

THE MUTUAL ASSISTANCE IN CRIMINAL AND RELATED MATTERS BILL
(No. of 2003)

Explanatory Memorandum

The object of this Bill is to enable the widest possible measure of international cooperation to be given and received by the Republic of Mauritius promptly and to the fullest extent possible, in investigations, prosecutions or proceedings concerning serious offences and related civil matters.

..... 2003

E. J. LEUNG SHING
*Attorney-General and
Minister of Justice & Human Rights*

THE MUTUAL ASSISTANCE IN CRIMINAL AND RELATED MATTERS BILL
(No. of 2003)

ARRANGEMENT OF CLAUSES

Clause

- | | |
|---|--|
| PART I - PRELIMINARY | PART IV - MISCELLANEOUS |
| 1. Short title | 17. Proof of service of documents abroad |
| 2. Interpretation | 18. Certificates relating to foreign documents |
| 3. Application of Act | 19. Sharing confiscated property with foreign States |
| PART II - REQUESTS | 20. Privilege for foreign documents |
| 4. Request from Mauritius | 21. Return of materials |
| 5. Request to Mauritius | 22. Offences |
| PART III - FORMS OF MUTUAL ASSISTANCE | 23. Regulations |
| 6. Procedure for an evidence-gathering order or a search warrant | 24. Rules |
| 7. Foreign request for a virtual evidence-gathering order | 25. Consequential amendments |
| 8. Request for transfer of detained persons to Mauritius | 26. Transitional provisions |
| 9. Safe conduct guarantee | 27. Commencement |
| 10. Foreign request for consensual transfer of detained persons from Mauritius | |
| 11. Foreign request for restraining order | |
| 12. Foreign request for enforcement of foreign restraining order or confiscation | |
| 13. Effect of registration of foreign confiscation order or foreign restraining order | |
| 14. Cancellation of registration of foreign restraining order or foreign confiscation order | |
| 15. Foreign request for the location of the proceeds of crime | |
| 16. Enforcement of request for the location of the proceeds of crime | |

A BILL

To make provision for mutual assistance between the Republic of Mauritius and a foreign State or an international criminal tribunal in relation to serious offences and to provide for related matters

ENACTED by the Parliament of Mauritius, as follows-

PART I - PRELIMINARY

1. Short title

This Act may be cited as the Mutual Assistance in Criminal and Related Matters Act 2003.

2. Interpretation

In this Act-

“authorised person” means a law officer or a police officer designated in writing by the Attorney-General;

"Central Authority" means the Attorney-General, who shall, for the purposes of a request from a foreign State or an international criminal tribunal, or a request from Mauritius to a foreign State or an international criminal tribunal, be the appropriate competent authority;

"confiscation" –

(a) means the permanent deprivation of property by order of a Court; and

(b) includes forfeiture, where applicable;

“data” means representations, in any form, of information or concepts;

“document” means any material on which data, capable of being read or understood by a person, a computer system or other device are recorded or marked;

“evidence-gathering order” means an order made pursuant to section 6;

"financial institution" means an institution or person regulated by an enactment specified in the First Schedule;

“foreign confiscation order” means an order made by-

(a) a Court in a foreign State in relation to a serious offence; or

(b) an international criminal tribunal in relation to an international criminal tribunal offence,

for the purpose of a confiscation of property in connection with that offence, or of the recovery of the proceeds of that offence;

“foreign document” means a document, article or thing obtained pursuant to a request made by Mauritius under this Act;

“foreign restraining order” means an order made in respect of-

- (a) a serious offence by a Court in a foreign State; or
- (b) an international criminal tribunal offence by an international criminal tribunal,

for the purpose of restraining a person from dealing with property;

“foreign State” means-

- (a) a state other than Mauritius; and
- (b) every constituent part of such state, including a territory, dependency or protectorate, which administers its own laws relating to international cooperation;

“international criminal tribunal” means an international criminal tribunal specified in the Second Schedule and includes any investigatory, prosecutorial or adjudicatory organ of such tribunal;

“international criminal tribunal offence” means any offence for which an international criminal tribunal has power or jurisdiction to prosecute a person;

