



**EASTERN AND SOUTHERN
AFRICA ANTI-MONEY
LAUNDERING GROUP**

Mutual Evaluation Report

Anti-Money Laundering and
Combating the Financing of Terrorism

DECEMBER 2008

THE REPUBLIC OF MAURITIUS

The Republic of Mauritius is a member of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG). This evaluation was conducted by the International Monetary Fund (IMF) and was then discussed by the Task Force of Senior Officials of the ESAAMLG in March 2008 and adopted by the Council of Ministers of the ESAAMLG as a 1st mutual evaluation on 22 August 2008.

Acronyms	6
Preface	8
Executive Summary	9
1 General	13
1.1 GENERAL INFORMATION ON THE REPUBLIC OF MAURITIUS	13
1.2 GENERAL SITUATION OF MONEY LAUNDERING AND FINANCING OF TERRORISM	14
1.3 OVERVIEW OF THE FINANCIAL SECTOR	14
1.4 OVERVIEW OF THE DNFBP SECTOR	18
1.5 OVERVIEW OF COMMERCIAL LAWS AND MECHANISMS GOVERNING LEGAL PERSONS AND ARRANGEMENTS	26
1.6 OVERVIEW OF STRATEGY TO PREVENT MONEY LAUNDERING AND TERRORIST FINANCING	27
2 Legal System and Related Institutional Measures	30
2.1 CRIMINALIZATION OF MONEY LAUNDERING (R.1 & 2)	30
2.1.1 Description and Analysis	30
2.1.2 Recommendations and Comments	45
2.1.3 Compliance with Recommendations 1 & 2	47
2.2 CRIMINALIZATION OF TERRORIST FINANCING (SR.II)	47
2.2.1 Description and Analysis	47
2.2.2 Recommendations and Comments	51
2.2.3 Compliance with Special Recommendation II	52
2.3 CONFISCATION, FREEZING, AND SEIZING OF PROCEEDS OF CRIME (R.3)	52
2.3.1 Description and Analysis	52
2.3.2 Recommendations and Comments	61
2.3.3 Compliance with Recommendation 3	62
2.4 FREEZING OF FUNDS USED FOR TERRORIST FINANCING (SR.III)	62
2.4.1 Description and Analysis	62
2.4.2 Recommendations and Comments	68
2.4.3 Compliance with Special Recommendation III	69
2.5 THE FINANCIAL INTELLIGENCE UNIT AND ITS FUNCTIONS (R.26)	70
2.5.1 Description and Analysis	70
2.5.2 Recommendations and Comments	87
2.5.3 Compliance with Recommendation 26	89
2.6 LAW ENFORCEMENT, PROSECUTION AND OTHER COMPETENT AUTHORITIES – THE FRAMEWORK FOR THE INVESTIGATION AND PROSECUTION OF OFFENSES, AND FOR CONFISCATION AND FREEZING (R.27, & 28) 89	
2.6.1 Description and Analysis	89
2.6.2 Recommendations and Comments	98
2.6.3 Compliance with Recommendations 27 & 28	99
2.7 CROSS BORDER DECLARATION OR DISCLOSURE (SR.IX)	99
2.7.1 Description and Analysis	99
3 Preventive Measures—Financial Institutions	102
CUSTOMER DUE DILIGENCE & RECORD KEEPING	102
3.1 RISK OF MONEY LAUNDERING OR TERRORIST FINANCING	102
3.2 CUSTOMER DUE DILIGENCE, INCLUDING ENHANCED OR REDUCED MEASURES (R.5 TO 8)	102
3.2.1 Description and Analysis	102
3.2.2 Recommendations and Comments	132
3.2.3 Compliance with Recommendations 5 to 8	133
3.3 THIRD PARTIES AND INTRODUCED BUSINESS (R.9)	134
3.3.1 Description and Analysis	134

	3.3.2	Recommendations and Comments	142
	3.3.3	Compliance with Recommendation 9	142
3.4		FINANCIAL INSTITUTION SECRECY OR CONFIDENTIALITY (R.4)	142
	3.4.1	Description and Analysis	142
	3.4.2	Recommendations and Comments	145
	3.4.3	Compliance with Recommendation 4	145
3.5		RECORD KEEPING AND WIRE TRANSFER RULES (R.10 & SR.VII)	145
	3.5.1	Description and Analysis	145
	3.5.2	Recommendations and Comments	151
	3.5.3	Compliance with Recommendation 10 and Special Recommendation VII	151
		UNUSUAL AND SUSPICIOUS TRANSACTIONS	152
3.6		MONITORING OF TRANSACTIONS AND RELATIONSHIPS (R.11 & 21).....	152
	3.6.1	Description and Analysis	152
	3.6.2	Recommendations and Comments	156
	3.6.3	Compliance with Recommendations 11 & 21.....	156
3.7		SUSPICIOUS TRANSACTION REPORTS AND OTHER REPORTING (R.13-14, 19, 25 & SR.IV)	156
	3.7.1	Description and Analysis	156
	3.7.2	Recommendations and Comments	165
	3.7.3	Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV	165
		INTERNAL CONTROLS AND OTHER MEASURES	166
3.8		INTERNAL CONTROLS, COMPLIANCE, AUDIT AND FOREIGN BRANCHES (R.15 & 22).....	166
	3.8.1	Description and Analysis	166
	3.8.2	Recommendations and Comments	173
	3.8.3	Compliance with Recommendations 15 & 22.....	173
3.9		SHELL BANKS (R.18)	173
	3.9.1	Description and Analysis	173
	3.9.2	Recommendations and Comments	176
	3.9.3	Compliance with Recommendation 18	176
		REGULATION, SUPERVISION, GUIDANCE, MONITORING AND SANCTIONS	176
3.10		THE SUPERVISORY AND OVERSIGHT SYSTEM—COMPETENT AUTHORITIES AND SROs. ROLE, FUNCTIONS, DUTIES AND POWERS (INCLUDING SANCTIONS) (R. 17, 23, 25 & 29).....	176
	3.10.1	Description and Analysis:	176
	3.10.2	Recommendations and Comments	198
	3.10.3	Compliance with Recommendations 17, 23, 25 & 29	199
3.11		MONEY OR VALUE TRANSFER SERVICES (SR.VI).....	200
	3.11.1	Description and Analysis (summary)	200
	3.11.2	Recommendations and Comments	202
	3.11.3	Compliance with Special Recommendation VI.....	202
4		Preventive Measures – Designated non-financial Businesses and Professions	202
4.1		CUSTOMER DUE DILIGENCE AND RECORD-KEEPING (R.12)	202
	4.1.1	Description and Analysis:	202
	4.1.2	Recommendations and Comments	207
	4.1.3	Compliance with Recommendation 12	208
4.2		SUSPICIOUS TRANSACTION REPORTING (R.16).....	208
		Description and Analysis	208
		Recommendations and Comments	211
		Compliance with Recommendation 16	212
4.3		REGULATION, SUPERVISION AND MONITORING (R.24-25).....	212
	4.3.1	Description and Analysis	212
	4.3.2	Recommendations and Comments	216
	4.3.3	Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)	216
4.4		OTHER NON-FINANCIAL BUSINESSES AND PROFESSIONS & MODERN-SECURE TRANSACTION TECHNIQUES (R.20).....	217
	4.4.1	Description and Analysis	217
	4.4.2	Recommendations and Comments	218

4.4.3	Compliance with Recommendation 20	218
5	Legal Persons and Arrangements & non-profit Organizations.....	218
5.1	LEGAL PERSONS – ACCESS TO BENEFICIAL OWNERSHIP AND CONTROL INFORMATION (R.33)	218
5.1.1	Description and Analysis	218
5.1.2	Recommendations and Comments	223
5.1.3	Compliance with Recommendations 33	223
5.2	LEGAL ARRANGEMENTS – ACCESS TO BENEFICIAL OWNERSHIP AND CONTROL INFORMATION (R.34)	223
5.2.1	Description and Analysis	223
5.2.2	Recommendations and Comments	225
5.2.3	Compliance with Recommendations 34	225
5.3	NON-PROFIT ORGANISATIONS (SR.VIII)	225
5.3.1	Description and Analysis	225
5.3.2	Recommendations and Comments	227
5.3.3	Compliance with Special Recommendation VIII	228
6	National and International Co-operation	228
6.1	NATIONAL COOPERATION AND COORDINATION (R.31)	228
6.1.1	Description and Analysis	228
6.1.2	Recommendations and Comments	229
6.1.3	229
6.1.4	Compliance with Recommendation 31	229
6.2	THE CONVENTIONS AND UN SPECIAL RESOLUTIONS (R.35 & SR.I)	230
6.2.1	Description and Analysis	230
6.2.2	Recommendations and Comments	230
6.2.3	Compliance with Recommendation 35 and Special Recommendation I	231
6.3	MUTUAL LEGAL ASSISTANCE (R.36-38, SR.V)	231
6.3.1	Description and Analysis	231
6.3.2	Recommendations and Comments	237
6.3.3	Compliance with Recommendations 36 to 38 and Special Recommendation V	237
6.4	EXTRADITION (R.37, 39, SR.V)	238
6.4.1	Description and Analysis	238
6.4.2	Recommendations and Comments	240
6.4.3	Compliance with Recommendations 37 & 39, and Special Recommendation V	241
6.5	OTHER FORMS OF INTERNATIONAL CO-OPERATION (R.40 & SR.V)	241
6.5.1	Description and Analysis	241
6.5.2	Recommendations and Comments	243
6.5.3	Compliance with Recommendation 40 and Special Recommendation V	244
7	Other Issues	244
7.1	RESOURCES AND STATISTICS	244
7.2	OTHER RELEVANT AML/CFT MEASURES OR ISSUES	245
7.3	GENERAL FRAMEWORK FOR AML/CFT SYSTEM	245
	TABLE 2. RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM	257
	ANNEX IV. SELECTED STATISTICS	307
	Annexes	
	Annex 1. Details of all Bodies Met on the on-site Mission	273
	Annex II: List of all laws, regulations and other material received	Error! Bookmark not defined.

Acronyms

AML/CFT	-	Anti-Money Laundering and Combating the Financing of Terrorism
BL	-	Banking Law
BOM	-	Bank of Mauritius
BCP	-	Basel Core Principles
CC	-	Criminal Code
CDD	-	Customer Due Diligence
CPC	-	Criminal Procedure Code
CSP	-	Company Service Provider
DDA	-	Dangerous Drugs Act
DNFBP	-	Designated Non-Financial Businesses and Professions
DPP	-	Director of Public Prosecution's Office
DAFO	-	Drugs Assets Forfeiture Office
ECAMLA	-	Economic Crime and Anti-Money Laundering Act
FATF	-	Financial Action Task Force
FI	-	Financial Institution
FIAMLA	-	Financial Intelligence and Anti-Money Laundering Act of 2002
FIU	-	Financial Intelligence Unit
FSAP	-	Financial Sector Assessment Program
FSC	-	Financial Services Commission
FSRB	-	FATF-style Regional Body
FT	-	Financing of terrorism
GRA	-	Gambling Regulatory Authority
ICAC	-	Independent Commission Against Corruption
IRS	-	Integrated Resort Scheme
IAIS	-	International Association of Insurance Supervisors
IGCA	-	Interpretation and General Clauses Act
KYC	-	Know your customer/client
LEG	-	Legal Department of the IMF
MEFD	-	Ministry of Finance and Economic Development
MFA	-	Ministry of Foreign Affairs
MFD	-	Monetary and Financial Systems Department of the IMF
MOU	-	Memorandum of Understanding
ML	-	Money laundering
MLA	-	Mutual legal assistance

NPO	-	Nonprofit organization
PEP	-	Politically-exposed person
POTA	-	Prevention of Terrorism Act 2002
ROSC	-	Report on Observance of Standards and Codes
SRO	-	Self-regulatory organization
STR	-	Suspicious Transaction Report
UN	-	United Nations Organization
UNSCR	-	United Nations Security Council Resolution

PREFACE

This assessment of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of the Republic of Mauritius is based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT assessment Methodology 2004 as updated in February 2007. The assessment team considered all the materials supplied by the authorities, the information obtained on site during their mission from September 24 to October 9, 2007, and other verifiable information subsequently provided by the authorities. During the mission, the assessment team met with officials and representatives of all relevant government agencies and the private sector. A list of the bodies met is set out in Annex 1 to the detailed assessment report.

The assessment was conducted by a team of assessors composed of staff of the International Monetary Fund (IMF) and an ESAAMLG Observer acting under the supervision of the IMF. The evaluation team consisted of Ms. Joy Smallwood (LEG, Senior Counsel, Team Leader); Ms. Nadine Schwarz, (LEG, Counsel); Mr. Andrew Gors (LEG, Technical Assistance Advisor); and Mr. Richard Walker (Expert under LEG supervision). Ms. Poovindree Naidoo, from the ESAAMLG, participated as an observer during the assessment visit by prior agreement with the authorities. The assessors reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter and punish money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP). The assessors also examined the capacity, implementation, and effectiveness of all these systems.

This report provides a summary of the AML/CFT measures in place in Mauritius at the time of the mission or shortly thereafter. It describes and analyzes those measures, sets out Mauritius's levels of compliance with the FATF 40+9 Recommendations (see Table 1), and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). The report was produced by the IMF as part of the Financial Sector Assessment Program (FSAP) of Mauritius. It was also presented to the Eastern and Southern Africa AML Group (ESAAMLG) and endorsed by this organization on its plenary meeting of March 2008.

The assessors would like to express their gratitude to the Mauritian authorities for their cooperation and hospitality throughout the assessment mission.

EXECUTIVE SUMMARY

Key Findings

1. **It was apparent to the mission that significant steps have been taken by the Mauritian authorities in recent years to enhance the AML/CFT framework.** These steps mean that Mauritius is well placed to capitalize on its national strategy to diversify its economy into global financial services by taking advantage of its linkages with both African and long standing arrangements with the larger Asian economies. Additionally, the Republic of Mauritius intends to offer new products in Islamic financial services and wealth management. In this dynamic environment, it will be important to conduct a review of the AML/CFT risks associated with such global business.
2. **In recent years, a National Committee for Anti-Money Laundering and Combating the Financing of Terrorism has been formed, chaired by a senior representative from the Ministry of Finance and Economic Development.** In addition, the FIU's functions were revised and the Bank of Mauritius' functions have been enhanced, and the Financial Services Commission (FSC) and the Independent Commission Against Corruption (ICAC) have been established. Now that the legislative and institutional framework is in place, it will be important for these and other key stakeholders to focus on implementing the framework. A key element in this also will be greater coordination and cooperation among the various national authorities. The recently established Bank of Mauritius and FSC Coordination Committee is one example of the necessary integrated approach to AML/CFT.
3. **Areas of further coordination and cooperation would include: more rapid filing of suspicious transaction reports (STRs) by reporting entities; improved quality of information provided in STRs; and more rapid exchange of information between intelligence, evidence gathering, and prosecution services.** Extensive and targeted training will assist in achieving a more integrated national system.

Legal Systems and Related Institutional Measures

4. **Mauritius took its first AML measures in 1995 with the adoption of the Dangerous Drugs Act (DDA) which criminalized money laundering where the predicate offense relates to drug offenses.** It then adopted a threshold approach with the money laundering offense applying to crimes in its first AML-specific law, the Economic Crimes and Anti-Money Laundering Act of 2000 (ECAMLA), which was subsequently replaced by the Financial Intelligence and Anti-Money Laundering Act of 2002 (FIAMLA). The ML offenses under the DDA and the FIAMLA broadly meet the standard, but the scope of Mauritius' fight against money laundering is narrowed by the limited number of predicate offenses.
5. Over the last years, Mauritius took important legislative steps to fight terrorism and terrorist financing with the adoption of the Prevention of Terrorism Act, the Convention for the Suppression of the Financing of Terrorism Act, and by implementing Regulations issued by the Prime Minister.
6. **Several authorities play a key role in the AML/CFT framework:** the Financial Intelligence Unit (FIU), the Independent Commission Against Corruption (ICAC), which is the primary authority for the investigation and prosecution of corruption and ML cases, the Police (central Crime Investigation Division, CID, and the Anti-Drugs and Smuggling unit, ADSU), the Attorney General's Office, the Drugs Assets Forfeiture Office (DAFO) and the Courts. The Ministry of Finance and Economic Development also provides direction on economic policy parameters that underpin AML/CFT legislation.

7. **The FIAMLA and the DDA make provision for a range of provisional and confiscation measures that enable the authorities to attach and, upon conviction, remove tainted property from the hands of the criminals.** Under both Acts, Mauritius placed the onus on the convicted person to establish that his or her possessions are not the proceeds of crime. In spite of the reversed burden of proof, no assets have been successfully confiscated.

8. **The investigative and prosecutorial authorities have the necessary powers to execute their respective functions,** but communication between the ICAC and the other authorities is rendered impossible due to the stringent confidentiality requirements set out in the Prevention of Corruption Act.

9. **The FIU has taken significant steps to enhance its operational capabilities over the last few years.** It exercises its functions pursuant to the FIAMLA. As a member of Egmont, the FIU is active in sharing information within that Group and in fostering FIUs in the region.

10. **The FIU's operational processes, including analysis, are professional.** The FIU is able to consult with the necessary authorities, seek assistance in performing its functions, and has access to a wide range of external data sources, including law enforcement (except ICAC). However, such access is not available on-line. The FIU has appropriate electronic receipt, storage, and analysis platforms and software, although most reports are still provided on paper forms.

11. **While the Director manages the daily operations of the FIU, a separately appointed Board maintains an administrative role.** Its role includes giving consent to disseminations of STRs, which raises an issue concerning the autonomy of the FIU, although to date this has not arisen. The FIU's effectiveness is reduced by some external factors, including the low level of STRs it receives, long delays in receiving the reports from reporting entities and lack of feedback from law enforcement authorities.

12. **In early 2007 Mauritius adopted a disclosure system for cross border physical transportation of currency.** The system is in the process of being implemented.

Preventive Measures – Financial Institutions

13. **There is a wide range of financial institutions operating in Mauritius.** Institutions are subject to regulation by the Bank of Mauritius or the FSC. The Bank of Mauritius is responsible for the banks and other nonbank deposit-taking institutions (mostly leasing companies), together with cash dealers. The FSC is responsible for certain other financial sector institutions. Currently, the majority of financial institutions is supervised for AML/CFT by one of the two above regulators. It was apparent to the mission that significant steps have been taken by the Mauritius authorities in recent years to enhance the AML/CFT framework applicable to financial institutions even though certain financial institutions, such as the 120 cooperative credit unions, are not included in the framework. The banking legislation, the FIAMLA Regulations and underlying Guidance Notes/Codes, which are enforceable, provide the basic framework on customer verification and record keeping to be followed by regulated institutions.

