

THE ANTI-MONEY LAUNDERING (MISCELLANEOUS PROVISIONS) BILL
(No. of 2003)

Explanatory Memorandum

The main object of this Bill is to amend the Banking Act, the Financial Intelligence and Anti-Money Laundering Act 2002 and the Financial Services Development Act 2001 to provide for -

- (a) the setting up of a National Committee for Anti-Money Laundering and Combating the Financing of Terrorism;
- (b) the replacement of the Review Committee of the Financial Intelligence Unit by a Board;
- (c) the Financial Intelligence Unit to issue guidelines to banks, financial institutions, cash dealers and members of the relevant professions or occupations on the manner in which suspicious transaction reports should be made to the Financial Intelligence Unit;
- (d) the Bank of Mauritius and the Financial Services Commission to issue codes and guidelines on anti-money laundering and the combating of the financing of terrorism and to enforce compliance with those codes and guidelines;
- (e) a derogation from the duty of confidentiality of -
 - (i) banks, to allow them to report suspicious transactions and supply information relating to a reported suspicious transaction to the FIU;
 - (ii) the Bank of Mauritius and the Financial Services Commission, to allow them to refer information suggesting a possible money laundering offence or a suspicious transaction to the FIU;
- (f) the Director of the FIU to be given the power to request further information in relation to a reported suspicious transaction.

K C KHUSHIRAM
Ministry of Economic Development,
Financial Services and Corporate Affairs

..... 2003

THE ANTI-MONEY LAUNDERING (MISCELLANEOUS PROVISIONS) BILL
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ARRANGEMENT OF CLAUSES

Clause

1. Short title
2. Banking Act amended
3. Financial Intelligence and Anti-Money Laundering Act 2002 amended
4. Financial Services Development Act 2001 amended

A BILL

**To amend the Banking Act, the Financial Intelligence and Anti-Money
Laundering Act and the Financial Services Development Act 2001**

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Anti-Money Laundering (Miscellaneous Provisions) Act 2003.

2. Banking Act amended

The Banking Act is amended –

(a) in section 39 -

(i) in subsection (2), by adding immediately after paragraph (g), the following new paragraph, the full stop at the end of paragraph (g) being deleted and replaced by a semi-colon accordingly –

(h) the bank has to –

(i) report a suspicious transaction to the FIU under; or

(ii) supply information to the FIU pursuant to a request made under section 13(2) of,

the Financial Intelligence and Anti-Money Laundering Act 2002.

- (ii) by deleting subsection (11) and replacing it by the following subsection -
 - (11) Nothing in this section shall preclude the disclosure of information by the central bank -
 - (a) under conditions of confidentiality to a central bank in a foreign country for the purpose of assisting it in exercising functions corresponding to those of the central bank under this Act; or
 - (b) pursuant to section 22 of the Financial Intelligence and Anti-Money Laundering Act 2002 to the FIU.
- (iii) in subsection (12), by inserting the following new definition in its appropriate alphabetical place -

"FIU" means the Financial Intelligence Unit established under the Financial Intelligence and Anti-Money Laundering Act 2002;
- (b) in section 39A -
 - (i) in subsection (3), by deleting the words "proof beyond reasonable doubt" and replacing them by the words "being satisfied";
 - (ii) in subsection (4), by adding immediately after paragraph (b), the following new paragraph, the full stop at the end of paragraph (b) being deleted and replaced by a semi-colon accordingly -
 - (c) the duty of the central bank to pass on information to the FIU established under the Financial Intelligence and Anti-Money Laundering Act 2002, pursuant to section 22 of that Act.

3. **Financial Intelligence and Anti-Money Laundering Act 2002 amended**

The Financial Intelligence and Anti-Money Laundering Act 2002 is amended –

- (a) in section 2 –
 - (i) in the definition of "suspicious transaction", by deleting paragraph (a) and replacing it by the following new paragraph -
 - (a) gives rise to a reasonable suspicion that it may involve -
 - (i) the laundering of money or the proceeds of any crime; or

