transmitted by facsimile or by any other electronic means and, where it is so transmitted, the FIU may require it to be authenticated in such manner as the FIU considers appropriate.
- (3) For the purposes of section 23, a request shall -
 - (a) confirm either that an investigation or prosecution is being conducted in respect of a suspected money laundering offence or that a person has been convicted of a money laundering offence.
 - (b) state the grounds on which any person is being investigated or prosecuted for money laundering or details of the conviction of the person;
 - (c) give sufficient particulars of the identity of the person;
 - (d) give particulars sufficient to identify any bank, financial institution, cash dealer or other person

- believed to have information, documents or material which may be of assistance to the investigation or prosecution;
- (e) request assistance to obtain from a bank, financial institution, cash dealer or other person all and any information, document or material which may be of assistance to the investigation or prosecution;
 - (f) specify the manner in which and to whom any information, document or material obtained pursuant to the request is to be produced;
 - (g) state whether a freezing order or forfeiture order is required and identify the property to be the subject of such an order; and
 - (h) contain such other information as may assist the execution of the request.

26. Request not to be invalidated

A request shall not be invalidated for the purposes of this Act or any legal proceedings by virtue of any failure to comply with this Part where the Director is satisfied that there is sufficient compliance to enable him to execute the request.

27. Evidence pursuant to a request

Evidence taken, pursuant to a request, in any proceedings in a Court of a foreign State may, if it is authenticated, be prima facie admissible in any proceedings to which such evidence relates.

28. Relationship with Letters of Request Rules

Nothing in this Part shall affect the operation of the Letters of Request Rules 1985.

29. Money laundering offence to be extraditable

Any money laundering offence shall be deemed to be an extradition crime for which extradition may be granted or obtained under the Extradition Act.

PART VI - MISCELLANEOUS

30. Confidentiality

- (1) The Director, every officer of the FIU, and the Chairperson and members of the Review Committee shall -
 - (a) before they begin to perform any duties under this Act, take an oath of confidentiality in the form set out in the Second Schedule; and
 - (b) maintain during and after their relationship with the FIU the confidentiality of any matter relating to the relevant enactments.
- (2) No information from which an individual or body can be identified and which is acquired by the FIU in the course of carrying out its functions shall be disclosed except with the prior approval of the Review Committee and where the disclosure appears to the FIU to be necessary -
 - (a) to enable the FIU to carry out its functions;
 - (b) in the interests of the prevention or detection of crime;
 - (c) in connection with the discharge of any international obligation to which Mauritius is subject; or
 - (d) pursuant to an order of a Judge.
- (3) Any person who contravenes this section shall commit an offence and, on conviction, shall be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 3 years.

31. Declaration of assets

- (1) Subject to subsection (2), the Director and every officer of the FIU shall file with the Commission a declaration of his assets and liabilities in the form specified in the Third Schedule -
 - (a) not later than 30 days after his appointment; and
 - (b) on the termination of his appointment.
- (2) Where, subsequent to a declaration made under subsection (1), the state of assets and liabilities is so altered as to be reduced or increased in value by a minimum of 200,000 rupees, the Director or officer shall make a fresh declaration.
- (3) No declaration of assets filed under subsection (1) or subsection (2) shall be disclosed to any person except with the consent of the Director or officer concerned or, on reasonable grounds being shown,

by order of a Judge.

32. Immunity

No action shall lie against the FIU, the Director, any officer of the FIU, or the Chairperson and members of the Review Committee, as the case may be, in respect of any act done or omission made by the FIU, the Director, any officer of the FIU, or the Chairperson or members of the Review Committee, as the case may be, in good faith, in the exercise of the functions conferred on the FIU under this Act or any other enactment.

33. Funding

- (1) The expenses of the FIU shall be met out of -
 - (a) money appropriated annually by Parliament for the purposes of the FIU; and
 - (b) any government grants made to it.
- (2)
 - (a) with the consent of the Minister, the FIU may accept donations.
 - (b) Article 910 of the Code Civil Mauricien shall not apply to a donation to the FIU.

34. Annual Report

The FIU shall make an annual report on its activities to the Minister, containing such statistical and other information as the Minister may require.

35. Regulations

- (1) The Minister may make such regulations as he thinks fit for the purposes of this Act.
- (2) Any regulations made under subsection (1) may make provisions, not inconsistent with this Act or any other Act of Parliament in order to enable Mauritius to comply with any international obligation relating to the prevention or detection of money laundering.
- (3) Regulations, other than those referred to in subsection (2), may provide that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and imprisonment for a term not exceeding 2 years.