14. **The Bank of Mauritius is a professional and well-organized supervisory body which devotes considerable efforts to ensure that appropriate AML/CFT measures are applied by the institutions that it regulates.** The BOM has issued Guidance Notes on AML/CFT and conducted on-

site inspections to all the institutions it regulates. It appeared to the mission that compliance by regulated firms with the Guidance Notes was good. Shell banks cannot be established in Mauritius.

15. **The FSC was established much more recently than the Bank of Mauritius and has issued AML/CFT Codes to insurance and investment institutions.** Some of these institutions have been subject to on-site inspections. The FSC has encouraged institutions to put in place AML/CFT counter measures. New legislation brought into force during the mission provides the FSC with specific on-site inspection powers and a greater range of potential sanctions for breaches of the Codes. It was apparent to the mission that the FSC intend to use the explicit and wider powers in the new legislation. The FSC's reports following on-site inspections since 2002 highlight weaknesses and make recommendations to address weaknesses. The FSC had issued directions to licensees with poor AML/CFT standards but the mission noted that some licensees lacked robust AML/CFT systems.

Preventive Measures – Designated Non-Financial Businesses and Professions

16. **The full range of DNFBPs operate in Mauritius.** There are a number of global business licensees which are administered by local management companies (trust and company service providers) both of whom are regulated by the FSC. Apart from the FSC licensees, there are no effective AML/CFT supervisory regimes in the other DNFBP sectors.

17. **STR reporting obligations apply across the range of DNFBPs covered by the AML/CFT legal framework, but real estate agents and jewelers are not included.** While the FIAMLA places a general requirement for DNFBPs for customer verification and record keeping, the lack of regulatory prescription, other than for the FSC supervised TCSPs, means that the balance of the DNFBP sector is not subject to effective CDD, record keeping, and internal control requirements. There is a prohibition on large cash payments beyond 500,000 rupees (approximately US\$16,500) which limits the risk in the jewelry sector. Large scale, high-value real estate developments and sales are being actively promoted to international investors, and CDD and reporting considerations are only partially addressed through the practice of requiring investors to establish accounts within the Mauritian banking system.

Legal Persons and Arrangements & Non-Profit Organizations

18. **Mauritius has achieved a good standard of transparency concerning the beneficial ownership and control of legal persons and legal arrangements.** Competent authorities are able to have timely access to current information on beneficial ownership. While bearer shares were permissible until 2001, they are not permissible under the Companies Act 2001. Companies created under former legislation were required to relinquish bearer shares by the end of 2001 or be struck off the register of companies.

19. **Non-profit organizations must register with the Registry of Associations but there has been no risk assessment of the sector for AML/CFT purposes nor has there been any outreach in this regard to the 8,000 NPOs.** International payments are not monitored by the Registrar or any other authority, although the Registrar does review annual statements of account filed by the NPOs.

National and International Co-operation

20. **A national Committee on Anti-Money Laundering was established with a view to creating a platform between all the relevant authorities in the fight against ML and TF.** The Bank of Mauritius and the FSC are able to cooperate with their foreign counterparts.

21. **With the Mutual Assistance in Criminal and Related Matters Act 2003 (MACRM Act) and the Extradition Act 1970, Mauritius adopted comprehensive laws that enable it to provide a wide range of measures at the request of a foreign State.** Both ML and TF are extraditable offenses.

DETAILED ASSESSMENT REPORT

1 GENERAL

1.1 General Information on the Republic of Mauritius

22. The Republic of Mauritius consists of the islands of Mauritius (main island), Rodrigues, Agalega, St. Brandon, and the Chagos Archipelago with a total area of some 2,040 sq kms. It obtained its independence from the British on March 12, 1968 and became a republic on March 12, 1992. The population of Mauritius is around 1.2 million people, mainly of Indian, African, Chinese, and European origin. English is the official language while French is widely used in the private sector and the media. Creole, a derivative of French, is understood and spoken by all Mauritians. In addition, several other languages are spoken by sections of the population.

23. The political system is based on the Westminster type democracy with the prime minister as head of the government. The President, who is the head of state, and the vice president are elected by parliament every five years. The separation of powers among the judiciary, the executive, and the parliament are defined in the Constitution of the Republic of Mauritius. Mauritius is a member of the Commonwealth, the United Nations and related organizations, the Organisation of African Unity, and the Indian Ocean Commission.

24. The main economic activities of Mauritius are sugar manufacturing, tourism, and the financial sectors. Financial services, comprising the business of banks, insurance companies, stock market, and other financial intermediaries, constitutes a fast growing sector of the Mauritian economy, representing around 10 percent of GDP in 2005 and employing more than 10,000 persons in both large and small establishments. The government is promoting the services sector, including IT and related services.

25. Mauritius has established the Independent Commission against Corruption under the Prevention of Corruption Act of 2002. The main function of the Commission is to investigate corruption and money laundering cases. Mauritius also ratified the United Nations Convention against corruption on December 15, 2004.

26. The Mauritian legal system is largely based on English and French law. Criminal procedure law is mainly English, while the Criminal Code was influenced by the French Code and the civil law is modeled on the Napoleonic Code. The three types of courts are the Magistrate's Court, the Intermediate Court, and the Supreme Court. Appeals from the Supreme Court lie with the Court of Civil Appeal or with the Court of Criminal Appeal. The ultimate court of appeal is the Judicial Committee of the Privy Council in England.

27. Mauritius has established the Financial Reporting Council which is a fully autonomous oversight body with the responsibility to monitor and enforce the reporting of financial matters, as well as issuing accounting and auditing standards and codes. The main objects of the Financial Reporting Council are to promote the provision of high-quality reporting of financial and non-financial information by public interest entities as well as promote the highest standards among licensed auditors. The Mauritius Institute of Professional Accountants plays a similar promotion and oversight role with respect to professional accountants. Law practitioners are subject to the profession membership and Codes of Ethics of the Law Society and Bar Council. The Chamber of Notaries also oversees professional conduct. Chartered Secretaries adhere to the qualifications for membership of

the profession's international association. Requirements for legal persons and arrangements are also framed in legislation that covers companies, associations, cooperatives and trusts.

28. Mauritius has also established the National Committee on Corporate Governance, which is the national coordinating body responsible for all matters pertaining to corporate governance. The main objectives of the Committee are to establish principles and practices of corporate governance and to promote the highest standards of corporate governance.

29. The Mauritius Institute of Directors is responsible for promoting high standards of corporate governance, business and ethical conduct by Directors. Directors are required to adhere to the Mauritian Code on Corporate Governance, which is based on OECD principles.

1.2 General Situation of Money Laundering and Financing of Terrorism.

30. The authorities have indicated that the crime rate in Mauritius is relatively low, with drug related offenses being the most prosecuted crimes. Other crimes that occur less frequently are crimes against the person, such as sexual assault, assault, homicide, as well as traffic offenses. Money laundering is rarely prosecuted. One possible explanation could be that law enforcement officers tend to investigate the predicate offenses and the person is subsequently only charged for the predicate offense and not money laundering.

31. It should be noted that there is a case currently pending before the courts in a European country where Mauritian global business companies are suspected of having been implicated in a large international money laundering operation. The Mauritian FSC informed the mission that, further to a disclosure order made by the Court under the Mutual Legal Assistance in Criminal and Related Matters Act in 2003, assistance was provided to the foreign authorities from the FSC's files. The (defunct) Economic Crime Office was the authority responsible for investigating money laundering cases which is now replaced by ICAC.

32. Transparency International's Corruption Perceptions Index ranks Mauritius number 53 which indicates that corruption is a serious issue in Mauritius. Mauritius has begun to address this by establishing ICAC which is now operational and is investigating a number of corruption cases.

33. There have been no reported incidences of terrorist acts or indications of terrorist financing in Mauritius. While the UNSCR 1267 lists of designated persons and entities were initially circulated to financial institutions under the purview of both the BOM and the FSC, they are now only circulated to financial institutions supervised by the BOM. The FSC no longer circulates the amendments to the consolidated list to its licensees. So far, no positive match with the 1267 designations was identified. According to the authorities, no requests were made under UNSCR 1373.

1.3 Overview of the Financial Sector

34. The financial services sector grew by an average of 7 percent over the 2000/2006 period. Its assets are equivalent to 100 percent of GDP. The financial services sector has become an important pillar of the economy both in terms of value-added and employment generation, especially for higher-skilled jobs. It contributed to around 10 percent of GDP between 2000 and 2006 and now provides employment to more than 9,000 employees, mostly professionals in large establishments.

35. The financial services sector is regulated and supervised by two independent institutions, namely the Bank of Mauritius, for all deposit taking and foreign exchange matters, and the Financial Services Commission, for nonbank financial services such as insurance, capital markets, leasing activities, global business companies, and private pensions. With regard to the balance of risk of money laundering and terrorist financing to financial institutions, the mission concluded that the potential risk was greater in the banking sector—the sector regulated by the Bank of Mauritius—than the other sectors. The banking sector is the largest, it appears to be more international in its outlook, and it is actively seeking to attract customers from outside Mauritius. Measures have been taken by the Mauritius authorities to mitigate the risk to the sector. The customer bases of the insurance and investment sectors—regulated by the FSC—are generally domestic, although some investment firms are successfully attracting foreign customers.

36. In October 2004, the Government of Mauritius introduced new banking laws, namely the Bank of Mauritius Act 2004 and the Banking Act 2004. The objective in enacting the new Banking Act was to amend and consolidate the laws relating to the business of banking and other financial institutions. The Act empowers the central bank to issue guidelines and to revoke a banking license where a bank has been convicted by a court of an offense under any enactment relating to anti-money laundering or prevention of terrorism. The central bank is also empowered to revoke a banking license where a bank is carrying on business in a manner which is contrary or detrimental to the interests of its depositors or the public, fails to comply with any directive or instruction issued by the central bank under the banking legislation or contravenes any provision of the banking legislation. The Bank of Mauritius Act 2004 made provision for the establishment of the Bank of Mauritius, as did the 1966 Bank of Mauritius Act.

37. The Financial Services Development Act 2001 provided for the establishment of the Financial Services Commission. This Act was replaced during the mission by the Financial Services Act 2007, which provided the FSC with greater regulatory powers. Among other matters, it provides greater ability to undertake on-site inspections, to obtain information, and to apply administrative penalties. The Act also establishes an Enforcement Committee and a Financial Services Review Panel. The Act allows for sanctions to be imposed in instances of noncompliance relating to AML/CFT issues in respect of institutions and individuals. Based on meetings with FSC staff, it was clear to the mission that, going forward, the FSC intends to use the tools in the new Act to enforce the AML/CFT framework it administers. The new Act deals with, among others, the licensing, regulation, monitoring, and supervision of businesses in the financial sector and global business companies. Under the Financial Services Act 2007 transitional provisions, existing Freeport and ITC companies, will have until 30 June 2012 to take necessary measures to meet the requirements of the new Act in order to remain as global business licensees.

38. During the mission, the Stock Exchange Act 1988 and the Unit Trust Act 1989 were replaced by the Securities Act 2005. The new Act establishes a framework for the regulation of securities markets, market participants, and the offering and trading of securities. One of the principal aims of the Securities Act 2005 is to implement the Objectives and Principles of the International Organization of Securities Commissions. Mauritius has a stock exchange established since 1988. Under the Stock Exchange Act 1988, the objects of the Stock Exchange Company were specified as being to operate and maintain a stock exchange, to provide facilities for buying, selling and otherwise dealing in securities on the stock exchange; to establish a clearing service under the Securities (Central Depository, Clearing and Settlement) Act 1996; and to provide and maintain, to the

satisfaction of the Commission, adequate and properly equipped premises for the conduct of its business.

39. The Stock Exchange Act was replaced by the Securities Act 2005 during the mission. Under the new Act, no person shall establish, operate or maintain a securities exchange without a license from the FSC. The FSC is not able to grant a license unless it is satisfied that the applicant has operating rules to ensure, as far as is reasonably practicable, that the market will operate fairly, transparently, and in an orderly way. The FSC must also be satisfied that the applicant has adequate rules or systems for handling conflicts between the commercial interests of the applicant and the need for the exchange to ensure that it operates fairly, transparently, and in an orderly way; monitoring the conduct of participants on, or in relation to the exchange; and enforcing compliance with the operating rules of the market. The stock exchange operates two markets, namely, the official market which has some 40 listed companies and a market capitalization of 144 billion rupees and the development and enterprise market with a market capitalization of some 45 billion rupees. The total market capitalization of the exchange is equivalent to over 80 percent of GDP.

40. The Insurance Act 2005, which came into effect during the mission, replaced the Insurance Act 1987. One of the aims of the new Act is to implement the Insurance Core Principles of the International Association of Insurance Supervisors. It establishes a framework for the regulation and supervision of the insurance business. It also provides for the licensing of insurers and other insurance operators, and for the registration of insurance salespersons and other insurance professionals.

Table 1. Structure of Financial Sector, 2006/2007

Sam Sample tables, to be adapted as appropriate.	Number of institutions	Total assets (\$ million)	Authorized/ Registered and supervised by:
Commercial banks	18	598 259(Rs mn) ¹	BoM
Mortgage banks			
Investment companies	84	35.86 (US\$bn)	FSC
Collective investment associations (Fund Investments/Portfolio Managers)	16	3 018 969 436 (Rs)	FSC
Life insurance companies and occupational pension funds	23	5 739 000 000 (Rs)	FSC
Company pension funds (Managers)	3	12 459 855(Rs)	FSC
Insurance brokers	18	389 683 190 (Rs)	
E-money			
Savings institutions			
Foreign exchange	5		BoM
Money transmitters	2		BoM
Leasing- and factoring	6	Leasing 10 427 408 007 (Rs) Factoring 210 046 304 (Rs)	FSC
Credit cards etc.			
Postal services 5/			

¹ 1 Rupee equals \$0.0337 USD

Table 2. Branches of Foreign Banks

	Number of branches abroad	Number of subsidiaries abroad	Branches of foreign banks in the country	
			Number	Supervisor
Commercial banks	3	0		
Mortgage banks				
Life Insurance Companies				
Investment companies				
Etc.				

41. The following table sets out the types of financial institutions that can engage in the financial activities that are within the definition of “financial institutions” in the FATF 40+9.

Table 3. Financial Activity by Type of Institution

Type of financial activity (See the Glossary of the 40 Recommendations)	Type of financial institution that performs this activity	AML/CFT regulator & supervisor
1. Acceptance of deposits and other repayable funds from the public (including private banking)	1. Banks 2. Non-bank deposit taking institutions (NBDTI)	1. BoM 2. BoM
2. Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting))	1. Banks 2. Credit cards companies 3. Factoring and finance/consumer credit companies	1. BoM 2. BoM 3. FSC
3. Financial leasing (other than financial leasing arrangements in relation to consumer products)	1. Banks 2. Leasing companies	1. BoM 2. FSC
4. The transfer of money or value (including financial activity in both the formal or informal sector (e.g. alternative remittance activity), but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds)	1. Banks 2. Money remitters	1. BoM 2. BoM
5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	1. Banks 2. Credit cards companies 3. Electronic money institutions	1. BoM 2. BoM
6. Financial guarantees and commitments	1. Banks	1. BoM
7. Trading in: (a) money market instruments (cheques, bills, CDs, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading	1. Banks 2. Investment companies	1. BoM 2. FSC

8. Participation in securities issues and the provision of financial services related to such issues	1. Banks 2. Investment companies	1. BoM 2. FSC
9. Individual and collective portfolio management	1. Banks 2. Investment companies 3. Investment associations	1. 2. FSC
10. Safekeeping and administration of cash or liquid securities on behalf of other persons	1. Banks 2. Investment companies 3. Investment management companies.	1. BoM 2. FSC
11. Otherwise investing, administering or managing funds or money on behalf of other persons	1. Banks	1. BoM
12. Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and to insurance intermediaries (agents and brokers))	1. Life insurance companies 2. Lateral pension funds 3. Life insurance agents and brokers	1. FSC 2. FSC
13. Money and currency changing	1. Banks 2. Cash dealers	1. BoM 2.BoM

Table 4. Employment in the Banking Sector

	March 2005			March 2006		
	Male	Female	Both	Male	Female	Both
Financial Intermediation	4648	3753	8401	4910	4099	9009
Banking	3013	2358	5371	3064	2443	5507
Insurance	1280	1055	2345	1240	1104	2344
Other	355	330	685	606	552	1158

1.4 Overview of the DNFBP Sector

42. Despite its relatively small size, the full range of DNFBPs styles are present in Mauritius. Mauritius has a Freeport Zone regime and a Global Business (international business) sector in addition to businesses that operate in the domestic economy. DNFBP activities are not one of the business activities approved to operate in the Freeport Zones. The legal framework provided by FIAMLA makes no distinction in its application to DNFBPs that operate domestically or which may operate in the global sector. There is no geographical restriction on where global businesses can be located in Mauritius. Table 5 in this section provides a profile of the DNFBP sector.

Table 5. DNFBPs Operating in Mauritius

Sector	In Mauritius Activity Performed by:	Size of Sector	AML/CFT Requirements in Domestic Law	Oversight Provided by:	Comments
Professional Trustee Services – Global Professional Trustee Services - Domestic	Management companies (MC) Licensed as Qualified Trustees – act as local registered agents for global business and trusts MC's licensed as Qualified Trustees FSC	23 holders of FSC Licenses Same 23 holders of FSC Licenses	Yes – CDD, record keeping, STR reporting and Internal Controls	Licensed and Supervised by FSC (designated AML/CFT supervisor)	Predominantly act as local registered agents for global businesses and for trusts established in Mauritius
Company service providers - global	Management Companies (for global companies) – Provide all aspects of corporate service activities	79 FSC licensees	Yes - CDD, record keeping, STR reporting and Internal Controls	licensed and supervised by FSC (designated AML/CFT supervisor)	Provide all aspects of corporate service activities
Company service providers - domestic	Local legal professionals, accountants and chartered secretaries - Provide all aspects of corporate service activities	Unknown	Only STR No CDD prescription	Subject to Rules and Ethics of professional bodies (see entries below).	Provide all aspects of corporate service activities
Casinos	Casinos No internet casino (although allowed in new Law)	6 licenses (5 casinos operating)	Only STR No CDD prescription	Gambling Regulatory Authority ² (effective September 10, 2007) – designated AML/CFT supervisor	No internet casino, although provision exists under new Act proclaimed Sept 10, 2007

² At the time of the mission, the regulatory responsibility was in the process of moving to the new single Gambling Regulatory Authority (GRA). The GRA Act provision concerning casino licensing were proclaimed on September 10, 2007; however, the parts concerning Bookmakers and totalisators and general enforcement were proclaimed after the on-site mission (December 6, 2007).