“proceedings”-

- (a) means any proceedings conducted by or under the supervision of a judge, magistrate or judicial officer, however described, in relation to any alleged or proved offence, any property derived from such offence or any related proceedings; and
- (b) includes –
 - (i) any inquiry or investigation into a serious offence; or
 - (ii) preliminary or final determination of facts relating to a serious offence;

whether or not conducted by or under the supervision of a judge, magistrate or judicial officer;

“proceeds of crime” –

- (a) means any property derived or realised, directly or indirectly, from a serious offence; and

- (b) includes, on a proportional basis, property into which any property derived, or realised, directly from the offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realised from such property at any time since the offence;

“property” means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit;

“related proceedings”, in relation to criminal proceedings, means any civil proceedings arising from the same subject matter as that from which the criminal proceedings arose;

“serious offence” -

- (a) means –
- (i) an offence against a law of Mauritius, for which the maximum penalty is imprisonment or other deprivation of liberty for a period of not less than 12 months; or
 - (ii) an offence against a law of a foreign State for which the maximum penalty is imprisonment or other deprivation of liberty for a period of not less than 12 months;
- (b) includes an international criminal tribunal offence.

3. Application of Act

- (1) This Act shall apply to -
- (a) any foreign State, subject to any condition, variation or modification in any existing or future agreement between Mauritius and that State; and
 - (b) any international criminal tribunal.

(2) This Act shall apply to requests for assistance in relation to serious offences committed before the coming into operation of this Act.

(3) This Act shall, in relation to any proceedings, have effect notwithstanding the Letters of Request Rules.

(4) Nothing in this Act shall prevent informal assistance and continued informal assistance between Mauritius and any other State.

PART II - REQUESTS

4. Request from Mauritius

(1) The Central Authority may make a request on behalf of Mauritius to the competent authority of a foreign State, or to an international criminal tribunal, for mutual assistance in any proceedings commenced in Mauritius in relation to a serious offence.

(2) A request under subsection (1) may require the foreign State or, as the case may be, the international criminal tribunal, to provide such assistance as may be specified in the request and, in particular to -

- (a) have evidence taken, a statement or information taken, or documents or other articles produced;
- (b) have evidence taken by means of technology that permits the virtual presence of the person in Mauritius;
- (c) obtain and execute a search warrant, or other lawful instrument, authorising a search for things believed to be located in the foreign State, which may be relevant to the proceedings, and if found, seize them;
- (d) locate or restrain any property reasonably believed to be the proceeds of a serious offence and located in the foreign State;
- (e) confiscate any property reasonably believed to be located in the foreign State, which is the subject of a confiscation order made by a Court in Mauritius and transmit such property or, any proceeds realised therefrom, to Mauritius;
- (f) take measures for the freezing or confiscation of proceeds of a serious offence;
- (g) permit the presence of an authorised person during the execution of any request made under this section;
- (h) effect service of documents;
- (i) examine any person with his consent, any object or any site;
- (j) locate and identify persons;
- (k) facilitate the appearance of witnesses or the attendance of persons in proceedings, subject to such practical and financial arrangements as may be agreed upon;
- (l) transfer in custody to Mauritius a person detained in the foreign State, or by the international criminal tribunal, who

consents to give evidence or to assist Mauritius in the proceedings; and

(m) transmit to Mauritius any evidence, statement, report, information, whether in original or a certified copy, document, article, thing or property referred to in this subsection.

(3) A request under subsection (1) shall be in writing and shall -

- (a) give the name of the requesting authority;
- (b) give the name of the authority conducting the proceedings to which the request relates;
- (c) give a description of the nature of the proceedings and a statement setting out a summary of the relevant facts and laws;
- (d) explain the purpose of the request and the nature of the assistance being sought;
- (e) give details of any procedure which is required to be followed to comply with the laws of Mauritius;
- (f) where appropriate, include a statement setting out any wish as to confidentiality of the request and the reasons for that wish ;
- (g) indicate any time limit within which compliance with the request is desired, stating reasons;
- (h) indicate the name and address of the person to be served, where necessary;
- (i) give any other information that may assist in giving effect to the request;
- (j) be supplemented with such other procedures, formalities, and information as may be required by the foreign State to give effect to the request; and
- (k) where necessary, be accompanied by a translation into the official language of the foreign State.