36. Consequential amendments

- (1) The Banking Act is amended -
 - (a) in section 39A(3) -
 - (i) by inserting immediately after the words "arms trafficking", the words ",offences related to terrorism under the Prevention of Terrorism Act 2002";
 - (ii) by adding after the words "money laundering", the words "under the Financial Intelligence and Anti-Money Laundering Act 2002";
 - (b) in section 40(1), by deleting the words "Economic Crime and Anti-Money Laundering Act 2000"² and replacing them by the words "Financial Intelligence and Anti-Money Laundering Act 2002".
- (2) The Financial Services Development Act 2001 is amended in section 33(6), by deleting the words "or money laundering under the Economic Crime and Anti-Money Laundering Act 2000" and replacing them by the words ", terrorism under Prevention of Terrorism Act 2002 or money laundering under the Financial Intelligence and Anti-Money Laundering Act 2002".
- (3) The Foreign Exchange Dealers Act is amended in section 6(2)(a)(i)(E), by deleting the words "or the Economic Crime and Anti-Money Laundering Act 2000" and replacing them by the words "or the Financial Intelligence and Anti-Money Laundering Act 2002".

37. Commencement

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

Passed by the National Assembly on the fourth day of February two thousand and two.

ANDRÉ POMPON
Clerk of the National Assembly

² Note by the Secretariat: E/NL.2003/01

FIRST SCHEDULE*(section 2)***OVERSEAS FINANCIAL INTELLIGENCE UNITS**

- | | | | |
|-----|------------------------|-----|----------------------|
| 1. | Aruba | 30. | Isle of Man |
| 2. | Australia | 31. | Italy |
| 3. | Austria | 32. | Japan |
| 4. | Bahamas | 33. | Jersey |
| 5. | Belgium | 34. | Latvia |
| 6. | Bermuda | 35. | Liechtenstein |
| 7. | Bolivia | 36. | Lithuania |
| 8. | Brazil | 37. | Luxembourg |
| 9. | British Virgin Islands | 38. | Mexico |
| 10. | Bulgaria | 39. | Monaco |
| 11. | Cayman Islands | 40. | Netherlands |
| 12. | Chile | 41. | Netherlands Antilles |
| 13. | Colombia | 42. | New Zealand |
| 14. | Costa Rica | 43. | Norway |
| 15. | Croatia | 44. | Panama |
| 16. | Cyprus | 45. | Paraguay |
| 17. | Czech Republic | 46. | Portugal |
| 18. | Denmark | 47. | Romania |
| 19. | Dominican Republic | 48. | Slovakia |
| 20. | El Salvador | 49. | Slovenia |
| 21. | Estonia | 50. | Spain |
| 22. | Finland | 51. | Sweden |
| 23. | France | 52. | Switzerland |
| 24. | Greece | 53. | Taiwan |
| 25. | Guernsey | 54. | Thailand |
| 26. | Hong Kong, China | 55. | Turkey |
| 27. | Hungary | 56. | United Kingdom |
| 28. | Iceland | 57. | United States |
| 29. | Ireland | 58. | Venezuela |

SECOND SCHEDULE
(section 30)

Oath of confidentiality

IN THE SUPREME COURT OF MAURITIUS

I, being appointed
..... do hereby swear/solemnly affirm that I will, to the best of my judgment,
act in furtherance of the objects of the Financial Intelligence Unit and shall not, on any account and at any time,
disclose, otherwise than with the authorisation of the Financial Intelligence Unit or where it is strictly necessary
for the performance of my duties, any confidential information obtained by me during or after my relationship
with the Financial Intelligence Unit.

Taken before me,
The Master and Registrar of the Supreme Court on (date)

THIRD SCHEDULE

(section 31)

DECLARATION OF ASSETS AND LIABILITIES

I,of the Financial Intelligence Unit
Make oath/solemn affirmation as a and declare that -

1. I am unmarried/married under the system of (matrimonial regime)
2. My assets and those of my spouse and minor children (extent and nature of interests therein) in Mauritius and outside Mauritius are as follows -
 - a. immoveable property -
 - (i) freehold
 - (ii) leasehold
 - b. motor vehicles
 - c. interest in any partnership, société, joint venture or succession
 - d. securities including treasury bills, units, etc.
 - e. cash in bank.....
 - f. cash in hand exceeding 50,000 rupees
 - g. jewellery and precious metals.....
 - h. other assets exceeding 50,000 rupees in the aggregate (specify)
.....
3. My liabilities and those of my spouse and minor children are as follows -
.....

.....
Signature

Sworn/solemnly affirmed by the abovenamed before me at this day of
.....

***Master and Registrar
Supreme Court***

Note: This Act was published in Government Gazette No. 6 of 2002 and came into operation on 10 June 2002 as per Proclamation No. 31 of 2002.