Legal Professional and accountants:					
Barristers	Barristers	325	Only STR No CDD prescription	Subject to Rules and Ethics of the Law Society and Law Practitioners Act	Subject to Rules and Ethics of the Law Society and Law Practitioners Act
Lawyers	Attorney-at-law	150	Only STR No CDD prescription	Subject to Rules and Ethics of the Law Society and Law Practitioners Act	Subject to Rules and Ethics of the Law Society and Law Practitioners Act
Notaries	Notaries	54 (max allowed in law of 60)	Only STR No CDD prescription	Professional conduct oversight by Chamber of Notaries	Subject to Law Practitioners Act and Notaries Act
Accountants	Professional Auditing/Accounting Firms (approximately 30)	1143	Only STR No CDD prescription	Registration and oversight by Mauritian Institute of Professional Accountants (MIPA)	Registration and oversight by Mauritian Institute of Professional Accountants (MIPA)
Auditors	Professional Auditing/Accounting Firms	140	Only STR No CDD prescription	Licensing and oversight by Financial Reporting Council (FRC)	Licensing and oversight by Financial Reporting Council (FRC)
Chartered Secretary	Qualified Chartered Secretary – 20 Corporate secretaries	100	Only STR No CDD prescription	Membership requirements of local & International Association	
Real Estate Agents	Trade Licensed and Unlicensed Real Estate Brokers	Industry Estimates range from 150 to 200.	No	No industry regulator or appointed authority. BOI/PMO approve high value IRS developments	Approvals to promoters of high value The Integrated Resort Scheme (IRS) are vetted through the Board of Investments
Precious metals and	Jewelers for sale of stones	600-800 Jewelers	No	Oversight of trade licenses	Prohibition on large cash

stones	Bank of Mauritius and 2 registered Metal Dealers	work in unknown number of business		by Controller of Assay	transactions places sector above FATF threshold
Other sectors covered in the domestic law (both gambling related)					
Totalisators Pool based betting	Licensed operators ³	2 Licensed holders	Only STR. No CDD prescription	Horse Racing Control Board	Pool based betting
Bookmakers	Licensed bookmakers	51 Licensees	Only STR. No CDD prescription	“ “ “ “	Fixed priced betting

Trust and Company Service Providers (TCSPs)

43. Trust and company service providers that service the global sector business in Mauritius must hold an FSC issued Management License. Of the 102 Licensees at the time of mission, 79 were Management companies and 23 were Corporate Trustees. Both categories were regulated by the FSC under the Financial Services Development Act 2001 until the mission. During the mission, the Act was replaced by the Financial Services Act 2007. The FSC also supervises the management companies that provide professional trustee services for domestic clients. Most of the management companies service both corporate and trust clients.

TCSPs - Global Business Sector

44. The 79 management companies, together with 23 qualified corporate trustees (that can also act as registered agents), service the global business (GBL) sector in Mauritius. Both management companies and qualified corporate trustees must hold a management license issued by the FSC; however, the license conditions for the management companies provide for a broader scope of activities: company formation, administration and management of GBLs and corporate trustee services. Corporate trustees are restricted to trustee services. Only management companies are allowed to act as registered agents. All GBLs must apply through or be represented in Mauritius by a holder of a management license. In the majority of cases, the management companies also hold trustee licenses through affiliated companies and act as the trustee for their global clients.

45. There were 28,981 businesses with global business licenses as of June 2006. There are two types of license: GB1 (8,706) and GB2 (20,285). GB1 businesses must have physical presence in Mauritius and are primarily involved in financial services, including funds management, banking, and insurance. GB2 licensees which must be represented in Mauritius by a registered agent (that is a management company), are mainly used for investment holdings for incorporated and high-wealth individuals and trading. The new Financial Services Act (FSA) which came into effect on September 28, 2007, strengthens statutory requirements for the conduct of global businesses. Global businesses that wish to conduct financial services are restricted to a GBL1 license. Most GBs are incorporated or registered in Mauritius and are subject to the requirements of the Companies Act. The FSC estimates indicate that in excess of 70 percent of total turnover in the global sector is generated through the financial services business conducted by GBL1 licensees.

³ At the time of the mission, the regulatory responsibility was in the process of moving to the new single Gambling Regulatory Authority (GRA). The GRA Act provision concerning Bookmakers and totalisators and general enforcement was placed into effect after the mission. (December 6, 2007).

46. For AML/CFT purposes, FIAMLA designates the FSC as the competent supervisory authority. The FSA (placed into effect during the on-site mission) creates the broader legal structure and framework for the FSC's regulation of the nonbank financial institutions, and this includes TCSPs that service the global sector and qualified trustees that are also able to act for domestic trusts. Consistent with its approach to regulating and supervising the insurance and securities sectors, the FSC acts as the licensing authority (both for management companies, qualified trustees and the GBLs, conducts on and off-site inspections of the management companies and qualified trustees and has undertaken enforcement action. Prior to the enactment of the FSA, TCSPs were governed by provisions of the Financial Services Development Act which also required TCSPs to be licensed by the FSC. The FSD s27(5) also gave specific power to the FSC to conduct on-site inspections of the management companies licensed to provide trustee and company provider services to the global business sector.

TCSPs - Domestic market

47. Although the Companies Act 2001 allows individuals to form their own domestic companies, local lawyers, notaries, accountants and chartered secretaries continue to provide these corporate services. The assessors were unable to obtain any statistics to scope the size of the sector; however, industry advice suggests that such business is still undertaken by many of the local professions.

Law Practitioners (including notaries)

48. Solicitors, lawyers, and notaries fall under the Law Practitioners' Act. Specific laws governing these three professions are the Law Society Act, the Bar Council Act and the Notaries Act.

49. In Mauritius, the legal profession is split between law practitioners (attorneys and notaries) and barristers. Attorneys and barristers are governed by the Law Practitioners Act (1984) and by the Mauritius Law Society Act (2005). (Description and analysis of the notary's profession is included separately). In 2006, the Law Society also issued Rules and a Code of Conduct. Barristers are governed by the Mauritius Bar Association Act (1957), Law Practitioners Act and a Code of Ethics (1997). There are approximately 150 lawyers and 325 barristers practicing in Mauritius.

50. Attorneys are generally retained by clients for commercial litigation and other civil litigation. Barristers may be hired directly by clients for criminal litigation. They may be hired for civil litigation matters as well although the carriage of the case remains with the attorney. Barristers are also employed by management companies and international law firms to give legal opinions on corporate and commercial matters with regards to Mauritian law for companies holding global business licenses in Mauritius who are conducting international business through those companies.

51. Notaries are considered law practitioners covered by the Law Practitioners Act that applies to lawyers and barristers. They are also subject to the requirements of the Notaries Act. The Chamber of Notaries has a general role to maintain the internal discipline among notaries. A maximum of 60 notaries are allowed to practice (currently 54 do). Historically, all notaries must be located in Port Louis to assist in their knowledge of the client.

52. Notaries are involved in real estate transactions, where they act as the intermediary for both buyer and seller. In this role, notaries authenticate the deeds of title and transaction. The Notary will hold on deposit funds from the potential buyer and release net funds to the vendor when the title is

transferred. The prohibition on large cash payments applies, and the normal practice is to rely on cheques placed with Mauritian banks.

53. Notaries are also involved in forming domestic companies for clients, although this business has fallen significantly following changes to the Companies Act that enable individuals to make their own application. Notaries provide a service to the GBLs and management companies in certifying true copies of board resolutions, powers of attorney and trust deeds, and that documents have been completed in accordance with the relevant Mauritian law.

Accountants and Auditors

54. In 2004, the Financial Reporting Act was passed. This Act provides for the setting up of the Mauritius Institution of Professional Accountants and the Financial Reporting Council. MIPA is responsible for the oversight of the professional conduct of registered accountants, and the FRC has a similar role with respect to licensed accountants.

55. There are currently 1,143 professional accountants registered with MIPA and 140 auditors who are required to be licensed by the FRC. Conflicting comment was received as to whether “accountant” is defined in law.

56. Professional accountants must have qualifications recognized by the various professional accounting bodies and work both in the public and private sector. All practices provide auditing and accounting services. The larger firms are increasingly moving into corporate advisory services, for example, on corporate financing proposals in the region. The local sector restricts itself to auditing work for the global sector as the accounting function service is provided by management companies. The industry is dominated by the five largest firms, which include international auditing firms.

Chartered Secretaries

57. There are approximately 100 Chartered Secretaries in Mauritius that meet the professional qualifications (legal or accounting). The international standard setting body is the Institute of Chartered Secretaries (based in London). All members of the local professional association (The Mauritian Association of Chartered Secretaries and Administrators) are required to adhere to the Institute’s professional code of ethics. The code addresses professional responsibilities which includes adherence to all relevant statutory and regulatory requirements. No specific guidance on AML/CFT matters have been issued.

58. Public companies and private companies of a certain turnover (30 million rupee) are required by the Companies Act to have a chartered (corporate) secretary and the Companies Registrar review verifies the membership status of all chartered secretaries that act for such companies. The role of the company secretary (currently about 20) is specified both in the Companies Act and the Code of Corporate Governance for Mauritius and essentially includes advising and assisting a board of its obligations to its own constitution, relevant statutory and regulatory requirements, Codes of Conduct and rules established by the Board. Company Secretaries are subject to the same “fit and proper” tests as directors.

59. In Mauritius, chartered secretaries also provide corporate services, including company formation and registered offices, nominee services, and management of bank accounts. The greatest risk to reputation is considered to be the acting as a nominee. Corporate Services are provided to the

domestic sector. Chartered secretaries also work for the various management companies in an internal capacity. Any AML/CFT obligations are the responsibility of the management company.

Real Estate Agents

60. Real Estate agents are not regulated except that they operate with a trade license from one of the nine local authorities. The mission was made aware of a significant level of unlicensed activity; although no real estate price index exists, the sector is undergoing considerable growth, especially with respect to the government-promoted Integrated Resort Scheme (IRS), which enables high-value developments to be sold primarily to foreign buyers. The Board of Investments estimated that 4.5 billion MUR (approximately US\$130 million) was invested in the IRS developments in the previous year.

61. A trade license enables a person to act as a broker between buyers and sellers of ‘immovable objects’—meaning property. There is no Agency law and the direction given by commercial code, which is based on French law, gives anyone the right to be involved in “buying and selling”. The trade license comes with no conditionality and is renewed on an annual basis. There is no monitoring of agents other than for payment of license fees.

62. The Real Estate Agents Association (30 members) advised that 150 to 200 persons operate as estate agents. The Association is seeking to improve the overall standards of the real estate sector and has issued a Code of Ethics, Rules and Regulations, including ethical membership requirements which are binding on its members. It has an internal disciplinary committee. All legal and transaction formalities concerning the acquisition or disposal of property in Mauritius is undertaken by notaries.

63. There is no real estate price index. Anecdotal comment suggests that the price of real estate has risen considerably in recent years. Increasing exemptions are being provided to allow foreigners to purchase real estate. The BOI facilitated IRS is a significant initiative to attract foreign buyers and investors. The IRS developers (Mauritian or foreign promoters) predominantly market the high value properties⁴ to international buyers. While the BOI undertakes a level of checking on the background of promoters before it approves the development application, this is more for credit worthiness.

64. The BOI does not regulate the IRS sector, although all the relevant regulations do require promoters/developers to establish bank accounts in Mauritius and hence be subject to the CDD processes of the financial sector. As part of its processes, the BOI will research annual reports and internet, and obtain source of funds and passport information. A KYC certification of the foreign buyer from the promoter’s Mauritian bank is provided to the BOI. Foreign investors must transfer all payments to the promoter’s Mauritian bank accounts. Subsequent to the on-site mission the authorities advised that the scope of the IRS has been extended to allow smaller private landowners to sell to foreign investors.

Dealers in Precious Metals and Stones

65. Dealers in precious metal and stones operate with a trade license from one of the local authorities. Although no official statistics were provided to the assessors, industry representatives advised there are approximately five to six hundred jewelers in Mauritius, although it is unclear how

⁴ Minimum sale price US\$500,000, although prices are much higher in practice.

many separate businesses exist. Most jewelers work for established jewelry businesses. Approximately 15 of these jewelers are involved in the jewelry export business. The assessors were advised that unlicensed activity is a problem in the industry.

66. The BOM sells gold to the two registered precious metal dealers. The two gold dealers do not fall under the regulatory purview of the BOM. Like jewelers, they are required to be registered with the Controller of Assay's Office and are governed by the provisions of the Jewelry Act 2007.

67. There is a level of oversight of licensed jewelers and jewelers are subject to transaction-based record keeping requirements for VAT and Customs purposes as well as for on-site quality checks by the Assay Office.

Casinos

68. In May 2007, the government enacted the Gaming Regulatory Authority Act to license, regulate, and supervise the business of casinos, horse racing, lotteries, gaming houses, bookmakers, and totalisator. The Act further empowers the Gaming Regulatory Authority to issue guidelines on the prevention of money laundering and the combating of the financing of terrorism to licensed casinos, bookmakers and totalisators. The Act was placed into effect with respect to casinos just prior to the onsite mission; however, the Board has yet to be constituted.

69. Six physical casinos in Mauritius operate on a yearly renewable licensing arrangement. The State Investment Corporation (SIC), which is the investment body of the government, maintains a majority shareholding in all licenses, and manages in partnership with private sector partners that are usually connected with the hotel operations that house a casino. The scale of the casinos is comparatively small, with the largest operating only 15 tables. Electronic gaming machines ("slots or pokies") are subject to a separate license by the sector regulator and the minister approves the number of machines. Transaction limits for note loading machines are 50 rupee and table bet limits seldom exceed 500 rupee. The current rate of turnover value added tax is a relatively high 50 percent. Like all businesses in Mauritius, casinos are prohibited from making or accepting payments in cash in excess of 500,000 rupee.⁵ The Mauritian casino clientele is primarily local known patrons and the industry places strong reliance on its knowledge of their betting habits. Mauritian casinos do not host junkets simply because they cannot match the inducements of the larger international casino operators.

Non-Profit Organisations

70. The Registry of Associations Act 1976 provides for the legal framework for the registration, supervision, and monitoring of non-profit organizations. 8,000 associations are registered under the Registration of Associations Act as of December 31, 2006. The membership strength of these associations varies between seven and 25,000. These associations have many purposes, including to promote social, cultural, religious, educational, sports, philanthropic, and benevolent activities and to provide benefits to their members. They handle funds ranging from Rs 1000 to Rs 460 million.

⁵ Exemption to this prohibition is possible in certain prescribed circumstances, however, the circumstances do not apply to DNFBPs.

1.5 Overview of commercial laws and mechanisms governing legal persons and arrangements

71. Legal persons may be formed as companies under the Companies Act 2001. Under section 91 of the Companies Act 2001, a global business company is required to maintain a share register which must record, among other information:

- (i) the names and the last known address of each person who is or has within the last seven years been a shareholder; and
- (ii) the date of any transfer of shares and the name of the person to or from whom the shares were transferred.

72. Under the previous FSD Act, a company holding a Category 1 global business license must at all times have a director resident in Mauritius. The new FS Act applies a 'management and control test' and requires GBL1 companies to have at least two directors, resident in Mauritius, and of sufficient calibre to exercise independence. Corporate directors are not allowed. A company holding a Category 2 global business license is not required to have a resident director and may appoint a corporate director. All global business companies must keep a register of directors containing:

- (i) the names and addresses of the persons who are directors of the company;
- (ii) the date on which each person whose name is entered on the register was appointed as a director of the company; and
- (iii) the date on which each person named as a director ceased to be a director.

73. Any change in the directors of a company must be notified to the Registrar of Companies. A global business company must at all times have a registered office in Mauritius.

74. It is also possible to register societies commercial (used for business purposes) and societies civil (used to hold real property or other assets), societies en participation, and societies de fait which can be created under the civil code of Mauritius. These societies may be created in one of three ways: individuals can retain a notary to prepare the deed; the individuals may create the deed themselves, or individuals can create a society commercial de fait where there is no document but the arrangement exists in practice. Whichever form of creation is chosen, all can be registered with the company registry so that the deed or interest is registered and recognized publicly. The societies are much less regulated than companies in that much less information is required to be disclosed. No shareholder or beneficial information need be disclosed.

75. Joint ventures, consortiums, foreign societies, or partnerships may also be registered by the registrar but there is no legal requirement for them to register. In all cases, no shareholders, beneficial owners or beneficiaries, as may be applicable, needs to be disclosed to the registrar.

76. As at the end of August 2007, there were 31,325 domestic companies registered with the Company Registrar, and 188 foreign companies. There were 8,732 Global Business License One companies and 20,268 Global Business License Two companies. In total, there were 61,039 companies registered in Mauritius as of the end of August 2007.

Trusts

77. The Trust Act 2001 governs trusts settled by both residents and nonresidents. There is no provision requiring a trust to be filed with a state or regulatory body. The instrument creating the trust must name the trustee and the beneficiaries or class of beneficiaries as the case may be and identify the property transferred on trust. All trusts are required to have at least one qualified trustee which must be licensed to act as such by the FSC. Qualified trustees are licensed by the FSC under Section 24 of the FSD Act. The qualified trustee is issued with a management license and is thus required to undertake the verification of the identity of the applicant business and of the principals thereof and to keep records of the verification of identity documentation pursuant to the requirements of the FIAMLA and FSC's Code on the Prevention of Money Laundering and Terrorist Financing intended for management companies.

1.6 Overview of strategy to prevent money laundering and terrorist financing

AML/CFT Strategies and Priorities

78. Mauritius enacted the Financial Intelligence and Anti-Money Laundering Act 2002 (FIAMLA), the Prevention of Corruption Act 2002 (POCA), and the Prevention of Terrorism Act 2002 (POTA). It is an active member of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG). The Financial Intelligence Unit, which is an independent body and a member of the Egmont Group, is responsible for collecting, analyzing, and disseminating data/information on anti-money laundering. The Independent Commission Against Corruption (ICAC), set up in 2002, is responsible for investigating corruption as well as money laundering matters. Powers were given to the Bank of Mauritius (BOM) and the Financial Services Commission (FSC) to issue and to enforce guidelines/Codes to their licensees on AML/CFT. With the enactment of the Gaming Regulatory Authority Act in May 2007, the Gaming Authority will have powers to issue guidelines on AML/CFT to its licensees, namely, casinos, bookmakers, gaming houses, etc.

79. The National Committee for Anti-Money Laundering and Combating the Financing of Terrorism, which was established under the FIAMLA, is responsible for promoting coordination 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. Most of the relevant authorities are enabled to communicate and cooperate with one another, but stringent confidentiality requirements in the POCA prohibit the ICAC from exchanging information with other authorities on a formal basis.