5. Request to Mauritius

(1) A foreign State may, in relation to a serious offence, and an international criminal tribunal may, in relation to an international criminal tribunal offence, make a request for assistance to the Central Authority in any proceedings commenced in the foreign State or before the international criminal tribunal, as the case may be.

(2) The Central Authority may, in respect of a request under subsection (1) from a foreign State -

- (a) promptly grant the request, in whole or in part, on such terms and conditions as it thinks fit or refer the matter to the appropriate authority for prompt execution of the request, in which case the Central Authority may represent the foreign State in proceedings entered to give effect to the request;
- (b) refuse the request, in whole or in part, on the ground -
 - (i) that compliance with the request would be contrary to the Constitution;
 - (ii) of prejudice to the sovereignty, international relations, security, public order, or other public interest of Mauritius;
 - (iii) of reasonable belief that the request for assistance has been made for the purpose of prosecuting a person on account of that person's race, sex, religion, nationality, ethnic origin or political opinions, or that a person's position may be prejudiced for any of those reasons;
 - (iv) of absence of dual criminality, where granting the request would require a Court in Mauritius to make an order in respect of any person or property in respect of conduct which does not constitute an offence, nor gives rise to a confiscation or restraining order, in Mauritius;
 - (v) that the request relates to an offence under military law, or a law relating to military obligations, which would not be an offence under ordinary criminal law;
 - (vi) that the request relates to a political offence or an offence of a political character;
 - (vii) that the request relates to an offence, the prosecution of which, in the foreign State, would be incompatible with laws of Mauritius on double jeopardy;
 - (viii) that the request requires Mauritius to carry out measures that are inconsistent with its laws and practice, or that cannot be taken in respect of criminal matters arising in Mauritius; or

- (c) after consulting with the competent authority of the foreign State, postpone granting the request in whole or in part, on the ground that granting the request immediately would be likely to prejudice the conduct of proceedings in Mauritius.

(3) The Central Authority may, in respect of a request under subsection (1) from an international criminal tribunal, grant the request, in whole or in part, on such terms and conditions as it thinks fit.

(4) A request under subsection (1) -

- (a) may relate to any matter referred to in section 4(2); and
- (b) shall contain such appropriate particulars as are referred to in section 4(3).

(5) A request shall not be invalidated for the purpose of this Act or any legal proceedings by virtue of any failure to comply with section 4(3), where the Central Authority is satisfied that there is sufficient compliance to enable him to execute the request.

(6) Where the Central Authority refuses a request, either in whole or in part, he shall so inform the foreign State or the international criminal tribunal.

(7) For the purpose of a request referred to in subsection (4), any reference in section 4(2) or (3) to a foreign State or to Mauritius shall be construed as a reference to Mauritius or the foreign State, as the case may be.

PART III - FORMS OF MUTUAL ASSISTANCE

6. Procedure for an evidence-gathering order or a search warrant

(1) Notwithstanding any other enactment, where the Central Authority grants a request by a foreign State, or an international criminal tribunal, to obtain evidence or a search warrant in Mauritius, the Central Authority may apply to a Judge in Chambers for -

- (a) an evidence-gathering order; or
- (b) a search warrant for the search of a person or premises, and removal or seizure of any document or article.

(2) Subject to section 5(5), a request by a foreign State, or an international criminal tribunal, for an evidence-gathering order shall -

- (a) comply with the requirements in section 4(3);
- (b) specify -
 - (i) the name and address or the official designation of the person to be examined;

- (ii) the question to be put to the person or the subject matter about which he is to be examined;
- (iii) whether it is desired that the person be examined orally or in writing;
- (iv) whether it is desired that an oath be administered to the person;
- (v) any provision of the law of the foreign State as to privilege or exemption from giving evidence which appears especially relevant to the request; and
- (vi) any special requirements of the law of the foreign State as to the manner of taking evidence relevant to its admissibility in that State;
- (vii) the document, record or property to be inspected, preserved, photographed, copied or transmitted;
- (viii) the property of which samples are to be taken, examined or transmitted; and
- (ix) the site to be viewed or photographed.

