

**THE ASSET RECOVERY (AMENDMENT)
BILL (No. XXXI of 2015)**

Explanatory Memorandum

The main object of this Bill is to amend the Asset Recovery Act to provide that the Enforcement Authority shall, instead of the Director of Public Prosecutions, be the Financial Intelligence Unit which shall take over the functions and powers conferred on the Director of Public Prosecutions by virtue of the Asset Recovery Act.

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23 October 2015

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ARRANGEMENT OF CLAUSES

Clause

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 2. Interpretation
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A BILL

To amend the Asset Recovery Act

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Asset Recovery (Amendment) Act 2015.

2. Interpretation

In this Act –

“principal Act” means the Asset Recovery Act.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended –

(a) by deleting the definition of “Investigative Agency”;

(b) by inserting, in the appropriate alphabetical order, the following new definitions –

“Asset Recovery Investigation Division” or “ARID” means the Asset Recovery Investigation Division set up under section 5;

“Director” means the Director of the FIU;

“FIU” means the Financial Intelligence Unit established under the Financial Intelligence and Anti-Money Laundering Act;

4. Section 4 of principal Act amended

Section 4 of the principal Act is amended –

(a) in subsection (2), by deleting the words “Director of Public Prosecutions or any law officer to whom he shall have delegated his powers under this Act in writing” and replacing them by the words “FIU”;

(b) in subsection (3), by deleting the words “of Public Prosecutions”.

5. Section 5 of principal Act amended

Section 5 of the principal Act is amended –

- (a) in the heading, by deleting the words “**Investigative Agency**” and replacing them by the words “**Asset Recovery Investigation Division**”;
- (b) by repealing subsection (1) and replacing it by the following subsection –

(1) There is set up, within the FIU, an Asset Recovery Investigation Division which shall, with the approval of the Director, consist of such law enforcement agents as the Secretary to the Cabinet or, as the case may be, the controlling body of a statutory corporation, may designate, one of whom shall be designated by the Director to be the Chief Investigating Officer.

- (c) in subsection (2), by deleting the words “Investigative Agency” and replacing them by the word “ARID”;
- (d) by inserting, after subsection (2), the following new subsection –

(2A) In furtherance of the functions of the FIU under this Act, 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 such persons representing banks, financial institutions, cash dealers and members of the relevant professions or occupations, as the FIU considers desirable.

6. Section 7 of principal Act amended

Section 7 of the principal Act is amended, in subsection (2) by deleting the words “Enforcement Authority” and replacing them by the words “Director”.

7. Section 43 of principal Act amended

Section 43 of the principal Act is amended, in subsection (1), by deleting the words “Investigative Agency” and replacing them by the word “ARID”.

8. Section 59 of principal Act amended

Section 59 of the principal Act is amended, in subsection (4), by deleting the words “, the Financial Intelligence Unit”.

9. Section 66 of principal Act amended

Section 66 of the principal Act is repealed.

10. Consequential amendments

(1) The Financial Intelligence and Anti-Money Laundering Act is amended –

(a) in section (2) –

- (i) in the definition of “investigatory authorities”, by deleting the words “Enforcement Authority” and replacing them by the word “ARID”;
- (ii) by inserting, in the appropriate alphabetical order, the following new definitions –

“ARID” means the Asset Recovery Investigative Division set up under section 5 of the Asset Recovery Act;

“officer” includes a director, an employee, an agent, a legal representative and, in relation to the powers of the ARID under the Asset Recovery Act, includes the Chief Investigating Officer;

(b) in section 10(2) –

- (i) in paragraph (b), by deleting the words “the Enforcement Authority and”;
- (ii) by adding the following new paragraph, the full stop at the end of paragraph (g) being deleted and replaced by a semicolon –

(h) perform such other functions as are conferred on it under the Asset Recovery Act.

(2) The Finance and Audit (Recovered Assets Fund) Regulations 2014 are amended, in regulation 3(1)(a), by deleting the words “Public Prosecutions” and replacing them by the words “the Financial Intelligence Unit”.

11. Transitional provisions

(1) In this section –

“former organisation” means the Enforcement Authority which was, before the commencement of this Act, the Director of Public Prosecutions or any law officer to whom he delegated his powers in writing;

“Minister” has the same meaning as in the Financial Intelligence and Anti-Money Laundering Act.

(2) (a) Subject to paragraph (b), the Chief Investigating Officer and every law enforcement agent forming part of the Investigative Agency before the commencement of this Act shall, at the commencement of this Act, be transferred to ARID on terms and conditions which are not less favourable than those applicable to him in the Investigative Agency.

(b) The Chief Investigating Officer and every law enforcement agent forming part of the Investigative Agency before the commencement of this Act may, within 30 days of the commencement of this Act, instead of a transfer under paragraph (a), be offered the option of resuming his previous employment.

(3) The assets and funds of the former organisation, obtained under the principal Act, shall, at the commencement of this Act, vest in the FIU.

(4) All rights, obligations and liabilities subsisting in favour of or against the former organisation under the principal Act shall, at the commencement of this Act, continue to exist under the same terms and conditions in favour of or against the FIU.

(5) Any act, thing or investigation commenced or done by the former organisation under the principal Act shall, at the commencement of this Act, be taken to have been done by the FIU.

(6) All proceedings, judicial or otherwise, commenced under the principal Act before and pending by or against the former organisation shall, at the commencement of this Act, be taken to have been commenced, and may be continued, by or against the FIU.

(7) Any matter which is pending before the Dangerous Drugs Commissioner under the Dangerous Drugs Act shall, at the commencement of this Act, be dealt with by the Enforcement Authority.

(8) Where this Act does not make provision for any transition, the Minister may make such regulations as may be necessary for such transition.

12. 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 of this Act.