The institutional framework for combating money laundering and terrorist financing

80. The Ministry of Finance and Economic Development has been assigned the responsibility for money laundering and terrorist financing matters, including policy issues regarding AML/CFT. Other relevant ministries include the Ministry of Justice and Human Rights, the Ministry of Interior, and the Ministry of Foreign Affairs. Other bodies involved in AML/CFT include:

- The Financial Intelligence Unit, which is the central agency in Mauritius responsible for receiving, requesting, analyzing and disseminating to the investigatory and supervisory authorities disclosures of financial information concerning suspected proceeds of crime, alleged money laundering offenses, and the financing of any activities or transactions related

to terrorism;

- The ICAC was set up under the Prevention of Corruption Act 2002, replacing the former Economic Crime Office set up under the repealed Economic Crime and Anti-Money Laundering Act 2000. Its role is to investigate corruption and money laundering offenses;
- The Mauritius Police Force has three different units which may be called upon to investigate money laundering cases: the Special Cell and the Fiscal Unit (both located within the Central Crime Investigation Department), and the Anti-Drugs and Smuggling Unit;
- The Solicitor General's Office has been involved in the drafting of the AML/CFT legislative framework with the aim of combating money laundering and strengthening the financial system in Mauritius. In addition, the Office deals with incoming and outgoing requests for mutual legal assistance to and from foreign countries through the Central Authority, in respect of serious crimes like fraud and money laundering. The Office is the main prosecutorial body in Mauritius and is assigned with the responsibility of providing advice on issues pertaining to AML/CFT, as well as prosecuting money laundering cases which are referred to the Office by the Independent Commission Against Corruption;
- The Commissioner of the Drug Asset Forfeiture Office is responsible for the confiscation of assets of persons convicted under the Dangerous Drugs Act of 2000;
- The Mauritius Revenue Authority (MRA), which is able to enforce AML/CFT rules and regulations on incoming and outgoing passengers;
- The BOM is the licensing and supervisory body of all banks, non-bank deposit-taking institutions, and cash dealers operating in Mauritius;
- The FSC licenses, regulates, and supervises nonbank financial institutions in Mauritius. The nonbank financial sector includes institutions involved in insurance and pensions, capital market operations, leasing, and credit finance as well as global business activities;
- The Financial Reporting Council has been set up as a fully autonomous oversight body with the responsibility to monitor and enforce the reporting of financial matters, as well as issuing accounting and auditing standards and codes;
- The Mauritius Institute of Professional Accountants, a self regulatory body, is responsible for the supervision and regulation of the accountancy profession. It also promotes the highest standards of professional and business conduct of professional accountants and works to enhance the quality of services offered by them;
- Mauritius has also established the National Committee on Corporate Governance, which is the national coordinating body responsible for all matters pertaining to corporate governance. The main objectives of the Committee is to establish principles and practices of corporate governance and to promote the highest standards of corporate governance;
- The Mauritius Institute of Directors is responsible for promoting high standards of corporate governance, business, and ethical conduct by Directors;

- The Gaming Regulatory will be established by the Gaming Regulatory Authority Act 2007 to license and supervise casinos, bookmakers, and totalisator. This body will be responsible for issuing guidelines on AML/CFT.

Approach concerning risk

81. Mauritius has not undertaken a risk assessment for AML/CFT purposes.

Progress since the last IMF/WB assessment or mutual evaluation

82. In December 2002, an FSAP mission of the IMF/WB conducted a detailed assessment of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Mauritius. The mission reviewed the relevant AML/CFT laws and regulations and supervisory and regulatory systems in place to deter money laundering and financing of terrorism with a view to identifying the strengths, vulnerabilities, and development needs in the financial sector and assisting the Mauritian authorities in designing appropriate responses.

83. To give effect to those recommendations, the Anti-Money Laundering (Miscellaneous Provisions) Act, the Convention for the Suppression of the Financing of Terrorism Act 2003, and the Mutual Assistance in Criminal and Related Matters Act 2003 were passed in September 2003. The FIAMLA Regulations on record keeping, personal identification, etc. was passed in June 2003.

84. The Anti-Money Laundering (Miscellaneous Provisions) Act 2003 amended the then Banking Act 1988, the Financial Intelligence and Anti-Money Laundering Act 2002 and the Financial Services Development Act 2001 to provide, among others, for:

- (a) the replacement of the Review Committee of the Financial Intelligence Unit by a Board;
- (b) the setting up of a National Committee for Anti-Money Laundering and Combating the Financing of Terrorism to coordinate AML/CFT actions at the national level;
- (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 be able to refer information suggesting a possible money laundering offense or a suspicious

transaction to the FIU;

- (f) the Director of the FIU to request further information in relation to a reported suspicious transaction.

85. The Mutual Assistance in Criminal and Related Matters Act 2003 was passed which aimed at enabling the widest possible measure of international cooperation to be given and received promptly by Mauritius.

86. The Financial Intelligence and Anti-Money Laundering Act 2002 and the Regulations to the Act were promulgated to provide for, among others, the verification of client identity, record keeping, the appointment and responsibilities of money laundering reporting officer, and the implementation of internal controls and other procedures to combat money laundering.

87. The Prevention of Corruption Act 2002 was amended on several occasions. One notable change was to enable the Independent Commission Against Corruption to investigate corruption and money laundering cases not only after referral from the FIU, but also after referral from the Police, as well as on its own initiative.

88. A general review of the Guidance Notes to the banking industry on AML/CFT was undertaken following the enactment and proclamation of the Banking Act 2004 and Bank of Mauritius Act 2004. The Guidance Notes require financial institutions under the jurisdiction of the BOM to apply enhanced KYC for, among others, politically-exposed persons, correspondent banking, wire transfers, and high-risk individuals.

89. The Financial Services Commission has issued three Codes on AML/ CFT to the insurance sector, management companies, and investment businesses. These Codes are updated as the need arises to cater to developments in AML/CFT.

International cooperation and extradition

90. With the Mutual Assistance in Criminal and Related Matters Act 2003 (MACRM Act) and the Extradition Act 1970, Mauritius adopted comprehensive laws that enable it to provide a wide range of measures at the request of a foreign State. Both ML and TF are extraditable offenses.

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

2.1 Criminalization of Money Laundering (R.1 & 2)

2.1.1 Description and Analysis

91. The Republic of Mauritius started fighting against money laundering in 1995 with the enactment of the Dangerous Drug Act (DDA) that criminalizes the laundering of the proceeds of drug-related offenses. It then criminalized money laundering on a larger scale in 2000 with the adoption of the Economic Crime and Anti-Money Laundering Act (ECAMLA), which took a threshold approach based on the gravity of the offense (crimes). The ECAMLA was subsequently replaced by the Financial Intelligence and Anti-Money Laundering Act of 2002 (FIAMLA), which criminalizes money laundering in the same terms as the ECAMLA.

92. Mauritius, therefore, has two money laundering offenses: a general one that applies to all crimes (Section 3 of the FIAMLA), and a more specific one that applies to the offenses listed under the DDA (Section 39 DDA).

Legal Framework

Criminalization of Money Laundering (c. 1.1 - Physical and Material Elements of the Offense):

93. Mauritius ratified the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) on February 19, 2001. It implemented the relevant provisions of the Convention with the adoption of (and subsequent amendments to) the DDA.

94. It also ratified the UN Convention Against Transnational Organized Crime (Palermo Convention) on April 21, 2003. Section 188 of the Criminal Code, which is a remnant of the French Criminal Code and which was already in place at the time of the ratification, criminalizes the association of malefactors but no additional implementation measures were taken as a result of the ratification.

95. The International Convention for the Suppression of Financing of Terrorism was ratified on December 14, 2004 and was given force of law in its entirety (Section 3 of the Convention for the Suppression of the Financing of Terrorism Act of 2003). Further measures were taken as described under Special Recommendation II below.

96. Section 3 of the FIAMLA criminalizes money laundering in the same terms as the 2002 ECAMLA and provides that:

“(1) Any person who:

(a) engages in a transaction that involves property which is, in whole or in part, or 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, in whole or in part directly or indirectly represents, the proceeds of any crime;

(c) 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 offense”.

97. The law further provides that a bank, financial institution, cash dealer or member of a relevant profession or occupation that fails to take such measures as are reasonable 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 offense shall commit an offense (Section 3(2) FIAMLA).

98. Articles 3(1)(b)&(c) of the Vienna Convention and 6(1) of the Palermo Convention require countries to establish as a criminal offense the following intentional acts (material elements): the conversion or transfer of proceeds; the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to proceeds; and, subject to the

fundamental or constitutional principals and basic concepts of the country's legal system (Art. 2 para. 1 of the Vienna Convention and Art. 6 para. 1 of the Palermo Convention), the acquisition, possession or use of proceeds (Art. 3 para. 1 (b) (i) – (ii) of the Vienna Convention and Art. 6 para. 1 (a) (i) – (ii) of the Palermo Convention), as well as the participation in, association with or conspiracy to commit, attempts to commit, and aiding, abetting, facilitating and counseling the commission of any of the foregoing (Art. 6 (1) (b) (iii) Palermo).

99. The material elements of the money laundering offense under the FIAMLA are broad in many respects and cover most of the elements listed under the Conventions. In particular, Sections 3(1) (a) and (b) of the FIAMLA satisfy the requirements of the Conventions with regard to the conversion or transfer, concealment or disguise and acquisition, possession or use of proceeds of crime. However, the concealment and disguise referred to under Section 3(1) only seem to apply to the property itself, and whilst this would usually cover the location of the property, it would not necessarily and in all cases also cover the “true nature, source, disposition, movement or ownership of or rights with respect to proceeds” as required by the Conventions.

100. Section 39 of the DDA provides that:

“Any person who unlawfully,

(a) converts or transfers resources or goods derived from any of the offenses specified under sections 30, 33, 35, 36 and 38 with the aim either of concealing or disguising the illicit origin of the said goods or resources or of aiding any person involved in the commission of one of those offenses to evade the legal consequences of his actions;

(b) renders assistance for concealing or disguising the genuine nature, origin, location, disposition, movement or ownership of the resources, goods or rights thereto derived from one of the offenses under this Part;

(c) acquires, possesses or uses goods and resources, knowing that they are derived from one of the offenses under this Part,

shall commit an offense (...).”

101. The first elements of the offenses under the Vienna and Palermo Conventions (i.e., the conversion and transfer) are clearly covered under Section 39 of the DDA. The second elements (concealment and disguise) are also covered, but in a way which appears too restrictive. Under the Conventions, these elements are broad and include the concealment or disguise of almost any aspect of or information about the property. While concealing and disguising should include the illicit origin as mentioned in the DDA, it should also cover all the other elements listed in the Conventions, namely, the true nature, source, location, disposition, movement or ownership of or rights with respect to proceeds. Under the DDA, these elements are specifically listed, but only with respect to the ancillary offense of rendering assistance.

The Laundered Property (c. 1.2):

102. The money laundering offense refers to property which is, in whole or in part or directly or indirectly represents the proceeds of any crime. Property is defined under Section 2 of the FIAMLA

as “property of any kind, nature or description, whether moveable or immoveable, tangible or intangible” and specifically 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 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 in any currency with any bank outside Mauritius;
- (d) motor vehicle, ships, boats, works of art, jewellery, precious metals or any item of value; and
- (e) any right or interest in property.”

103. Although corporeal and incorporeal assets are not specifically mentioned, they are clearly covered in the definition and list above. This definition of property applies to a broad range of assets and is in line with the definition under the Vienna and Palermo Conventions and the FATF Glossary.

104. Section 39 of the DDA refers to “resources or goods,” which the Act does not define. It is also unclear in the text of the law whether the legislator’s intention was to cover “resources and goods” that have been derived both directly and indirectly from the crime. The authorities, however, are adamant that they interpret “resources and goods” broadly to cover all types of property derived, directly or indirectly, from crime.

Proving Property is the Proceeds of Crime (c. 1.2.1):

105. Prior conviction for the predicate offense is not a prerequisite to a conviction for money laundering under the FIAMLA; the Act specifically provides that “a person may be convicted of a money laundering offense notwithstanding the absence of a conviction in respect of a crime which generated the proceeds alleged to have been laundered” (Section 6(1) FIAMLA). The law further mentions that in any proceedings for money laundering, it is sufficient to aver 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 crime (Section 6(3) of the FIAMLA).

106. The principles under both provisions of the FIAMLA were already contained in the ECAMLA, respectively under Section 17(6) and (7). In one case conducted under the ECAMLA before the Intermediate Court, the specifics of the predicate offense (which had been committed abroad) were not provided in detail by the prosecution. The defense counsel moved for a stay of the proceedings on the grounds that Section 17(7) (the current Section 6(3) of the FIAMLA) breached Sections 10(1) and 10(2) of the Constitution of Mauritius which provide for a fair hearing and the right for the defendant to be informed in detail of the nature of the offense he is charged with. The Court agreed with the State Counsel (both in the ruling and in the final judgment) that, although the Prosecution must prove that the property was tainted and that the accused had reasonable grounds to

suspect that he was dealing with the proceeds of a crime, it is not necessary to aver the predicate offense, and the need for particulars of the predicate offense therefore does not arise.⁶ The accused person was convicted for money laundering and sentenced to a 1,000,000 Rupees fine. It should be noted, however, that the accused party subsequently challenged this judgment on several grounds, including the constitutionality of Section 17(7) of the ECAMLA. The case was pending before the Appeals Court at the time of the assessment and the trial scheduled for early 2008.

107. According to the authorities, although this is not specified in the Act, prior conviction for the predicate offense is a necessary precondition to a conviction for money laundering under Section 39 of the DDA. Both offenses may nevertheless be (and have been) tried during the same proceedings.

The Scope of the Predicate Offenses (c. 1.3):

108. The Mauritian authorities opted for a threshold approach under the FIAMLA with the money laundering offense applying to “crimes”, i.e., offenses punishable by penal servitude (imprisonment imposed for life or for a minimum term of 3 years) and/or a fine exceeding 5,000 rupees (Sections 4 and 11 of the Criminal Code).⁷ Several of the categories of offenses designated by FATF as the minimum standard for the list of predicate offenses constitute offenses under Mauritian law. However, a number of them carry an imprisonment sentence for a duration ranging from 11 days to 5 years (as opposed to penal servitude for a longer term), which entails that they constitute misdemeanors, as opposed to crimes. Others still do not constitute an offense, and therefore, like the misdemeanors, do not fall within the scope of the money laundering offense. In some instances, such as larceny, the main offense is classified as a misdemeanor when it is committed in its “simplest” form, but takes the more serious nature of a crime when it was committed with aggravating circumstances (such as the use of violence, or the fact that the offense was committed by a criminal group). It is worth noting that the amount of money or other assets involved in the offense is not an aggravating element: the theft of a large amount of money, for example, does not constitute a crime but only a misdemeanor and the laundering of the proceeds of the theft entirely evades the scope of the FIAMLA.

109. The money laundering offense under the DDA applies to the conversion and transfer of resources or goods derived from the offenses covered by the Act which include illicit trafficking in narcotic drugs and psychotropic substances.⁸

110. The following categories of offenses designated by the FATF constitute predicate offenses under Mauritian law (under both FIAMLA and DDA):

⁶ Cause No. 847/02. The case was brought before the Court under the previous Act, the ECAML Act, which criminalized money laundering in the same words as the FIAMLA.

⁷ The other types of offenses under Mauritanian law are misdemeanors, which are offenses punishable by imprisonment for a term exceeding 10 days (with or without hard labour) and/or a fine exceeding 5,000 rupees. Unless otherwise specified, the term for which imprisonment may be imposed ranges between 11 days and five years; and contraventions, which are offenses punishable by imprisonment for a term not exceeding 10 days and/or a fine not exceeding 5,000 rupees (Sections 5, 6, 11 and 12 of the Criminal Code).

⁸ Drug dealing offenses (Section 30); precursors, materials and equipment offenses (section 33); offering or selling for personal consumption (section 35); facilitating or permitting drug offences (Section 36); incitement to drug offenses and unlawful use (Section 38).

- Participation in an organized criminal group and racketeering - Section 188 of the Criminal Code. Section 188 provides that “any association of malefactors against the persons or property of individuals is a crime against the public peace”. Pursuant to Section 189, “such a crime exists by the mere fact of an organisation of a band, or of correspondence between such band and its chiefs or commanders, or of an agreement having for object to give an account or to make a distribution or division of the produce of their wrongful acts.” It should be noted that this particular offense gave rise to some level of confusion during the assessment because of the reference to the breach of peace. Initially, it was unclear whether breach of peace was a specific element of the offense which would have excluded other groups acting in pursuit or organized with a view to obtain financial gain without breaching the public peace. The authorities then indicated that this was not the case based on an analogy with French law: they explained that Section 188 was a remnant of the French Code adopted by Mauritius, that French law therefore constituted a valid source of information for interpretation purposes and that, under French law, the breach of peace is not an element of the offense. In their view, this would be the reason why Section 188 could be interpreted broadly. It should also be noted that this particular offense is rarely applied and that the fact that a specific crime was committed by a group is usually taken into account as an aggravating element under the main offense, rather than in the application of Section 188.
 - Terrorism, including terrorist financing - Section 4 of the CSFT Act;
 - Trafficking of children – Section 13A of the Child Protection Act 1994 (as amended in 1995 and 2004);
 - Corruption – Sections 4, 5, 6 – 17 of the POCA;
 - Fraud is covered by the offense of Swindling – Section 330 of the Criminal Code; Embezzlement is also a crime when committed by a public or a ministerial officer, or by a servant or a person in service receiving wages, or a pupil, clerk, workman, journeyman or apprentice, to the prejudice of his master – Section 333 subsection 2 of the Criminal Code;
 - Counterfeiting currency – Sections 93 to 100 of the Criminal Code;
 - Murder, grievous bodily injury – Sections 214 to 223, 228 and 229 of the Criminal Code;
 - Kidnapping and hostage taking (“sequestration”) – 258 and 268 of the Criminal Code;
 - Sexual exploitation of minors (i.e. victims under the age of 18) – Sections 14 and 18 of the Child Protection Act;
 - Theft is covered by the offense of Larceny with wounding, larceny with violence by night breaking and larceny with other aggravating circumstances (larceny with armed weapon, or by two or more individuals, or in public dwelling, or on a public road), larceny by night breaking – Sections 303, 304 and 305 of the Criminal Code;
 - Extortion – Section 307 of the Criminal Code;
 - Forgery – Sections 106 – 112, 117, 118 of the Criminal Code
111. Other categories of designated offenses are not predicate offenses under Mauritian law:

- Trafficking in adult human beings and adult migrant smuggling (not criminalized);
- Sexual exploitation of adults (misdemeanor);
- Illicit arm trafficking (not criminalized);
- Illicit trafficking in stolen goods and other goods (not criminalized);
- Counterfeiting and piracy of products (misdemeanor);
- Environmental crime (misdemeanor under the Environmental Crime Act);
- Theft - While the notion of robbery is covered by the various forms of larceny with aggravating circumstances listed above, the notion of theft (larceny outside these circumstances) is a misdemeanor, not a crime, and is, therefore, not covered by the FIAMLA;
- Smuggling (misdemeanor);
- Piracy (misdemeanor);
- Insider trading (misdemeanor) and market manipulation (not criminalized).