(3) A request by a foreign State or an international criminal tribunal for a search warrant shall -

- (a) comply with the requirements in section 4(3);
- (b) specify the property to be searched for and seized; and
- (c) contain such information available to the foreign State or international criminal tribunal, as the case may be, as may be required for the purpose of the application.

(4) (a) Subject to subsection (9), the Judge in Chambers shall grant an application for an evidence-gathering order where he is satisfied that there are reasonable grounds to believe that -

- (i) a serious offence has been or may have been committed against the law of the foreign State or an international criminal tribunal offence has been or may have been committed; and
- (ii) evidence relating to an offence referred to in subparagraph (i) may be -
 - (A) found in Mauritius; or
 - (B) given or produced by a person believed to be in Mauritius.

(b) The Judge in Chambers shall not grant an application for a search warrant where it would, in all the circumstances, be more appropriate to grant an evidence-gathering order.

(5) For the purposes of subsection (4)(a)(i), a statement contained in the request to the effect that -

- (a) a serious offence has been or may have been committed against a law of the foreign State; or
- (b) an international criminal tribunal offence has been or may have been committed,

shall be *prima facie* evidence of that fact.

(6) An evidence-gathering order-

- (a) shall provide for the manner in which the evidence is to be obtained in order to give effect to the request and may require any person named therein to-
 - (i) make a record from data or make a copy of a record;
 - (ii) attend before the Master and Registrar to give evidence; and
 - (iii) produce to the Judge in Chambers, or to any other person designated by him, any article, including any document, or copy thereof; or
- (b) may include such terms and conditions as the Judge in Chambers considers desirable, including those relating to -
 - (i) the interests of the person named therein or of third parties; or
 - (ii) the questioning of the person named therein by any representative of the foreign state or international tribunal, as the case may be.

(7) Subject to subsections (8) and (9), a person named in an evidence-gathering order may refuse to answer a question, or to produce a document or article, where the refusal is based on -

- (a) an enactment which permits the person to decline to give evidence in similar circumstances in proceedings originating in Mauritius or a privilege recognised by the law in Mauritius;
- (b) a privilege recognised by a law in force in the foreign State that made the request; or

- (c) a law currently in force in the foreign State that would render the answering of that question, or the production of that document or article by that person, in his own jurisdiction, an offence.

(8) (a) Where a person refuses to answer a question or to produce a document or article pursuant to subsection (7)(b) or (c), the Central Authority shall notify the foreign State and request the foreign State to provide a written statement on whether the person's refusal was well-founded under the law of the foreign State.

(b) A written statement received by the Central Authority from the foreign State in response to a request under paragraph (a) shall be admissible before the Judge in Chambers and, for the purposes of this section, be conclusive evidence that the person's refusal is, or is not, well-founded under the law of that state.

(c) Any person who, without reasonable excuse, refuses to comply with an order of a Judge in Chambers made under this section or who, having refused to answer a question or to produce a document or article on a ground specified in subsection (7), continues to refuse notwithstanding the admission into evidence of a statement under paragraph (b) to the effect that the refusal is not well-founded, shall be in contempt of Court.

(9) Notwithstanding section 9 of the Bank of Mauritius Act, sections 39 and 39A of the Banking Act and section 33 of the Financial Services Development Act 2001 and subsections (7) and (8), a Judge in Chambers hearing a request from a foreign State or an international criminal tribunal may grant an evidence-gathering order or search warrant against the Bank of Mauritius, a bank or financial institution where he is satisfied that -

- (a) the information is material and necessary to the proceedings in the foreign State or before the international criminal tribunal; and
- (b) the law of the foreign State permits the disclosure of information to foreign States in circumstances similar to the one relating to the request.

(10) The Central Authority shall inform the foreign State of the date and place of the taking of evidence pursuant to this section.