- (ii) funds linked or related to, or to be used for, terrorism or acts of terrorism or by proscribed organisations, whether or not the funds represent the proceeds of a crime;
- (ii) by deleting the definition of "Review Committee";
- (iii) by inserting in their appropriate alphabetical places, the following new definitions –
 - "Board" means the Board of the Financial Intelligence Unit constituted under section 12;
 - "comparable body" means an overseas Government agency with functions similar to those of the FIU;
 - "Director" means the Director of the FIU appointed under section 9;
 - "National Committee" means the National Committee for Anti-Money Laundering and Combating the Financing of Terrorism established under section 19A;
- (b) in section 10 –
 - (i) in subsection (1)(c), by deleting the words ", as specified in Part III of the Prevention of Terrorism Act 2002";
 - (ii) in subsection (2) -
 - (A) in paragraph (b), by inserting immediately after the words "co-operate with", the words "the Commissioner appointed under section 45(8) of the Dangerous Drugs Act and";
 - (B) by deleting paragraphs (c), (d) and (e) and replacing them by the following paragraph –
 - (c) issue guidelines to banks, financial institutions, cash dealers and members of the relevant professions or occupations on the manner in which -
 - (i) a report under section 14 shall be made; and
 - (ii) additional information may be supplied to the FIU, on a suspicious transaction, pursuant to a request made under section 13(2);

(C) by deleting paragraph (f) and replacing it by the following paragraph –

(f) exchange information with overseas financial intelligence units and comparable bodies.

(c) in section 12 –

(i) by deleting the heading and replacing it by the following heading –

12. The Board

(ii) by deleting the words "Review Committee" wherever they appear and replacing them by the word "Board";

(iii) in subsection (1), by deleting the words "There is established for the purposes of this Act a Review Committee" and replacing them by the words "The FIU shall be administered by a Board";

(d) in section 13 -

(i) by deleting the words "FIU" and "Review Committee" wherever they appear and replacing them by the words "Director" and "Board" respectively;

(ii) by deleting the words "it shall refer" and replacing them by the words "he shall refer";

(iii) by numbering the existing provision as subsection (1) and adding the following new subsection -

(2) Where a report of a suspicious transaction has been made under section 14, the Director may, for the purposes of assessing whether any information should be disseminated to investigatory or supervisory authorities, request further information in relation to the suspicious transaction from -

(a) the bank, financial institution, cash dealer or member of the relevant profession or occupation who made the report; and

(b) any other bank, financial institution, cash dealer or member of the relevant profession or occupation who is, or appears to be, involved in the transaction.

(e) by repealing section 16 and replacing it by the following section –

16. Legal consequences of reporting

- (1) No person directly or indirectly involved in the reporting of a suspicious transaction under this Part shall inform any person involved in the transaction or to an unauthorised third party that the transaction has been reported or that information has been supplied to the FIU pursuant to a request made under section 13(2).
 - (2) No proceedings shall lie against any person for having -
 - (a) 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 prosecution or any other judicial action;
 - (b) supplied any information to the FIU pursuant to a request made under section 13(2).
 - (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 this Act.
 - (4) For the purposes of this section –

“officer” includes a director, employee, agent or other legal representative;

“unauthorised third party” does not include any of the supervisory authorities.
- (f) in section 18, by adding immediately before subsection (1), the following new subsection, the existing subsections (1) to (3) being renumbered (2) to (4) accordingly –
- (1)
 - (a) The supervisory authorities may issue such codes and guidelines as they consider appropriate to combat money laundering activities and terrorism financing, to banks or cash dealers subject to their supervision, or to financial institutions, as the case may be.
 - (b) The Bank of Mauritius shall supervise and enforce compliance by banks and cash dealers with the requirements imposed by this Act, regulations made under this Act and such guidelines as it may issue under paragraph (a).
 - (c) The Financial Services Commission shall supervise and enforce compliance by financial institutions with the requirements imposed

by this Act, regulations made under this Act and such guidelines as it may issue under paragraph (a).

- (g) in section 19(1) –
 - (i) in paragraph (a), by inserting immediately after the words “fails to make a report”, the words “, supply any information requested by the FIU under section 13(2)”;
 - (ii) in paragraph (c), by inserting immediately after the word “warns”, the words “or informs”;
- (h) by inserting immediately after Part IV, the following new Part –

PART IV A – NATIONAL COMMITTEE FOR ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

19A Establishment of National Committee

(1) There is established for the purposes of this Act a National Committee for Anti-Money Laundering and Combating the Financing of Terrorism.