Threshold Approach for Predicate Offenses (c. 1.4):

112. Under the Mauritius threshold approach, the money laundering offense under the FIAMLA applies to all serious offenses (i.e., crime) under national law, in line with the standard. Mauritius adopted a list approach under the DDA. Criteria 1.4 therefore, does not apply to the DDA.

Extraterritorially Committed Predicate Offenses (c. 1.5):

113. Predicate offenses for money laundering extend to activities carried out and acts or omissions which occurred outside Mauritius which would have constituted a crime had they been carried out in Mauritius (Section 2 of FIAMLA, definition of crimes subsection b). The previous AML-specific Act, the ECAMLA, contained a similar provision and on at least one occasion, the Intermediate Court of Mauritius found the defendants guilty of laundering the proceeds of a crime which had been committed abroad.⁹

114. Section 29 of the DDA sanctions anyone who “in any place outside Mauritius, does any act preparatory to or in furtherance of the commission in Mauritius of” an offense against the Act. Section 30 further sanctions any person who “procures the importation or exportation of any dangerous drugs.” The Mauritian authorities therefore retain their jurisdiction over money laundering offenses when the predicate offense has been carried in another country. According to the authorities, many such cases have been brought before the Supreme Court, but their outcome was not shared with the mission. The assessors were nevertheless concerned that, since a prior conviction for the predicate

⁹ Case No. 847/02.

offense is a condition for money laundering charges to be brought before the court, the fact that the predicate occurred in another country could constitute an additional hurdle that the prosecution may only overcome if the foreign courts have successfully tried the author of the predicate offense and if the international cooperation mechanisms are effective.

Laundering One's Own Illicit Funds (c. 1.6):

115. A conviction for both the money laundering offense and the predicate crime (self-laundering) is specifically made possible under Section 6(2) of the FIAMLA: "A person may, upon single information or upon separate information, be charged with and convicted of both the money laundering offense and the offense which generated the proceeds alleged to have been laundered".

116. The money laundering offense under Section 39 DDA applies to "every person" who unlawfully engages in the activities listed, and no distinction is made between the author of the predicate offense and the launderer. This would suggest that "every person" includes the author of the asset-generating offense and that a conviction for both offenses is possible under the DDA. This view was shared by the prosecution and, in one case pending before the court at the time of the assessment mission, a person who had previously been convicted for an offense under the DDA was being prosecuted for laundering the proceeds of that crime.

Ancillary Offenses (c. 1.7):

117. The money laundering offenses under both acts are enhanced by a number of dispositions of the Criminal Code (and the FIAMLA) which criminalize various forms of participation in the crime. The authors of the activities listed below are considered as accomplices and punishable by the same offense as the money launderer (Section 37 of the Criminal Code and 45 of the Interpretation and General Clauses Act (IGCA) of 1974):

(a) Attempt – any person who attempts to commit an offense is liable to the penalty provided for the completed offense (Section 45 of the IGCA);

(b) Conspiracy – under section 4 FIAMLA, any person who agrees with one or more other persons to commit a money laundering offense as defined under Section 3(1), and (2) shall commit an offense; in the case of conspiracy to commit the money laundering (or predicate offenses) under the DDA, the general provision of Section 109 of the Criminal code (Supplementary part) apply. Section 109 in particular provides that any person who agrees with one or more other persons to do an act which is unlawful, wrongful or harmful to another person, or to use unlawful means in the carrying out of an object not otherwise unlawful, shall commit an offense and shall, on conviction be liable to penal servitude for a term not exceeding 5 years and to a fine not exceeding 10,000 Rupees.

(c) Aiding and abetting, and facilitating - Section 38 of the Criminal code provides that any person who knowingly aids and abets the author of any crime or misdemeanor in the means of preparing, facilitating, or perpetrating the crime or misdemeanor, shall be deemed an accomplice, even in cases where the crime which was the object of the conspirators or instigators has not been committed. The Criminal Code also explicitly provides that the sanctions envisaged for the main offense also apply to accomplices (Section 37). The same applies for anyone who, by gift, promise or abuse of authority or power, machination or culpable artifice instigates, or gives any instruction for, the commission of a crime or

misdemeanor shall be punished as an accomplice in the crime or misdemeanor, as well as to any person who procures arms, instruments, or any other means used in the commission of a crime or misdemeanor, knowing that they were to be so used (Section 37(1) and (2) of the Criminal Code). Harboring offenders is also an offense (Section 39 of the Criminal Code).

(e) Counseling – although not specifically mentioned in the FIAMLA or the Criminal Code, counseling is covered by the notions of aiding and abetting mentioned above.

Additional Element—If an act overseas which do not constitute an offense overseas, but would be a predicate offense if occurred domestically, lead to an offense of ML (c. 1.8):

118. Although neither the FIAMLA, nor the DDA, nor the Criminal Code make provision to this effect, the authorities are of the view that where the proceeds of a crime are derived from the conduct that occurred in another country, which is not an offense in that country but which would have constituted a predicate offense had it occurred in Mauritius, it would constitute a money laundering offense in Mauritius if the elements of this offense have been committed in Mauritius.

Liability of Natural Persons (c. 2.1) and The Mental Element of the ML Offense (c. 2.2):

119. The money laundering offense under FIAMLA requires intent and therefore applies to anyone who knowingly engages in a transaction that involves tainted property or receives, is in possession of, or engages in any of the activities listed, where he suspects or has reasonable grounds for suspecting that the property is derived from a crime. Intent is not defined but the authorities indicated that it refers to the traditional concept of “knowledge” where the accused is aware of the criminal nature of his conduct and of the results that it could reasonably cause. It does not extend to reckless (*dolus eventualis*), but nor should this necessarily be the case under the standard. As for determining the intent, the suspicion that the property was the proceeds of a crime or the reasonable grounds for suspecting that it was the proceeds of crime, Section 6(3) of FIAMLA explicitly allows the judges to infer the intentional element of the ML offense from objective factual circumstances. After the mission, case law was provided to show that judges have inferred intent from objective factual circumstances (*The State v. Susan Dalziel* (2007), *The State v. Ann Wills Kayiwa* (2008).)

120. Intent is also required under the DDA: the money laundering offense of Section 39 applies to any person who engaged in any of the activities listed knowing that the goods or resources were the proceeds of crime. Although this is not specified in the DDA as it is in the FIAMLA, the authorities indicated that inference from objective factual circumstances also applies to the money laundering offense under the DDA, as in any proceedings for any other type of crime, pursuant to long standing judicial practice in Mauritius. It seems that the rules of evidence in criminal procedures follow the principle of “conviction in time” (free moral judgment) adopted from French law. It would, therefore, also appear that the judge may draw inferences as to the offender’s knowledge or intent from objective facts or factual circumstances.

121. With the enactment of the FIAMLA (and its predecessor, the ECAMLA) and the inclusion of “suspicion or reasonable grounds to suspect that the property was derived from crime, the authorities opted for an approach which is lighter on the prosecution with the adoption of a standard of proof which is considerably easier to reach. Under the DDA, the standard is higher, with the prosecution having to prove that the defendant engaged in the acts listed under Section 39 “knowing” that he or she was dealing with tainted property. The reasons for the differentiation in the requirements and the

standard of proof are unclear. The DDA was amended on a number of occasions over the last years but none of these amendments brought Section 39 DDA in line with Section 6 of the FIAMLA.

Liability of Legal Persons (c. 2.3):

122. Both the FIAMLA and DDA refer to the “person” who commits the offense. Pursuant to Section 2 of the IGCA, “person” also applies to and includes a group of persons, whether corporate or incorporate. The IGCA applies both to civil and criminal proceedings and legal persons may, therefore, be held criminally liable for having criminally engaged in activities in violation of the Criminal laws, including the FIAMLA and DDA.

Liability of Legal Persons should not preclude possible parallel criminal, civil, or administrative proceedings & c. 2.4):

123. According to the authorities, parallel civil or administrative sanctions may apply, where available (see write up on Recommendation 17 for sanctions available).

Sanctions for ML (c. 2.5):

124. Under Section 8 FIAMLA, any person who is found guilty of money laundering is liable to a fine not exceeding 2 million rupees (circa US\$65,000) and to penal servitude for a term not exceeding 10 years.

125. Money laundering under the DDA is subject to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 20 years.

126. Both sentences are slightly higher than the average sanctions for other economic crimes and appear to be effective, proportionate, and dissuasive.

Prosecution of money laundering offenses under both acts:

127. All money laundering cases are tried before the Intermediate Court (Section 7 of the FIAMLA), except drug cases which are lodged before the Supreme Court and which also include a count of money laundering under the DDA. The DPP is in charge of the prosecution but, pursuant to Section 72(5) of the Constitution, he may delegate the prosecution to other persons, including officers “outside” his office, namely, for money laundering cases, members of the police force and of the ICAC.

Statistics:

**Table 6. Statistics on Money Laundering Investigations Undertaken by the ICAC
(2002 to August 2007)**

	2002	2003	2004	2005	2006	2007	Total
ICAC cases:							
a) Initiated	19	19	27	14	22	42	143
b) Set aside after further investigation	16	6	10	-	10	21	63
c) Pending	3	13	17	14	12	21	80
Cases received from FIU:							
a) Investigated	-	11	29	14	28	20	102
b) Set aside	-	4	6	-	4	1	15
c) Pending	-	7	23	14	24	19	87
Pending Prosecutions	2	-	2	-	1	-	5
Convictions	-	-	1	-	1	1	3

Table 7. Statistics on Money laundering investigations conducted by the Police CID, prosecutions and conviction under former AML law (ECAMLA) and FIAMLA

	Total since 2003
Police investigations	7 (but 4 dropped)
Cases referred to the ICAC by the police	2 (no indication as to the year)
Prosecutions	4
Convictions	3
Still pending	1

Table 8. Statistics on money laundering investigations enquired by the Police (ADSU), prosecutions and convictions under DDA

	2004	2005	2006	2007	Total
Discontinued	1				
Forwarded to DPP	2	1	1	1	
Prosecuted	1	1	4	3	
Struck out or dismissed		2	1		
Sentenced	4 (incl cases from previous years)	1	4		9

128. The nine sentences pronounced under Section 39 of the DDA range from fines of 25,000 Rupees to imprisonment (for terms up to 18 months) and a fine, and to penal servitude (for a period of 3 years) and a fine.

Table 9. ADSU statistics on the number of investigations led into money laundering cases under the DDA

	2004	2005	2006	Jan.- July 2007
Total number of completed ASDU investigations	8	7	10	4
Cases pending in DPP's office	2	1	1	1
Cases pending before the intermediate court	1	1	4	3
Struck out	0	2		
Discontinued	1	2	1	
Convictions	4: - 2 yrs impris. + costs - 3 yrs penal serv. + R 1000 fine + costs - 1 yr impris. + costs - R 50,000 fine + costs	1: - R 25,000 fine + costs	4: - 12 months impris. + costs - 18 months impris. + costs - 2 yrs impris. + costs - 18 months impris. + costs	

Table 10. ADSU statistics on outstanding ML investigations

YEAR	EXHIBITS	Court
2002	200,000 USD	
2003	sum of R356,575/	IC
2003	sum of R519,500/ suspected to be proceeds of sales of drugs	IC
2004	OB2122/03	IC
2004	80000 US\$	IC
2004	OB2881/03	IC
2004	11000US\$ + 4000EUROS + R1500	
2004	OB2100/04	IC
2004	5000Euro + 21600 US\$	
2004	R79000/ + 3445 EUROS - Conn OB3234/04	IC
2004	2 gms + R1500/	IC
2005	R254,000/	
2005	18 doses + R10825/ - sold to ADSU Off	IC
2005	50815 Euros and 740 Pound sterling	
2005	228,065 Euros and 373,500 US\$	
2005	1.9 m rupees in foreign currencies	GPORT
2005	31900 Euros	
2005	OB1422/05	IC
2006	OB 1445/05	IC
2006	OB 1445/05	IC
2006	OB3233/04	IC
2006	OB3209/05	IC
2006	OB3862/04	IC
2006	54 frag + articles and sum of R18100/	IC
2006	OB603/06	IC
2006	8,000 euro and Rs 60,000	
2006	17 foils cont heroin + 214 aluminium foils + a roll of tape + sum of R68650/- sus to be proceeds of sale of drugs	IC
2006	R244000/	
2007	44610 euro + 19425 sterling, 375 dirhams, + 13250 euro, 255 dirhams	
2007	OB1773/07	IC
2007	OB2940/07	IC
2007	OB2931/07	
2007	OB1075/07 – R8500/ + 10 Euros	

Table 11. ADSU Statistics on ML Investigations

(NB the statistics provided are considerably more detailed: confidential information was removed for the purposes of this report)

Sno	Date Rep	Offence	2nd Offence
1	22-Jul-02	POSS HEROIN FOR PURPOSE OF SELLING	MONEY LAUNDERING
2	05-Nov-02	MONEY LAUNDERING UNDER DDA	MONEY LAUNDERING
3	05-Nov-02	MONEY LAUNDERING UNDER DDA	MONEY LAUNDERING
4	26-Mar-03	MONEY LAUNDERING UNDER DDA	MONEY LAUNDERING
5	26-Mar-03	MONEY LAUNDERING UNDER DDA	MONEY LAUNDERING
6	23-Apr-03	DEALING IN HEROIN	MONEY LAUNDERING
7	15-Sep-03	POSS HEROIN FOR PURPOSE OF DISTRIBUTING	MONEY LAUNDERING
8	12-Apr-04	MONEY LAUNDERING UNDER FIAM	MONEY LAUNDERING
9	12-Apr-04	MONEY LAUNDERING UNDER FIAM	MONEY LAUNDERING
10	12-Apr-04	MONEY LAUNDERING UNDER FIAM	MONEY LAUNDERING
11	24-Apr-04	MONEY LAUNDERING UNDER FIAM	MONEY LAUNDERING
12	06-May-04	POSS HEROIN FOR PURPOSE OF SELLING	MONEY LAUNDERING
13	07-Jul-04	POSS GANDIA FOR PURPOSE OF SELLING	MONEY LAUNDERING
14	08-Aug-04	MONEY LAUNDERING UNDER DDA	MONEY LAUNDERING
15	03-Sep-04	POSS HASHISH FOR PURPOSE OF SELLING	MONEY LAUNDERING
16	03-Oct-04	MONEY LAUNDERING UNDER DDA	MONEY LAUNDERING
17	03-Oct-04	MONEY LAUNDERING UNDER DDA	MONEY LAUNDERING
18	14-Oct-04	MONEY LAUNDERING UNDER DDA	MONEY LAUNDERING
19	19-Oct-04	MONEY LAUNDERING UNDER DDA	MONEY LAUNDERING
20	19-Oct-04	MONEY LAUNDERING UNDER DDA	MONEY LAUNDERING
21	03-Dec-04	POSS HEROIN FOR PURPOSE OF SELLING	MONEY LAUNDERING
22	27-Dec-04	POSS HEROIN FOR PURPOSE OF SELLING	MONEY LAUNDERING
23	30-Dec-04	POSS HEROIN FOR PURPOSE OF SELLING	MONEY LAUNDERING
24	08-Mar-05	MONEY LAUNDERING UNDER DDA	MONEY LAUNDERING
25	12-May-05	POSS HEROIN FOR PURPOSE OF DISTRIBUTING	MONEY LAUNDERING
26	12-May-05	POSS HEROIN FOR PURPOSE OF DISTRIBUTING	MONEY LAUNDERING
27	20-May-05	MONEY LAUNDERING	MONEY LAUNDERING
28	20-May-05	MONEY LAUNDERING	MONEY LAUNDERING
29	20-May-05	MONEY LAUNDERING	MONEY LAUNDERING
30	03-Jun-05	MONEY LAUNDERING UNDER DDA	MONEY LAUNDERING
31	17-Jun-05	MONEY LAUNDERING UNDER DDA	MONEY LAUNDERING
32	03-Jul-05	MONEY LAUNDERING UNDER DDA	MONEY LAUNDERING
33	24-Sep-05	POSS GANDIA FOR PURPOSE OF SELLING	MONEY LAUNDERING
34	09-Feb-06	POSS HEROIN FOR PURPOSE OF DISTRIBUTING	MONEY LAUNDERING
35	11-Feb-06	POSS GANDIA FOR PURPOSE OF SELLING	MONEY LAUNDERING
36	12-Jul-06	POSS OF DANGEROUS DRUGS (BUPRENORPHINE)	MONEY LAUNDERING
37	03-Oct-06	MONEY LAUNDERING UNDER DDA	MONEY LAUNDERING
38	12-Mar-07	POSS HEROIN FOR PURPOSE OF SELLING	MONEY LAUNDERING
39	19-Mar-07	MONEY LAUNDERING	MONEY LAUNDERING
40	19-Mar-07	MONEY LAUNDERING	MONEY LAUNDERING
41	25-Apr-07	POSS HEROIN FOR PURPOSE OF SELLING	MONEY LAUNDERING
42	03-Jul-07	POSS HEROIN FOR PURPOSE OF DISTRIBUTING	MONEY LAUNDERING
43	04-Jul-07	POSS GANDIA FOR PURPOSE OF SELLING	MONEY LAUNDERING

Table 12. Statistics provided by the Police

	Prosecutions	Convictions	Remarks
OB 4/01 Money Laundering	2002	2006	Convicted
OB 12/01 Money Laundering I/C Cno 847/02	2002	2004	Each fined Rs 1M + Rs 500/- cost on 22/9/04
CF/58/03 Money Laundering	21/06/04		Proceeding stayed on 30/06/05
FIR/393/03 Money Laundering	2004		Warning administered as advised by DPP on 09/10/06
FIR/40/05 Money Laundering (2 counts)	20/12/06	10/06/07	Convicted Rs 300,000/- each count + Rs 500/- cost

Implementation:

129. Both money laundering offenses have only been used in a limited number of cases. In comparison with the number of investigations initiated on the basis of the predicate offenses, in particular drug offenses under the DDA, the number of investigations for money laundering appears rather low. The overall length of time needed to conclude the investigation, prosecute, and try money laundering cases seems relatively long, with some proceedings lasting several years.