(11) The Judge in Chambers may authorise the presence of representatives of the foreign State, and of parties to the relevant proceedings in the foreign State, at the proceedings under this section.

(12) The Central Authority shall provide such authenticated report as may be required by the foreign State, or international criminal tribunal, concerning -

- (a) the result of any search;

- (b) the place and circumstances of seizure; and
- (c) the subsequent custody of the property seized.

7. Foreign request for a virtual evidence-gathering order

(1) Where the Central Authority grants a request by a foreign State, or an international criminal tribunal, to order a person to give evidence by means of technology that permits the virtual presence of the person in the territory over which the foreign State has jurisdiction or in the International Criminal Tribunal, it may apply to a Judge in Chambers for an order for the taking of the virtual evidence of the person.

(2) Where there exist in Mauritius facilities for the taking of evidence by technology permitting the virtual presence of a person in the foreign State, the Judge in Chambers shall grant the application where he is satisfied that there are reasonable grounds to believe that -

- (a) a serious offence has been or may have been committed against the law of the foreign State or, as the case may be, an international criminal tribunal offence has been or may have been committed; and
- (b) evidence relating to an offence referred to in paragraph (a) may be given by a person believed to be in Mauritius.

(3) A virtual evidence-gathering order made under subsection (2) may require any person named therein to-

- (a) attend at a time and place fixed by the Judge in Chambers to give evidence by means of the technology;
- (b) answer any question put to him by the foreign State, or the international criminal tribunal, or a person authorised by any of them in accordance with the law that applies to that State, or to the tribunal; and
- (c) produce at the time and place fixed by the Judge in Chambers, or exhibit, any article, including a document, by means of the technology.

(4) Where a witness gives evidence under subsection (3) -

- (a) the evidence shall be given as though the witness were physically before the Court, or tribunal, outside Mauritius for the purposes of the laws relating to evidence and procedure, but only to the extent that giving the evidence would not entail disclosure of information otherwise protected by any law on non-disclosure of information or privilege;

- (b) the law of Mauritius relating to perjury shall apply with respect to any evidence given by the person as though the person was a witness before a Court in Mauritius.
- (5) Where a witness refuses-
- (a) to attend at the time and place fixed by the Judge in Chambers; or
 - (b) to answer a question, or produce, or show a document or article as ordered by the Judge in Chambers under subsection (3),

he shall be in contempt of the Court.

8. Request for transfer of detained persons to Mauritius

(1) Where a foreign State or an international criminal tribunal grants a request made by Mauritius under section 4(2)(l), the Central Authority may, by written notice addressed to the Commissioner of Prisons, authorise -

- (a) the temporary detention in Mauritius, for such period as may be specified in the notice, of a person detained in a foreign State, or by an international criminal tribunal, who is to be transferred to Mauritius; and
- (b) the return in custody of the person to the foreign State, or international criminal tribunal, when his presence is no longer required.

(2) A person in respect of whom a notice is issued under subsection (1) shall, so long as the notice is in force-

- (a) be permitted to enter and remain in Mauritius for the purposes of the request, and be required to leave Mauritius when no longer required for those purposes; and
- (b) while in custody in Mauritius for the purposes of the request, be deemed to be in lawful custody for the purposes of section 170 of the Criminal Code.

(3) The Central Authority may, at any time, vary a notice issued under subsection (1), and where the foreign State, or the international criminal tribunal, agrees to the release of the person from custody, either immediately or on a specified date, the Central Authority shall direct that the person be released from custody accordingly.

(4) Any person who escapes from lawful custody while in Mauritius pursuant to subsection (1) may be arrested without warrant and returned to the custody authorised under subsection (1)(a).

9. Safe conduct guarantee

(1) Subject to subsection (2), where a person, whether or not a detained person, is in Mauritius, pursuant to a request by the Central Authority under section 4(2)(l), to give evidence or to assist in any proceedings, the person shall not, while in Mauritius, be -

- (a) detained, prosecuted, punished or subjected to any other restriction of personal liberty; or
- (b) subjected to civil process,

in respect of any act or omission that occurred before the person's departure from the foreign State, or international criminal tribunal, pursuant to the request.