(2) The National Committee shall consist of –

- (a) the Supervising Officer of the Ministry responsible for financial services, who shall act as Chairperson;
- (b) a representative of the Prime Minister’s Office;
- (c) a representative of the Attorney-General’s Office;
- (d) a representative of the Ministry responsible for finance;
- (e) a representative of the Ministry responsible for financial services;
- (f) a representative of the Ministry responsible for foreign affairs;
- (g) the Commissioner of Police or his representative;
- (h) the Comptroller of Customs or his representative;
- (i) the Director of the FIU or his representative;
- (j) the Managing Director of the Bank of Mauritius or his representative;

- (k) the Chief Executive of the Financial Services Commission or his representative;
- (l) the Commissioner appointed under section 45(8) of the Dangerous Drugs Act or his representative;
- (m) the Commissioner appointed under section 19 of the Prevention of Corruption Act 2002 or his representative.

(3) The National Committee may co-opt such other persons as appear to it to have special knowledge or experience in anti-money laundering or combating the financing of terrorism.

19B Functions of the National Committee

The National Committee shall –

- (a) assess the effectiveness of policies and measures to combat money laundering and the financing of terrorism;
- (b) make recommendations to the Minister for legislative, regulatory and policy reforms in respect of anti-money laundering and combating the financing of terrorism;
- (c) promote co-ordination among the FIU, investigatory authorities, supervisory authorities and other institutions with a view to improving the effectiveness of existing policies to combat money laundering and the financing of terrorism;
- (d) formulate policies to protect the international reputation of Mauritius with regard to anti-money laundering and combating the financing of terrorism;
- (e) generally advise the Minister in relation to such matters relating to anti-money laundering and combating the financing of terrorism, as the Minister may refer to the National Committee.

19C Meetings of the National Committee

The National Committee shall regulate its meetings and proceedings in such manner as it thinks fit.

- (i) in section 20 -
 - (i) in subsection (3) -

- (A) by inserting immediately after the words "subsection (1) and (2)", the words "but subject to section 13(1)";
 - (B) by deleting the words "with the consent of the Review Committee";
 - (C) by inserting immediately after the words "overseas financial intelligence unit", wherever they appear, the words "or comparable body";
- (ii) by adding immediately after subsection (3), the following new subsections -
- (4) Subject to subsection (5), where a request for information is received from an overseas financial intelligence unit or comparable body, the FIU shall pass on any relevant information in its possession to the overseas financial intelligence unit or comparable body, on terms of confidentiality requiring the consent of the FIU prior to the information being passed on to any other person.
- (5) Where a request referred to in subsection (4) concerns information which has been provided to the FIU by a supervisory authority, a Ministry or other Government department or statutory body, the information shall not be passed on without the consent of that supervisory authority, Ministry, Government department or statutory body, as the case may be.
- (j) in section 21 –
- (i) in subsection (1), by deleting the words "subject to subsection (4) and with the consent of the Review Committee" and replacing them by the words "by itself or at the request of the supervisory authorities, subject to subsection (4)";
 - (ii) in subsection (2), by deleting the words "and with the consent of the Review Committee";
 - (iii) in subsection (3), by deleting the words "and with the consent of the Review Committee,";
- (k) in section 22 –
- (i) in subsection (1) -
 - (A) by deleting the word "If," and replacing it by the words "Notwithstanding any other enactment, where";
 - (B) by deleting the words "subject to subsection (2)";

- (ii) by repealing subsection (2);
- (l) in section 30 -
 - (i) in subsection (1), by deleting the words "Review Committee" and replacing them by the word "Board";
 - (ii) in subsection (2), by deleting the words "with the prior approval of the Review Committee and";
- (m) in section 31(1), by deleting the words "Review Committee" and replacing them by the word "Board";
- (n) in section 32, by deleting the words "Review Committee", wherever they appear, and replacing them by the word "Board".

4. Financial Services Development Act 2001 amended

The Financial Services Development Act 2001 is amended –

- (a) in section 14 –
 - (i) in subsection (3), by inserting immediately after the words "and any regulations made thereunder", the words "implement such procedures for retaining internal records of every customer's identity as may be specified in guidelines issued by the Commission under this Act or under section 18(1) of the Financial Intelligence and Anti-Money Laundering Act 2002 and shall, in particular";
 - (ii) in subsection (4), by deleting the words "Every record" and replacing them by the words "Notwithstanding any other enactment, every record";
- (b) in section 33 –
 - (i) in subsection (6), by deleting the words "proof beyond reasonable doubt" and replacing them by the words "being satisfied";
 - (ii) in subsection (7), by adding immediately after paragraph (c), the following new paragraph, the full stop at the end of paragraph (c) being deleted and replaced by a semi-colon accordingly -
 - (d) the duty of the Commission to pass on information to the FIU established under the Financial Intelligence and Anti-Money Laundering Act 2002, pursuant to section 22 of that Act.