130. While most of the drugs-related money laundering cases are prosecuted and sentenced on the basis of the DDA, the prosecution authorities informed the mission that in at least one instance, the money laundering offense was prosecuted under the FIAMLA even though a prior conviction for the predicate offense was pronounced under the DDA. The case was still pending in the Intermediate Court at the time of the on-site mission.

131. Prosecutions into the money laundering offenses have been led by senior officers of the Director of Public Prosecution's (DPP) office as well as by police officers from the Anti-Drug and Smuggling Unit and members of the ICAC: The Police prosecuted straightforward money laundering cases involving small amounts which resulted from the commission of drug offenses under the DDA. Larger and more complex cases were prosecuted by the senior officers of the DPP's office. Police officers in charge of the prosecutions under the DDA have received specific training on criminal proceedings. The ICAC led the prosecution in only one instance so far but several cases were under

an ICAC investigation at the time of the assessment and it was likely that the prosecution would be conducted by the ICAC staff. The ICAC “prosecutors” are ex-State Law officers who worked at the DPP’s office and therefore have previous experience in prosecution.

132. The prosecution of the money laundering offense under the DDA is clearly more cumbersome than under the FIAMLA, because the prosecutor must establish beyond reasonable doubts that the accused knew that he or she was dealing with the proceeds of a crime under the DDA, whereas under the FIAMLA, the prosecution only needs to establish that the accused suspected or had reasonable grounds to suspect that he or she was dealing with tainted property. This led the DPP on at least one occasion to prosecute the laundering of the proceeds of a drug-related offense under the FIAMLA, instead of the DDA after the conviction for the predicate offense had been secured under the DDA. The case was still pending during the assessment and it therefore remains to be seen whether the court agrees to apply the FIAMLA in lieu of the DDA.

2.1.2 Recommendations and Comments

133. While both the money laundering offenses are comprehensive in many respects, they lack the necessary level of detail to fulfill all the requirements under the standard. In order to be effective, both offenses should cover all the material elements listed in the Vienna and Palermo Conventions, and the DDA should define resources or goods broadly in order to encompass all aspects of property listed in the Conventions. The need for prior conviction under the DDA constitutes an additional obstacle that the prosecution must overcome before it can secure a conviction for money laundering under Section 39. Furthermore, the higher standard of proof required in the DDA entails that it is more difficult to establish the money laundering offense under the DDA than under the FIAMLA. Prosecutions for money laundering under the DDA should be facilitated to the same extent as under the FIAMLA.

134. With the adoption of the FIAMLA, the authorities sent a clear message as to their intention to apply the money laundering offense to all serious offenses under the Mauritian legislation. However, the underlying criminal laws (including the Criminal Code) were not amended to guarantee the widest range of predicate offenses. As a result, several of the categories of offenses which should constitute predicate offenses to money laundering under the standard (i.e., the list of designated categories of offenses in the FATF Glossary) are outside the scope of the FIAMLA, either because they have not been criminalized in Mauritius or because they carry a lower sanction and constitute misdemeanor rather than crimes. This is probably the main shortcoming of the offense under the FIAMLA because it narrows the scope of Section 3 and considerably hampers the authorities’ fight against money laundering (at least domestically).

135. As mentioned above, the notion of fraud is covered by the offense of swindling under the Criminal Code. While this may be sufficient to comply with the standard on this point, some authorities expressed concern about the fact that embezzlement is not a predicate offense to money laundering. It would, therefore, seem appropriate to ensure that the proceeds of embezzlement (in its simple form) may also fall within the scope of the money laundering offense, in particular when the amounts involved are high.

136. Section 188 of the Criminal Code (association of malefactors) covers organized crime in a way which broadly meets the requirements of the Palermo Convention. However, the authorities do not make use of it and seem to consider it as outdated. Furthermore, it is possible that the discussions held during the mission as to whether a breach of peace is a necessary element of the offense or not

may arise again and it is unclear whether the courts would agree with the view on Section 188 expressed by the representatives from the DPP's. The law enforcement agencies maintain that domestic organized crime is not of particular concern in Mauritius, but the situation with respect to transnational organized crime involving Mauritius is unknown. It would, therefore, seem appropriate for the authorities to establish the risk of transnational organized crime and reconsider Mauritius' implementation of the Palermo Convention.

137. It is unclear whether any legal action (including parallel sanctions) has been (or should have been) brought against legal persons. It was, therefore, not possible to assess the effectiveness of the Mauritian framework on this particular element.

138. Whilst the authorities maintain that the notion of "resources and goods" under the DDA should be interpreted broadly, it would prove useful, for the sake of clarity, to specify this in the text of the DDA, for example by giving a definition of "resources and goods" in line with the standard.

139. Overall, it is unclear why there have been so few investigations, prosecutions, and convictions for money laundering over the last years. While the exact extent of the money laundering phenomenon in Mauritius (and in other countries) is not known, the crime statistics provided by the police and the ICAC give an indication as to the number of asset-generating offenses that take place in Mauritius (see annex 4) and, to a certain extent, provide some indication as to the level of money laundering that may occur in Mauritius. One could expect the number of investigations, prosecutions, and convictions for money laundering under both the FIAMLA and the DDA to be higher. It also seems that the relevant authorities need further training on the specificities of the money laundering offense and on the Mauritius AML/ CFT framework in order to be able to investigate, prosecute, and sentence money laundering cases effectively.

140. In light of the above, it is recommended that the authorities ascertain why the number of investigations into money laundering, in particular with respect to laundering the proceeds of corruption and DDA offenses, is so low.

141. It is further recommended that they take measures to:

- Ensure that all the material elements of the money laundering offense listed in the Vienna and Palermo Conventions are covered by including the concealment or disguise of "true nature, source, location, disposition, movement or ownership of or rights with respect to proceeds;"
- Ensure that the crime of money laundering apply to all serious crimes and that the following acts and activities constitute predicate offenses to money laundering: trafficking in adult human beings and adult migrant smuggling; sexual exploitation of adults; illicit arm trafficking; illicit trafficking in stolen goods and other goods; counterfeiting and piracy of products; environmental crime; theft; piracy; smuggling; insider trading and market manipulation;
- Although the notion of "fraud" under the standard is adequately covered under Mauritian law by the swindling crime, it is recommended that the authorities also include embezzlement as a predicate offense for money laundering at least where it constitutes a serious offense due to the large amounts of funds involved;

- Ensure that Section 188 of the Criminal Code is applied as and when appropriate and reconsider the implementation of the Palermo Convention;
- For the sake of clarity, amend the text of the DDA and explicitly specify that the property covered by the money laundering offense under the DDA covers all assets of every kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in such assets;
- Ensure that conviction for money laundering under the DDA may also be secured in the absence of prior conviction for the predicate offense;
- Consider lowering the level of proof required under the DDA in order to bring it in line with the FIAMLA and ensure that prosecutions under the DDA are not rendered unnecessarily cumbersome; and
- Ensure that all authorities involved in the investigation, prosecution, and trial of money laundering cases are fully educated and trained on the specificities of the offense.

2.1.3 Compliance with Recommendations 1 & 2

	Rating	Summary of factors underlying rating
R.1	PC	<ul style="list-style-type: none"> • Some of the relevant requirements of the Vienna and Palermo Conventions have not been implemented in the FIAMLA nor in the DDA (concealment and disguise of the “true nature, source, location, disposition, movement or ownership of, or rights with respect to proceeds”); • 8 out of the 20 categories of designated offenses are not predicate offenses in Mauritius: Trafficking in adult human beings and adult migrant smuggling; Sexual exploitation; Illicit arm trafficking; Illicit trafficking in stolen goods and other goods; Counterfeiting and piracy of products; Environmental crime; Theft; Piracy; Smuggling; Insider trading and market manipulation; • A conviction for the ML offense under the DDA requires prior conviction for the predicate; • Lack of effective implementation.
R.2	LC	<ul style="list-style-type: none"> • Effective implementation was not established.

2.2 Criminalization of Terrorist Financing (SR.II)

2.2.1 Description and Analysis

Legal Framework:

142. Mauritius ratified the International Convention for the Suppression of the Financing of terrorism on December 14, 2004 and ratified or acceded to 9 of the other relevant UN Conventions¹⁰

¹⁰ Convention on Offences and Certain Acts Committed on Board Aircraft (ratification on April 5, 1983 and enactment of the Civil (Hijacking and Other Offences) Act 1985); Convention for the Suppression of Unlawful Seizure of Aircraft (ratification on April 25, 1983 and enactment of the Civil (Hijacking and Other Offences) Act 1985); Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (ratification on April 25, 1983 and enactment of the Civil (Hijacking and Other Offences) Act 1985); Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents

and protocols. At the time of the assessment, it was considering acceding to the Convention on the Physical Protection of Nuclear Material of March 3, 1980 and to the Convention on the Marking of Plastic Explosives for the Purpose of Detection of March 1, 1991. It has signed and was considering ratifying the International Convention for the Suppression of Acts of Nuclear Terrorism.

143. The Republic of Mauritius enacted several pieces of legislation over the last years to fight against terrorism and its financing:

- Prevention of Terrorism Act (POTA) was enacted in 2002 mainly with a view to criminalize terrorist acts and to provide the relevant authorities with the necessary powers to fight against terrorism;
- It was subsequently enhanced with the adoption, by the Prime Minister, of Regulations No. 14 and No. 36 of 2003, generally referred to as the Prevention of Terrorism (Special Measures) Regulations; and
- The Convention for the Suppression of the Financing of Terrorism Act (CSFT Act) was passed in 2003. Section 2 provides that, subject to the act, the 1999 International Convention for the Suppression of the Financing of Terrorism (which is annexed to the Act) has force of law in Mauritius.

Criminalization of Financing of Terrorism (c. II.1):

Crit. II.1 a)

144. Section 4 of the CSFT Act establishes the terrorist financing offense in the following terms:

“Any person who, by any means whatsoever willfully and unlawfully, directly or indirectly, provides or collects funds with the intention or knowledge that it will be used, or having reasonable grounds to believe that they will used, in full or in part, to commits in Mauritius or abroad:

- (a) an offense in breach of an enactment specified in the [Second] schedule;¹¹ or
- (b) an act of terrorism.

commits an offense.”

(accession on September 24, 2003, partly implemented through the enactment of the POTA); International Convention against the Taking of Hostages (ratification on October 17, 1980 and enactment of Section 12 of the POTA, except for Art. 5(1)(b)(c) of the Convention); Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (ratification on August 17, 1989 and enactment of the Revised Civil Aviation Regulation); Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (accession in August 2004 and adoption of the POTA); Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (accession in August 2004 and enactment of the POTA); International Convention for the Suppression of Terrorist Bombings (accession on January 24, 2003 and enactment of the POTA).

¹¹ The text of section 4 (a) erroneously refers to the Third Schedule. There are however only two schedules, the second of which refers to Section 4 of the Act.

145. The Second Schedule of the CSFT Act refers to the hostage-taking offense of Section 12 of the POTA and various forms of attacks against civil aviation. “Acts of terrorism” are criminalized under Section 3 of the POTA and mean any act which:

- (a) may seriously damage a country or an international organization; and
- (b) is intended or can reasonably be regarded as having been intended to:
 - (i) seriously intimidate a population;
 - (ii) unduly compel a government or an international organization to perform or abstain from performing any act;
 - (iii) seriously destabilize or destroy the fundamental political, constitutional, economic or social structures of a country or an international organization; or
 - (iv) otherwise influence such government, or international organization; and involves or causes,

as the case may be:

- (i) attacks upon a person’s life which may cause death;
- (ii) attacks upon the physical integrity of a person;
- (iii) kidnapping a person;
- (iv) extensive destruction to a government or a public facility, transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or a private property, likely to endanger human life or result in major economic loss;
- (v) the seizure of an aircraft, a ship or other means of public or goods transport;
- (vi) the manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons;
- (vii) the release of dangerous substances, or causing of fires, explosions or floods, the effect of which is to endanger human life; and
- (viii) interference with or disruption of the supply of water, power or any other fundamental natural resource, the effect of which is to endanger life.”

146. As defined above, the notion of “acts of terrorism” is very broad. Mauritius nevertheless falls short of the standard on this point, and in particular of the definition of “terrorist acts” provided in the FATF Glossary, because it has not ratified all the relevant UN Conventions and Protocols and criminalized all the acts that they cover.

147. Under Section 4 of the POTA, it is an offense for anyone to belong to, or even profess to belong to a “proscribed organizations.” The qualification as to what constitutes a “proscribed organization” lies with the Judge in Chamber: where two or more persons associate for the purpose of (a) participating or collaborating in an act of terrorism; (b) promoting, encouraging, or exhorting others to commit an act of terrorism; or (c) setting up or pursuing acts of terrorism, the Judge may, on an application made by the Commissioner of the police, declare the entity to be a proscribed organization. This definition is in line with the definition of terrorist organizations provided in the standard.

In addition to the general provision of Section 4 CSFT Act (mentioned above) which criminalizes the collection of provision of funds to finance terrorism, Section 6 of the POTA criminalizes the “provision of, or making available” financial or other related services to a “proscribed organizations.”

148. Although broad in its scope, the terrorist financing offense fails to comply fully with the standard because the provision of funds to and collection of funds for individual terrorists is not criminalized when no act of terror in particular has been identified.

Crit. II.1 b)

149. Section 2 of the CSFT Act replicates the ICSFT’s definition of funds and covers assets of every kind, whether tangible or intangible, moveable or immovable, however acquired and includes 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, travelers’ cheques, bank cheques, money orders, shares, securities, bonds and letters of credit.

Crit. II.1 c)

150. The CSFT Act explicitly provides that for an act to constitute the financing of terrorism offense, it is not necessary that the funds were actually used to carry out the act of terrorism (Section 4(2)). However, neither the Act nor the ICSFT which is attached make provision for the application of the offense in circumstances where there is no proven link with a specific terrorist act.

Crit. II.1 d)

151. The attempt to commit the offense of terrorist financing is criminalized under the general provision of Section 45 IGCA and carries the same sanction as the terrorist financing offense.

Crit. II.1 e)

152. It is also an offense to participate in the terrorist financing crime, to organize or direct others to commit the crime and to contribute to the crime, in application of the general provisions of Sections 37 and 28 of the Criminal Code.

Predicate Offense for Money Laundering (c. II.2):

153. Terrorist financing constitutes a crime under Mauritian law and is, therefore, a predicate offense to the money laundering offense under the FIAMLA.

Jurisdiction for Terrorist Financing Offense (c. II.3):

154. The terrorist financing offense under Section 4 of the CSFT Act applies regardless of whether the terrorist act was committed or would have been committed in Mauritius or in another country. Under Section 7(h) of the CSFT Act, Mauritius Courts have jurisdiction to try the offenses under the Act where the offense is committed by a person who is, after the commission of the act, in Mauritius, regardless of whether the offense was committed within or outside Mauritius, and that person cannot be extradited to a foreign state having jurisdiction over the offense.

The Mental Element of the TF Offense (applying c. 2.2 in R.2), Liability of Legal Persons (applying c. 2.3 & c. 2.4 in R.2) and Sanctions for FT (applying c. 2.5 in R.2):

155. According to the authorities, under the general principle of the free evaluation of evidence in Mauritius, for proceedings into terrorist financing (as for any other type of crime) the judge may infer the intent from objective factual circumstances presented before him or her. The terrorist financing offense under the CSFT Act refers to “any person” which, pursuant to section 2 of the IGCA, may include legal persons as well as natural persons.

156. According to the authorities, parallel actions are possible where available (see write up under Recommendation 17 for available sanctions).

157. Terrorist financing is punishable by penal servitude for a term of not less than 3 years (Section 4(3) of the CSFT Act). In addition, the Court may order the forfeiture of the funds which were used or intended to be used for or in connection with the offense, or which constitute the proceeds of the offense (Section 4(4) of the same act).

Implementation and Statistics:

158. There have been no cases of terrorist financing investigated in Mauritius so far and the law enforcement authorities informed the assessors that no terrorist activities (including funding) have been identified.

2.2.2 Recommendations and Comments

159. The terrorism financing offense under Mauritian law is broadly in line with the standard. It covers in particular all the funds defined under the ICSFT. It nevertheless suffers from a few shortcomings that may hamper the authorities’ fight against terrorist financing.

160. It is, therefore, recommended that the authorities take action to:

- Ratify and implement the Convention on the Physical Protection of Nuclear Material of March 3, 1980, the Convention on the Marking of Plastic Explosives for the Purpose of Detection of March 1, 1991, and the International Convention for the Suppression of Acts of

Nuclear Terrorism.

- Ensure that the terrorist financing offense also applies to the direct or indirect provision or collections of funds by any means with the unlawful intention that they be used or in the knowledge that they are to be used in full or in part by an individual terrorist; and
- Ensure that the terrorist financing offense does not require that the funds be linked to a specific terrorist act.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	LC	<ul style="list-style-type: none"> • The terrorist financing offense is broad, however: • Not all the relevant UN Conventions have been ratified and fully implemented in Mauritius; • The TF offense does not cover funding of individual terrorists; • A link with the specific terrorist act seems necessary to apply the TF offense; • Overall effectiveness was not established.

2.3 Confiscation, freezing, and seizing of proceeds of crime (R.3)

2.3.1 Description and Analysis

161. As a general rule, forfeiture and confiscation (both terms are used inter-changeably) are conviction-based and are considered both as a secondary penalty and as a measure of security. They are mandatory under the DDA but not under the POCA – while the Court must order the forfeiture of the property which was found to be the proceeds of unlawful dealings in dangerous drugs, it has discretionary powers in all other money laundering cases as to whether to order the removal of the funds and other assets or not, as well as to the extent of the confiscation. The Mauritian authorities took stringent measures, both under the DDA and the FIAMLA, with the reversal of the burden of proof on the accused person’s possessions. They also established, for the purposes of forfeiture under the DDA, an independent Drugs Assets Forfeiture Office (DAFO) which is responsible for identifying the property subject to forfeiture.

Legal Framework:

Confiscation of Property related to ML, FT or other predicate offenses including property of corresponding value (c. 3.1) and Confiscation of Property Derived from Proceeds of Crime (c. 3.1.1 applying c. 3.1):

162. Section 8(2) of the FIAMLA provides that “any property belonging to, in possession of or under the control of a person convicted of [a money laundering offense] will 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.” The notion of property under the Act is broad and covers all types of property, whether moveable or immovable and whether tangible or intangible (see full definition in the write-up for recommendation 1). According to the authorities, it also covers

instrumentalities used in or intended for use in the commission of the money laundering offense. The wording of Section 8(2) and the definition of property supports their views.

163. Additional provisions for forfeiture may be found in the POCA: Section 82 (4) provides that where a person is convicted under either the POCA or the FIAMLA, the court may order the forfeiture of “the property the subject-matter of the offence” in addition to any penalty imposed.