(2) The person specified in subsection (1) shall not, without his consent, be required to give evidence in any proceedings other than those to which the request relates.

(3) Subsection (1) shall not apply to the person where he -

- (a) leaves Mauritius and subsequently returns voluntarily to Mauritius; and
- (b) has had the opportunity to leave Mauritius but remains in Mauritius for more than 10 days after the Central Authority has notified him that he is no longer required for the purposes of the request.

10. Foreign request for consensual transfer of detained persons from Mauritius

(1) Where the Central Authority approves a request under section 5 to have a person, who is detained in custody in Mauritius by virtue of a sentence or order of a Court, transferred to a foreign State or to an international criminal tribunal to give evidence, or otherwise assist in any proceedings, he may apply to a Judge in Chambers for a transfer order.

(2) The Judge in Chambers may make a transfer order under this section where he is satisfied, after having considered any document filed or information given in support of the application, that the detained person consents to the transfer.

(3) A transfer order made under subsection (2) shall-

- (a) set out the name of the detained person and his current place of confinement;
- (b) order the person who has custody of the detained person to deliver him into the custody of a person designated in the order;

- (c) order the person receiving him into custody to take him to the foreign State, or to the international criminal tribunal, as the case may be, and, on return of the detained person to Mauritius, to return that person to a place of confinement in Mauritius specified in the order, unless the person is no longer required to be held in custody;
- (d) state the reasons for the transfer; and
- (e) fix the time within which the detained person has to be returned.

(4) The time spent in custody by a person pursuant to a transfer order shall count toward any sentence required to be served by that person, so long as the person remains in such custody and is of good behaviour.

11. Foreign request for restraining order

- (1) Where-
 - (a) a foreign State or an international criminal tribunal requests the Central Authority to obtain the issue of a restraining order against the proceeds of crime which are believed to be located in Mauritius; and
 - (b) proceedings relating to the proceeds of crime have commenced in the foreign State, or before the international criminal tribunal,

and there are reasonable grounds to believe that the proceeds of the crime are located in Mauritius, the Central Authority may apply to a Judge in Chambers for a restraining order under this section.

(2) Where, upon an application made under subsection (1), the Judge in Chambers is satisfied that the proceeds of crime are located in Mauritius, he may make a restraining order in respect of the proceeds of the crime, on such conditions as he may deem fit to impose, including any condition as to payment of debts, sale, transfer or disposal of any property.

12. Foreign request for enforcement of foreign restraining order or confiscation

(1) Notwithstanding any other enactment, where a foreign State, or an international criminal tribunal, requests that necessary measures be taken for the enforcement of-

- (a) a foreign restraining order; or
- (b) a foreign confiscation order,

the Central Authority may apply to the Supreme Court for registration of the order.

(2) The Supreme Court shall register the foreign restraining order where it is satisfied that, at the time of registration, the order is in force in the foreign State or before the international criminal tribunal.

(3) The Supreme Court shall register the foreign confiscation order where it is satisfied that -

- (a) at the time of registration, the order is in force in the foreign State, or before the international criminal tribunal; and
- (b) in the case of a person who did not appear in the proceedings in the foreign State, or before the international criminal tribunal -
 - (i) the person was given notice of the proceedings in sufficient time to enable him to defend himself; or
 - (ii) the person had absconded, or died before such notice could be given.

(4) For the purposes of subsections (2) and (3), a statement contained in the foreign request to the effect that -

- (a) the foreign restraining or confiscation order is in force in the foreign State, or before the international criminal tribunal; or
- (b) the person who is the subject of the order was given notice of the proceedings in sufficient time to enable him to defend himself, or had absconded, or died before such notice could be given,

shall be *prima facie* evidence of the fact, without proof of the signature or official character of the person appearing to have signed the foreign request.

(5) Where a foreign restraining order or foreign confiscation order is registered in accordance with this section, a copy of any amendment made to the order in the foreign State, or before the international criminal tribunal, shall be registered in the same way as the order.