Crit. 3.1.1 a)

164. Both the FIAMLA and the POCA are silent on the confiscation of property derived from the proceeds of crime. The authorities were adamant, however, that such property, including income, profits or other benefits from the proceeds of crime, falls within the notion of proceeds of crime because the legislator’s intention was to provide the broadest definition of property.

Crit. 3.1.1 b)

165. The confiscation measures under Section 8(2) of the FIAMLA and 82(4) of the POCA are very broad as far as the accused person’s property is concerned and the burden of proof was reversed: it is incumbent upon the accused person to provide sufficient evidence to convince the Court that all or parts of the property in his possession or in a third party’s hands and under his control, was of lawfully origin. Property owned by a third party, however, may not be forfeited unless the prosecution is able to prove beyond reasonable doubt that the third party participated in any way in the money laundering offense.

166. In short, the property subject to confiscation is all the accused person’s possessions, regardless of their nature, their source and their purpose, that have not been proved as legitimate.

167. Where a forfeiture order under Sections 82 of the POCA or 8 (2) of the FIAMLA cannot be enforced (in particular, where the property cannot be located, has been transferred to a third party to avoid forfeiture, is located abroad, has been substantially diminished in value and rendered worthless, or has been commingled with other property that cannot be divided without difficulty), the Supreme Court may order the person to pay an amount equal to the value of the property that would have been forfeited (Section 64 of the POCA).

168. The identification of property subject to confiscation under the DDA is based on a similar principle as under the FIAMLA, namely, the reversal of the burden of proof. The procedure for confiscation is more detailed than the procedure under the FIAMLA and is the most frequently used of all forfeiture procedures in place. It is also the only instance where the authorities rely on a separate office to trace the assets subject to confiscation (the DAFO).

169. When a person is brought before the Court on a charge of money laundering under Section 39 of the DDA, the Court may order (and, according to the authorities, usually does order) a provisional ban on the defendant’s assets: when such an order is issued, the person charged may no longer dispose of any of his assets, nor make any withdrawal from any account or deposit at any bank or other financial institution until the order is revoked, or until he is acquitted of the money laundering offense (Section 45(1) of the DDA). The Court may also order the defendant to file an affidavit setting out all his assets and disclosing all his accounts and deposits at any bank or other financial institution. After the issuance of the Court order, the DPP must publish the order in the Mauritius

“Gazette” and at least two daily newspapers, and give notice of the order to all notaries, banks, and financial institutions in Mauritius (Section 45(2) of the DDA).

170. Upon conviction for the money laundering offense, the DPP refers the matter for enquiry to the Commissioner of the DAFO (Section 45(3) DDA). After full enquiry, the Commissioner establishes the property subject to confiscation and reports back to the DPP, who may then apply to the Supreme Court for an order for the forfeiture of the possessions of the convicted person or any member of his family (Section 45(7) and (10) DDA). Provision was made for a reversal of the burden of proof: Where the Supreme Court finds that the possessions of the convicted person, or of any member of his family, or any part thereof are the proceeds of unlawful dealing in dangerous drugs by the convicted person, the Supreme Court shall order the forfeiture of those possessions (Section 45(10) of the DDA). For the purposes of forfeiture, the possessions of the convicted person shall be presumed, unless the contrary is shown upon a balance of probabilities, to be the proceeds of unlawful dealing in drugs (Section 45(11) of the DDA). Under the DDA, possessions mean “property, movable or immovable, including any cash in a bank account or bank deposit whether in a person’s own name or fictitious name” (Section 2 of the DDA).

171. Instrumentalities used in or intended for use in the commission of the money laundering offense or the predicate offense are not specifically mentioned as being part of the “possessions”. The authorities maintain that the notion of “possession” under Section 2 of the Act should be interpreted broadly and thus cover instrumentalities but they did not provide any case law that would support their interpretation of the law. While a broad interpretation of the law could cover instrumentalities that are in the convicted person’s (or his family’s) possession, it would not cover instrumentalities in another person’s hands. The assessors were, therefore, of the view that it has not been established that all instrumentalities would indeed be part of the property that may be confiscated.

3.1.1.a) and b)

172. The law does not specify whether property derived from the proceeds of crime, including income, profits or other benefits, may be subject to confiscation. According to the authorities, any income, profit or other benefit derived from proceeds of crime would be subject to confiscation insofar as they are considered as proceeds of crime, but no case law was provided to make this point.

173. As mentioned above, the property subject to confiscation goes beyond the convicted person’s possessions and includes the possessions of the members of his family unless it was proven that they are not the proceeds of crime (Section 45(10) of the DDA). However, the Act does not specify whether property held by third parties other than family members may be confiscated.

174. The forfeiture of all terrorist property is made possible under Section 6 of the CSFT Act. This applies to property which:

(a) has been, is being, or is likely to be used for any act of terrorism or by a proscribed organization;

(b) is the proceeds of an act of terrorism; or

(c) is gathered for the pursuit of, or in connection with, an act of terrorism (Section 2 CSFT Act and Section 2 POTA).

175. Section 4(4) of the CSFT Act enables the court before which a person is convicted of terrorist financing to order the forfeiture of funds which:

- (a) were, or intended to be, used for, or in connection with, the offense;
- (b) constitute the proceeds of the offense.

176. Funds are defined under the Act as:

- (a) assets of every kind, whether tangible or intangible, movable or immovable, however acquired; and
- (b) includes 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, travelers' cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit (Section 2).

177. The POTA, which mainly deals with terrorism and terrorist acts rather than terrorist financing, also enables the court to order the forfeiture of any terrorist cash, with accrued interest or terrorist property (Section 32(2)).

178. No provision is made for the confiscation of property of corresponding value under the relevant acts.

3.1.1 a) and b)

179. As mentioned above, forfeiture of the property derived from the proceeds of a terrorist act is made possible under Section 4(4) of the CFST Act. There are no similar provisions that would apply to property derived from the proceeds of terrorist financing.

180. No distinction is made with respect to the person who owns the property subject to forfeiture. This would imply that all property described above, including that owned by a third party, may be forfeited.

Provisional Measures to Prevent Dealing in Property subject to Confiscation (c. 3.2):

181. The POCA provides for the measures that may be taken to secure the property subject to confiscation during the various phases of an investigation led by the ICAC. Measures that may be taken by the police during its own investigations conducted under the FIAMLA are mentioned in the Police Act.

182. Where there are reasonable grounds to suspect that a person has committed an offense under the FIAMLA (or the POCA), the Judge in Chambers may, on application by the ICAC, issue an attachment order. The order attaches in the hands of the person named in the order (whether that person is himself the suspect or not) all money or other property due or owing or belonging to or held on behalf of the suspect, and require the latter to declare the nature and source of all money or other property attached. The order also prohibits the person from transferring, pledging, or otherwise disposing of the money and property attached. When such an order is made, the ICAC publishes the order in the next issue of the Mauritius "Gazette" and at least two daily newspapers, and gives notice of the order to all notaries, banks, financial institutions, cash dealers and any other person who may

hold or be vested with the property belonging to or held on behalf of the suspect (Section 56 of the POCA). Unless revoked by the Judge, the attachment order remains in force for 60 days. It may be renewed for successive periods of 60 days if the Judge is satisfied that the ICAC has obtained or is likely to obtain substantial new information relating to the offense (Section 57(2) and (3) of the POCA). In practice, such attachment orders have been issued in a number of proceedings and some have remained in force for several years.

183. Section 58 of the POCA further enables the authorities to seize moveable property which is the subject-matter of or relates to the offense.

184. Where a person is charged, or is about to be charged with a money laundering offense (or a corruption offense), the Supreme Court may, on application by the DPP, order the attachment of all moneys and other property due or owing or belonging to or held on behalf of the accused, as well as prohibit the accused or any other person from transferring, pledging, or otherwise disposing of any money or any property attached (Section 62 of the POCA). Upon issuance of the order under Section 62, the DPP has to communicate the content of the order: he must cause notice of the order to be published in the next issue of the Mauritius “Gazette” and in at least two daily newspapers published in Mauritius. He must also give notice of the order to all notaries, banks, financial institutions and cash dealers, and any other person who may hold or be vested with the property belonging to or held on behalf of the accused (Section 62(5) of the POCA). The law explicitly specifies that any payment, transfer, pledge or other disposition of property made in contravention of a freezing order shall be void (Section 62(8) of the POCA).

185. Finally, the police may, in the course of its own investigation under the FIAMLA, or on request from the ICAC, seize the property subject to confiscation in application of the general powers provided under Section 14 of the Police Act.

186. For the purposes of clarification, it is worth mentioning Section 52 of the POCA, because it gave rise to some confusion in practice: Pursuant to Section 52 of the POCA, the ICAC may, where it has reasonable grounds to believe that there is, on specified premises or in any place of business, evidence which may assist in its investigation, issue a warrant authorizing its officers to enter and search the premises and “remove” therefrom “any document or material which may provide evidence relevant to an investigation” conducted by ICAC. The purpose of this section is to enable the ICAC to undertake certain investigative measures without the need to apply for a court order. While the purpose is clear, the wording is not and Section 52 is imprecise on two counts: firstly, it suggests that the ICAC may search any premises and place of business. This is not entirely accurate since the ICAC (like the police), needs to apply for a court order to search the premises of a bank and obtain disclosure of banking records (see Recommendation 28). Secondly, the inclusion of the term “material” in the list of objects that the ICAC may seize, could suggest that the ICAC is empowered to seize proceeds of crime that it may identify during the search. The authorities explained that this is not the case, and that the proceeds of crime discovered during an ICAC search may only be seized by the police in application of Section 14 of the Police Act, or attached following the procedure mentioned below. To sum up, while the ICAC may, of its own accord, search premises and businesses other than banks and seize any documents which may serve as evidence for the purposes of the investigation, it may not enter and search bank premises without applying for a court order, nor can it seize the proceeds of crime without the assistance of the police.

187. The provisional measures which may be taken under Section 45 of the DDA (order to the convicted person not to dispose of any of his assets publication and notification of the order to

notaries, banks and financial institutions) are described under 3.1 above. The DDA also enables the police and the customs to seize and detain any material, equipment, devices, or other movables fit and intended for use in the commission of the offense (section 51(2) DDA).

188. Where there are reasonable grounds to believe that there is any place, building, vessel, or any other property in respect of which a forfeiture order may be made, the Judge in Chambers may issue a restraint order prohibiting any person from disposing of that property, or otherwise dealing with any interest in that property, other than as may be specified in that order. The application for the order is made by the Commissioner of the Police. The Judge may also appoint a person to take control of and manage the whole or part of the property, as well as require any person having possession of the property to give it to the person appointed (Section 5(2) CSFT Act). The power to manage or otherwise deal with the seized property includes, if necessary, selling perishable goods or rapidly depreciating property and destroying dangerous property and property of little value (Section 5(3) CSFT Act).

189. The POTA also makes provision for attachment of property where a person is charged or is about to be charged with an offense under the Act: Section 16 enables the judge, upon application from the Commissioner of the Police to attach all moneys and other property due, owing, or belonging to, or held on behalf of the suspect. As is the case under the DDA and the FIAMLA, attachments order under the POTA are published in the Mauritius “Gazette” and in two daily Mauritian newspapers and the Commissioner of the Police must give notice of the order to all notaries, banks, other financial institutions and cash dealers, and any other person who may hold or be vested with property belonging to or held on behalf of the suspect.

Ex Parte Application for Provisional Measures (c. 3.3):

190. While it is only a requirement under the CFST Act (Section 5(1)), the authorities confirmed that all applications for freezing, seizing, or attachments mentioned above are made ex-parte.

Identification and Tracing of Property subject to Confiscation (c. 3.4):

191. Sections 52, 54, and 55 of the POCA enable the ICAC to trace tainted property (and to enforce property tracking and monitoring orders) either on its own accord or with the assistance of a Judge.

192. Under Section 52, the Commission is empowered to issue a warrant to enter and search premises and business places other than banks, as well as “seize and take possession of any book, document, computer disk or other article” and other objects (other than the proceeds of crime), which may assist in its investigation. It may exercise these powers without having recourse to the judge.

193. Under Section 54, the ICAC may apply for an order for disclosure where it needs, for the purposes of its investigation, to determine whether any property belongs to, is in possession or under the control of, a person, or where the Commission has reasonable grounds to suspect that a person has committed, is committing, or is about to commit an offense which the Commission has powers to investigate.

194. There are two main differences between the measures taken under Section 52 and those ordered under Section 54. The first difference is a result of Section 64 of the Banking Act: the search and seizing powers granted under Section 52 only apply with respect to persons and entities other

than banks. If the information sought is held by banks, a court order is necessary due to confidentiality requirements under the Banking Act, and the ICAC must follow the procedure laid out under Section 54 of the POCA (see also write up under Recommendation 28). The second difference lies in the enforcement of the measures taken: only the disclosure order made by the Judge under Section 54 may be enforced: A Judge in Chambers may, on good cause shown by the ICAC that any person is failing to comply with, is delaying or is otherwise obstructing a directive made in accordance with Section 54, order that the ICAC or any officer may enter any premises of a bank, financial institution, cash dealer, or member of a relevant profession or occupation,¹² search the premises and remove any document, material or other things therein for the purpose of executing the order (Section 55 of the POCA).

195. The DDA enables the Judge in Chambers to grant the police a range of powers to investigate when there are reasonable grounds to suspect that a money laundering offense (or another offense under the DDA) has been or is likely to be committed (Section 56). He may issue a warrant authorizing any police officer to:

- (a) tap or place under surveillance, for a period not exceeding 6 months, the telephone lines used by persons suspected of participation in money laundering (or other) offense;
- (b) have access to the computer systems used by the suspect and place them under surveillance;
- (c) place a bank account under surveillance when it is suspected of being used for operations related to money laundering (or other) offense; and
- (d) have access to all bank, financial, and commercial records that may reasonably concern transactions related to offense.

196. The DDA also enables the Commissioner of the DAFO (who is responsible for identifying all property subject to confiscation) to require of his own accord (i.e., without having to apply for a court order) any person, including banks and other financial institutions, the convicted person and members of his family, to make any disclosure relating to the possessions of the convicted person (Section 45(4) DDA). The Banking Act takes the Commissioner's power into account by stating that the duty of confidentiality does not apply when a bank is summoned by the Commissioner acting under Section 45(4) of the DDA to provide evidence and any relevant record, book, or document (Section 64(3)(k)). Failure to comply with the Commissioner's order may entail a fine and imprisonment (except where it is the accused person who is in breach of the order, in which case only the fine will apply; Sections 42 45(5)(a) and (c)).

197. Section 17 of the POTA enables the Commissioner of the police to trace all relevant property after application for a court order. If the Commissioner of the Police has reasonable grounds to suspect that a person has committed, is committing, or is about to commit an act of terrorism or is in possession of terrorist property, he may apply to a Judge in Chambers for an order (a) compelling the suspect to deliver to him any document relevant to identifying, locating, or quantifying any property

¹² "Member of relevant profession or occupation" means an accountant, an attorney, a barrister, a chartered secretary, a notary, and includes a person carrying on the business of a casino, a bookmaker, or a totalisator under the Gaming Act (Section 2 of the POCA).

belonging to or in possession of or control of that person; (b) requiring a bank or any other financial institution, trustee, cash dealer, or custodian to produce to him all information and deliver to him all documents regarding any business transaction conducted by or on behalf of the suspect.

Protection of Bona Fide Third Parties (c. 3.5):

198. The publications in the “Gazette” and the newspapers called for under the POCA, DDA, and CSFT Act ensure that the public at large, and in particular bona fide third parties, are informed of the provisional measures which are being undertaken and of the confiscation orders. Further provisions were made under the POCA and the POTA to enable bona fide third parties to uphold their rights in spite of the measures taken, but they have no equivalent under the DDA.

199. Section 62 (3) of the POCA enables the Judge, in making a freezing order, to 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 to the DPP;
- (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.

200. These authorizations ensure that the freezing measures do not prejudice the rights of bona fide third parties, in line with the requirements of the Palermo Convention.

201. There are no provisions under the DDA that ensure some level of protection of the rights of bona fide third parties. This shortcoming in the DDA is of particular significance in light of the fact that the possessions belonging to the family member of the convicted person are automatically considered to be tainted unless their lawful origin is established by the family members. The automatic extension of the freezing and confiscation measures to possessions of the members of the convicted person’s family is, in itself, in violation of the Palermo Convention, and the automatic assumption that family members are not bona fide parties should at the very least be counter-balanced by appropriate measures that ensure that the rights of bona fide third parties, including family members, may be upheld.

202. A person who claims an interest in property that has been forfeited in application of the CSFT Act and who has been given notice of the order of forfeiture may make an application to the Supreme Court to vary or set aside an order, no later than 60 days after the day on which the forfeiture order was placed (Section 6(8) CSFT Act). Furthermore, before ordering the forfeiture of the funds that were used for, or intended to be used for, or in connection with the terrorist financing offense or which constitute the proceeds of the terrorist financing offense, the Court must give every person appearing to have an interest in the funds, an opportunity to be heard (Section 4(5) of the CSFT Act).

Power to Void Actions (c. 3.6):

203. The Civil code provides that any contract must have a lawful purpose. According to the authorities, the judge may prevent or void any contract or other actions where the persons involved knew or should have known that as a result of that contract the authorities would be prejudiced in their ability to recover property subject to confiscation, on the basis that the contract or action in

question does not have a lawful purpose. This general principle applies regardless of the laws under which the provisional measures and the confiscation were ordered.

Additional Elements (Rec 3) – Provision for a) Confiscation of assets from organizations principally criminal in nature; b) Civil forfeiture; and, c) Confiscation of Property which Reverses Burden of Proof (c. 3.7):

204. Extended confiscation is not a current feature of Mauritian law. One possible explanation could be the limited use which is made of Section 188 of the Criminal Code (association of malefactors). Confiscation without conviction (civil forfeiture) is not available, but discussions on a potential extension of the forfeiture mechanisms are being held. As mentioned above, Mauritius reversed the burden of proof in forfeiture procedures conducted under the relevant laws. The onus is, therefore, on the accused person to demonstrate that the property was acquired through lawful means.

Implementation and statistics:

205. The statistics provided by the authorities indicate that the ADSU (Police) and the ICAC make regular applications for provisional measures under the DDA and the POCA. Anecdotal evidence suggests that the amount of assets frozen in application of the DDA at the time of the assessment reached some 100 million Rupees.

Table 13. Applications made by the ICAC

	2002	2003	2004	2005	2006	2007
Attachment Order	-	3	7	8	6	7
Disclosure Order*	-	-	7	24	18	36

*Applicable since 2004 – Banking Act 2004.

206. According to the DAFO, some 15 applications for forfeiture under the DDA are pending, either before the DPP or before the courts.