(6) Notice of the registration of any foreign confiscation order or foreign restraining order, shall be published in the *Gazette* and 2 daily newspapers, one of which shall be specified by the Supreme Court.

(7) Subject to subsection (9), where the foreign restraining order, or foreign confiscation order, comprises a facsimile copy of a duly authenticated foreign order, or amendment made to such an order, the facsimile shall be regarded, for the purposes of this Act, as the duly authenticated foreign order.

(8) Any registration effected upon production of a facsimile shall cease to have effect up to the end of the period of 14 days commencing on the

date of registration, unless a duly authenticated original of the order is registered by that time.

(9) Where a foreign restraining order, or foreign confiscation order, has been registered pursuant to this section, section 13 shall apply to such registration.

(10) A foreign restraining order shall stay in force until the determination of the proceedings in the foreign State, or by the international criminal tribunal.

13. Effect of registration of foreign confiscation order or foreign restraining order

(1) Subject to subsections (2) and (3), where an order has been registered under section 12 and the Supreme Court is notified that it has been established to the satisfaction of a foreign court or international tribunal that the property or any part thereof constitutes the proceeds of crime of a serious offence or of an international tribunal offence, order that the property be confiscated and be vested in the State until such arrangement is made under section 19 by the Central Authority with the foreign State.

(2) The Court may make an order under subsection (1) on such conditions as it may deem fit to impose, including any condition as to payment of debts, sale, transfer or disposal of any property.

(3) Any person who claims to have an interest in property subject to an order registered under section 12 shall, within 21 days from the last publication of the registration under section 12, apply to the Court for an order under subsection (4).

(4) Where the Court is satisfied that the applicant under subsection (3) -

- (a) was not in any way involved in the commission of the offence in respect of which the confiscation or restraining order was sought; and
- (b) acquired the property without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time of acquisition tainted property,

the Court shall make an order declaring the nature of the interest of the applicant.

14. Cancellation of registration of foreign restraining order or foreign confiscation order

The Supreme Court shall, on application by the Central Authority, cancel the registration of -

- (a) a foreign restraining order, if it appears to him that the order has ceased to have effect;
- (b) a foreign confiscation order, if it appears to him that the order has been satisfied, or has ceased to have effect.

15. Foreign request for the location of the proceeds of crime

(1) Where-

- (a) a foreign State requests the Central Authority to assist in locating property believed to be the proceeds of a serious crime committed in that State; or
- (b) an international criminal tribunal requests the Central Authority to assist in locating property believed to be the proceeds of an international criminal tribunal offence,

the Central Authority may apply to a Judge in Chambers for an order -

- (i) that any information 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 Central Authority; or
- (ii) that a bank or financial institution forthwith produces to the Central Authority all information obtained by it about any business transaction relating to the property for such period before or after the date of the order as the Judge may direct.

(2) Notwithstanding section 9 of the Bank of Mauritius Act, sections 39 and 39A of the Banking Act, section 33 of the Financial Services Development Act 2001 and section 6(7) and (8), a Judge in Chambers may grant an order under subsection (1) on being satisfied that -

- (a) the document is material and necessary to the proceedings in the foreign State or before the international criminal tribunal; and
- (b) the law of the foreign State authorises the granting of such an order in circumstances similar to the one relating to the request.

16. Enforcement of request for the location of the proceeds of crime

A Judge in Chambers may, on good cause shown by the Central Authority that a person is failing to comply with, is delaying or is otherwise obstructing an order made in accordance with section 15, order the Central Authority, or an officer authorised by the Central Authority, to enter and search the premises specified in the order and remove any document, material or other thing therein for the purposes of executing such order.

PART IV - MISCELLANEOUS**17. Proof of service of documents abroad**

The service of documents in a foreign State may be proved by a certificate issued by the Central Authority of that State.

18. Certificates relating to foreign documents

(1) The Central Authority may certify that a foreign document was obtained as a result of a request made to a foreign State or international criminal tribunal pursuant to section 4.

(2) It shall be presumed, unless evidence sufficient to raise reasonable doubt is adduced to the contrary, that the foreign document specified in the certificate was obtained as a result of that request.

(3) A foreign document referred to in this section shall be admissible in evidence in a Court in Mauritius.

19. Sharing confiscated property with foreign States

(1) The Central Authority may enter into such arrangement as he thinks fit with the competent authorities of a foreign State for the reciprocal sharing with that State of such part of any property realised -

- (a) in the foreign State, as a result of action taken by him pursuant to section 4; or
- (b) in Mauritius, as a result of action taken by him pursuant to section 5.

(2) Where the Minister to whom 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 confiscated under this Act, or the value thereof, be returned or remitted to the foreign State or the international criminal tribunal.

20. Privilege for foreign documents

(1) Subject to subsection (2), a document sent to the Central Authority by-

- (a) a foreign State; or
- (b) an international criminal tribunal,

in accordance with a request made by the Central Authority under this Act shall be privileged.

(2) No person shall disclose the document referred to in subsection (1), or its purport, or the contents of the document, before the document, in compliance with the conditions on which it was so sent, is made public, or disclosed, in the course of and for the purpose of any proceedings.

(3) No person in possession of a document referred to in subsection (1), or a copy thereof, or who has knowledge of any information contained in the document, shall be required by any Court or other person to produce the document or copy thereof or to give evidence relating to any information that is contained therein except for the purpose of any proceedings.

(4) Except to the extent required under this Act to execute a request by a foreign State or an international criminal tribunal, no person shall disclose -

- (a) the fact that the request has been received; or
- (b) the contents of the request.

21. Return of materials

Any property, record or document handed over to Mauritius in relation to a request made under this Act shall be returned to the foreign State or tribunal as soon as it is no longer required, unless the foreign State or tribunal waives its right of return.

22. Offences

Any person who contravenes section 20 shall commit an offence and shall be liable, on conviction, to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 5 years.

23. Regulations

(1) The Attorney-General may make such regulations as he thinks fit for the purposes of this Act.

- (2) Any regulations made under subsection (1) may provide for-
- (a) the taking of fees and the levying of charges;
 - (b) matters necessary or convenient for carrying out or giving effect to this Act;
 - (c) the amendment of the Schedules;

- (d) that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and imprisonment not exceeding one year.

24. Rules

The Chief Justice may -

- (a) make such rules; or
- (b) issue such practice directions,

as he thinks fit for the purposes of this Act.

25. Consequential amendments

(1) The Banking Act is amended in section 51(2), by inserting immediately after the words "the Bank of Mauritius Act", the words "and the Mutual Assistance in Criminal and Related Matters Act 2003".

(2) The Financial Intelligence and Anti-Money Laundering Act 2002 is amended -

- (a) in the heading of Part VI, by deleting the words "MUTUAL ASSISTANCE AND";
- (b) by repealing sections 23 to 28.

(3) The Prevention of Corruption Act 2002 is amended by repealing Part VIII.

(4) The Prevention of Terrorism Act 2002 is amended -

- (a) in the heading of Part IV, by deleting the words "MUTUAL ASSISTANCE AND";
- (b) by repealing sections 18 to 24.

26. Transitional provisions

(1) Every matter or proceedings commenced under any enactment repealed by this Act and pending immediately before the coming into operation of this Act may be continued, completed and enforced under this Act.

(2) This Act shall not affect the rights of any party to any proceedings commenced before the coming into operation of this Act.

27. 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.

FIRST SCHEDULE
(section 2)

Enactments

Financial Services Development Act 2001

Immigration Act insofar as it relates to section 5A

Insurance Act

Securities (Central Depository, Clearing and Settlement) Act

Stock Exchange Act

Trusts Act 2001

Unit Trusts Act

SECOND SCHEDULE

(section 2)

1. The International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and other Serious Violations of International Humanitarian Law committed in the Territory of Rwanda and Rwandan Citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, established by Resolution 995 (1994) of the Security Council of the United Nations.
2. The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Law committed in the Territory of Former Yugoslavia since 1991, established by Resolution 827 (1993) of the Security Council of the United Nations.