207. However, while the courts generally give suit to the applications for attachment, no property has been successfully forfeited so far. Confiscation has been ordered on one occasion, but was subsequently challenged (and the case was pending before the Court of Appeals at the time of the assessment). No specific explanation was provided but some of the authorities met expressed concern with respect to the timing of the attachment measures and claimed that such measures are often taken too late in the procedure and that the assets are being disposed of in the meantime.

Constitutionality of confiscation measures

208. Some of the defense lawyers met during the on site visit claimed that the confiscation measures ordered in application of the FIAMLA were, in their view, unconstitutional when the predicate was an offense other than drug-trafficking, corruption, or fraud. They also informed the mission of their intention to challenge the constitutionality of a confiscation order based on another predicate offense. Although the assessors feel that there is no conflict between the Mauritian

confiscation framework and the Constitution, they consider the debate raised by the lawyers is nevertheless worth mentioning because it highlights the difficulties that the authorities face when implementing the AML/CFT framework. The current debate is the following: The Constitution of Mauritius provides for the general protection of personal property (Section 8) and enumerates a limited number of exceptions under which the State may remove a person's possessions. One of the exceptions listed relates to measures taken "to the extent that the law makes provision for the taking of possession or acquisition of property (...) by way of penalty for breach of the law or forfeiture in consequence of a breach of the law or in consequence of the inability of a drug-trafficker or a person who has enriched himself by fraudulent and/or corrupt means to show that he has acquired the property by lawful means" (Section 8(1) (4)(a)(ii)). According to the defense lawyers, the restrictions in the Constitution should be interpreted strictly and confiscation may only be ordered in application of the DDA or the FIAMLA when the predicate offense is drug-trafficking, corruption, or "fraud" (i.e., under Mauritian law, swindling or embezzlement). The Constitution, however, is not limited to a specific type of crime. On the contrary, the inclusion in Section 8 of "penalty for breach of the law, or forfeiture in consequence of a breach of the law" and of enrichment by "fraudulent means" clearly broadens the scope of the crimes beyond drug-trafficking, corruption, and fraud. This inclusion and the fact that the FIAMLA explicitly provides for confiscation enable the authorities to forfeit tainted property in application of the FIAMLA regardless of the nature of the predicate offense. This view was shared by the representatives of the DPP's office. While it does not appear to be a real "threat" to the confiscation framework, the ongoing debate nevertheless exemplifies the fact that confiscation in money laundering cases is a novelty with which the lawyers are not familiar.

2.3.2 Recommendations and Comments

209. The confiscation and provisional measures provided for by the Mauritian laws are flexible and the property subject to confiscation, although not fully in line with the standard, is extensive. The authorities in charge of these measures (Police, ICAC, DPP, DAFO) are afforded adequate powers to identify and trace property which may become property subject to confiscation. The procedure by which these measures may be taken ensure sufficient publicity after the issuance of the relevant orders and the reversed burden of proof should undoubtedly facilitate the application of forfeiture.

210. However, the timing of the provisional measures is key to an effective confiscation system and the fact that some measures may be taken too late is of great concern.

211. The lack of measures under the DDA to enable *bona fide* third parties to protect their rights is also of concern, in particular considering that the reversal of the burden of proof applies equally to the offenders and members of his or her family.

212. Possible challenges against confiscation orders based on a strict interpretation of the Constitution have the potential to hamper the authorities' efforts to remove tainted property from the hands of criminals.

213. Finally, the fact that no property has been successfully confiscated several years after the relevant laws were passed raises serious doubts as to the effectiveness and the real implementation of the confiscation framework.

214. In order to bring the Mauritian legal framework in full compliance with the standard, the authorities are recommended to:

- Provide for the confiscation of property of corresponding value when forfeiture under the DDA and the POTA when the property subject to confiscation under the DDA and the POTA is not available;
- Ensure that instrumentalities and property derived from the offense may be forfeited;
- Enable confiscation under FIAMLA to take place even when the property subject to confiscation is owned by third parties;
- Enable confiscation under the DDA to take place even when the property subject to confiscation is owned by third parties who are not family members;
- Provide protection for the rights of bona fide third parties who may be affected by a forfeiture measure under the DDA and in a way which is consistent with the requirements of the Palermo Convention;
- For the sake of clarity, amend Section 52 POCA with respect to the premises and business places that ICAC may search, and the material that ICAC may seize;

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	PC	<ul style="list-style-type: none"> • No provisions were made in the DDA and the Acts dealing with the fight against terrorism and terrorist financing for the confiscation of property of corresponding value; • Unclear whether instrumentalities and property derived from an offense may be confiscated; • No provision was made under the FIAMLA to enable the confiscation of property owned by third parties; • No provision was made under the DDA to enable the confiscation of property owned by third parties who are not family members of the convicted person; • There are no measures in the DDA to ensure the protection of the rights of bona fide third parties; • Lack of effectiveness (no assets forfeited so far).

2.4 Freezing of funds used for terrorist financing (SR.III)

2.4.1 Description and Analysis

Legal Framework:

215. As mentioned under Special Recommendation II, the Republic of Mauritius has enacted several pieces of legislation over the last years to fight against terrorism and its financing, the most relevant of which are the Prevention of Terrorism Act of 2002 (POTA) and the Convention for the Suppression of the Financing of Terrorism Act of 2003 (CSFT Act). The Prime Minister also issued implementing regulations in 2003 (Regulations no. 14 and 36 of 2003, the Prevention of Terrorism (Special Measures) Regulations 2003 and the Prevention of Terrorism (Special Measures) (Amendments) Regulations 2003), which provide the framework for freezing measures.

216. It is worth mentioning from the outset that, at the time of the assessment mission, no funds in Mauritius had been linked with terrorism, terrorist groups or terrorist individuals. The legislative and regulatory framework had, therefore, never been implemented and tested before the courts.

Freezing Assets under S/Res/1267 (c. III.1):

217. Section 10(1) and (4) of the POTA provide the legal basis that enables the Minister to declare a person or group or entity as a suspected international terrorist or suspected international terrorist organization. Section 10(1) provides that “the Minister may declare any person to be a suspected international terrorist where:

- (a) he reasonably suspects that that the person:
 - (i) is or has been concerned in the commission, preparation, or instigation of acts of international terrorism;
 - (ii) is a member of, or belongs to, an international terrorist group; or
 - (iii) has links with an international terrorist group; and,
 - (iv) he reasonably believes that the person is a risk to national security.
- (b) the person is listed as a person involved in terrorist acts in any Resolutions of the UNSC or in any instruments of the Council of the European Union; or
- (c) the person is considered as a person involved in terrorists acts by such State or other organization as the Minister may approve.

218. The Prime Minister may also declare a group to be an international terrorist group if the group:

- (a) is subject to the control or influence of persons outside Mauritius, and the Minister reasonably suspects that it is concerned in the commission, preparation or instigation of acts of international terrorism; or
- (b) is listed as a group or entity involved in terrorist acts in any UNSCR or any instrument of the Council of the European Union; or
- (c) is considered as a group or entity involved in terrorist acts by such competent authority of such States as the Minister may approve.

219. Pursuant to Section 10(7) of the POTA, once he has made such a declaration, the Minister must give notice of it in the Gazette and in such other manner as he deems fit. On publication of the declaration, the BOM or the FSC, as the case may be, must, by notice, direct that any account, property or funds held by financial institutions under its regulatory authority on behalf of any listed terrorist is frozen and that a report be made to the regulator (Regulation 3 of the Prevention of Terrorism (Special Measures) Regulations 2003).

220. Section 10(6) of the POTA makes provision for the general framework for freezing measures and for the Prime Minister to issue implementing regulations (which, as mentioned above, he did in 2003). The freezing envisaged under the POTA covers the person's or organization's funds, financial assets, or other economic resources, including funds derived from property, owned or controlled directly or indirectly by the person or the organization, or by any person acting in his or its behalf or at his or its direction.

221. The consolidated list of designation made pursuant to UNSCR 1267 and its updates are sent to Mauritius through its Ministry of Foreign Affairs (MoFA). The MoFA then forwards them to the Prime Minister's Office, with copy to Ministry of Finance (MoF). The Prime Minister's office in turn sends the lists and updates to the Commissioner of the Police, the National Security Service, the Passport and Immigration Office, Customs and the FIU, while the MoF sends them to the BOM and the FSC. This dissemination procedure is not set in law or regulation but is merely the result of the authorities' practice.

222. Further dissemination to the private sector differs from one regulator to the other:

- The BOM forwards all amendments to the list to the financial institutions under its purview via email addressed to the institutions' compliance officers. It also sends the full updated consolidated list where the latest amendments are highlighted. Ultimately, the lists and updates are sent to the financial institutions between a few days to up to three weeks after the UNSC updated the consolidated list. In its communication, the BOM requests the financial institutions to report back to the central bank, within one week, whether the persons and entities mentioned in the updates hold any account with the financial institution, and to seek the approval of the BOM before executing any request for transactions in respect of those persons and entities.
- The FSC initially sent the consolidated list and its updates to its licensees, with a request to review their files against the lists and to inform the Commission of the result of their review, but subsequently considered that this was not cost effective and decided instead to include a link, on its own website, to the UN website. No mention is made with respect to the freezing requirements under Regulation 3 of the Prevention of Terrorism (Special Measures) Regulations 2003.

223. While the Conventions and the Regulations provide the legal framework for the freezing measures, in practice, the latter may only be ordered after a bank or another financial institution has identified a designated person among its customers: The freezing mechanism can only be initiated by the BOM and the FSC upon publication in the Gazette of the Prime Minister's declaration (Regulation 3 of the Prevention of Terrorism (Special Measures) Regulations 2003) and Section 10 of the POTA leaves it to the Prime Minister's discretion whether to make a declaration or not ("the Minister may declare ..."). At the time of the assessment, no such declaration has been made. The authorities informed the mission that it is only if and when one of the designated person's or entity's name appears within one of the institutions, and duly informs the regulator who, in turn, will inform the Prime Minister's Office, that the Minister would consider declaring that person or entity as a terrorist or a terrorist organization.

224. While the freezing measures can only be initiated upon the Prime Minister's declaration, they may be revoked at any time by either of the regulators (Regulation 6).

225. The recently enacted Financial Services Act provides an additional option for the FSC by enabling the latter to apply to the Judge in Chambers for a freezing order when it has reasonable grounds to suspect that a financial crime (which, according to the authorities, includes terrorism financing) has been committed. The Act was enacted during the assessment team's on site visit and the new freezing mechanism had, therefore, not been tested.

Freezing Assets under S/Res/1373 (c. III.2) and Freezing Actions Taken by Other Countries (c. III.3):

226. The mechanisms described above apply to all relevant UNSCR (Section 10(1) (b) of the POTA), including UNSCR 1373. The procedure to give effect to designations made pursuant to UNSCR 1373 and to the actions initiated by another country should, according to the authorities, therefore be similar as the one applied in implementation of UNSCR 1267.

227. The situation is, nevertheless, entirely different in practice because the authorities maintained that no request had ever been made to Mauritius and no names were ever circulated under UNSCR 1373 or as a consequence of another country's freezing actions.

228. Consequently, no measures have been taken to examine and, if appropriate, give effect to actions initiated under the freezing mechanisms of other countries.

229. While it is difficult for the assessment team to establish precisely whether this is indeed the case, considering other countries' experience, including that of other small jurisdictions around the world, it is possible that no request was ever made to Mauritius to freeze terrorist funds targeted under UNSCR 1373 or under another country's actions.

Extension of c. III.1-III.3 to funds or assets controlled by designated persons (c. III.4):

230. Pursuant to Section 10(6) POTA, the Minister may make regulations to provide for the freezing of any suspect international terrorist's or international terrorist group's funds, financial assets or other economic resources, including funds derived from property, owned or controlled directly or indirectly, by the terrorist or the terrorist group, by persons acting on his or its behalf or at his or its direction.

231. The Prevention of Terrorism (Special measures) Regulations of 2003 and their Amendments further define funds as "assets of any kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form including electronic or digital, including title to or interest in, such asserts, including but not limited to, bank credit, travelers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit."

232. These provisions do not, however, cover the funds and other financial assets of those who finance terrorism.

Communication to the Financial Sector (c. III.5):

233. As mentioned above in the description of the implementation of UNSCR 1267, the designations made by the UNSC 1267 Committee are circulated, through the MoFA, to the Prime Minister's Office and to the MoF and then to the law enforcement agencies and regulators, before being passed on to the financial institutions under the purview of the BOM. Communications from

the BOM to the financial institutions are slow and take between a few days to up to three weeks after updates to the consolidated list. The designations are no longer communicated to the institutions under the regulatory control of the FSC other than through a link to the list on the FSC's website, and are not circulated at all to the DNFBPs that are not regulated.

234. As also mentioned above, under the Regulations, any action taken with a view to freezing a terrorist individual or a terrorist organization's funds would necessitate prior declaration of the Prime Minister and would be published in the Mauritius Gazette, thus ensuring some form of communication to the financial sector.

235. The Financial Services Act provides that where a freezing order is made in application of Section 50, the FSC may:

- (a) give notice of the order, (court order), unless the FSC reasonably believes that such notice is likely to obstruct the conduct of any investigation under the Act;
- (b) give notice of the order to all branches and to the head office of all banks and branches, investment dealers, cash dealers and financial institutions belonging to or held on behalf of the suspect (Section 50(2)).

Guidance to Financial Institutions (c. III.6):

236. In July 2005, the BOM issued Guidance Notes on AML/CFT for the financial institutions under its purview. The Guidance Notes bring together the texts of the various pieces of legislation that deal with the fight against terrorism and its financing (POTA, the CSFT Act, and the 2003 Regulations). They also provide some guidance by expounding on the designation process and the BOM's powers as follows: "A listed terrorist has been defined in the regulations as an international terrorist group or a suspected international terrorist. In this respect, the Bank is, on the publication in the Government Gazette of a declaration by the Prime Minister listing those suspected international terrorists or international terrorist groups, empowered to direct by notice that funds and property held by financial institutions for those listed terrorists be frozen and to subsequently refer the matter to the police for investigation." The Notes do not provide additional and more practical guidance as to the financial institutions' obligations in taking action under the freezing mechanism.

237. During the same month, the FSC issued three Codes on AML/CFT, respectively for the insurance entities, investments business, and management companies. The Codes provide general information on money laundering and terrorist financing as well as on the Mauritian legislative framework, but like the BOM Guidance Notes, do not provide specific practical guidance on the obligations with respect to freezing of funds.

238. No guidance at all has been issued to the attention of the DNFBPs that are not under the purview of the BOM or the FSC.

De-Listing Requests and Unfreezing Funds of De-Listed Persons (c. III.7):

239. There are no procedures in place for considering de-listing requests or unfreezing the funds or other assets of de-listed persons. The authorities mentioned that pursuant to Regulation 3, the BOM and the FSC may revoke a freezing directive given on the basis of a declaration by the Prime Minister that a particular person or organization is a terrorist. They did not, however, specify the procedure by

which a request for de-listing could be made. Furthermore and more importantly, while Regulation 3 could be of some relevance under UNSCR 1373, it is not sufficient under UNSCR 1267 whereby any de-listing procedure would necessarily entail authorities other than the regulator, including the UNSC.

Unfreezing Procedures of Funds of Persons Inadvertently Affected by Freezing Mechanism (c. III.8):

240. Similarly, there are no measures in place to unfreeze, in a timely manner, the funds and other assets of persons or entities inadvertently affected by a freezing mechanism.

Access to frozen funds for expenses and other purposes (c. III.9):

241. The Prevention of terrorism (Special Measures)(Amendments) Regulations exclude from the definition of funds those funds and other financial assets or economic resources that are necessary for basic expenses (including payments for food, mortgages, medical treatment, taxes, etc.) as well as those necessary for extraordinary expenses. This implies that a decision as to the amount of funds that may escape the freezing measure has to be taken from the outset, namely, when the freezing is ordered. How this would apply in practice is unclear. In particular, there is no indication as to how these amounts would be estimated and by whom.

Review of Freezing Decisions (c. III.10):

242. The specific procedure that would enable a person or entity whose funds and assets have been frozen to challenge the freezing order is unclear.

Freezing, Seizing and Confiscation in Other Circumstances (applying c. 3.1-3.4 and 3.6 in R.3, c. III.11)

243. Provisional and confiscation measures may be taken in other contexts as described under Recommendation 3 – Terrorist financing offense.

Protection of Rights of Third Parties (c. III.12):

244. Measures are in place to provide for the protection of bona fide third parties only in the context of freezing mechanisms initiated under a criminal investigation led in Mauritius as described under Recommendation 3.

Enforcing the Obligations under SR III (c. III.13):

245. The only obligation that the financial institutions have had in the context of SR III at the time of the assessment was to check the consolidated list issued pursuant to UNSCR 1267 against their list of customers. However, the monitoring of their compliance with these requirements is unclear.

Additional Element (SR III) - Implementation of Measures in Best Practices Paper for SR III (c. III.14):

246. The measures set out in the FATF Best Practices Paper for SR III have not been implemented in Mauritius.

Additional Element (SR III) - Implementation of Procedures to Access Frozen Funds (c. III.15):

247. Provision was made in the Regulations to allow for the payment of basic expenses as described above, but the procedure by which it can be implemented has not been defined.

2.4.2 Recommendations and Comments

248. The current freezing mechanism suffers from a number of shortcomings and the assessment team considered that the overall implementation of the measures provided for under the laws and regulations was ineffective.

249. The mere fact that the freezing measures under UNSCR 1267 necessitate a declaration which the Prime Minister may make at his own discretion before they can be implemented contravenes the requirements under UNSCR 1267. So does the Regulation which enables the regulators to revoke a freezing order made under USCR 1267. UN member countries are afforded no discretion in the qualification as terrorists of the persons and entities listed under UNSCR 1267 and the freezing mechanism must be able to operate as soon as the amendments to the consolidated list are made. This entails that all the relevant persons and entities must be made aware of the amendments as soon as the latter have been adopted. Communication of the amendments should be made to all the relevant parts of the private sector and not only to the industries under the purview of the BOM. A link to the UN website on the FSC's homepage is not sufficient in this respect. Furthermore, the fact that, in Mauritius, the amendments to the consolidated list are sent to the private sector (regulated by the BOM) several days and up to several weeks after their adoption raises concerns because it entails that the authorities are not in a position to act with the expediency required to fight effectively against terrorism.

250. The authorities do not seem to have given sufficient thought to the procedure that should apply when requests are made by other countries acting under UNSCR 1373 or as a result of their own freezing mechanisms.

251. Although it has never been applied, the provision made for the payment of basic expenses is another matter for concern: Considering that the duration of the freezing measures cannot be specified from the outset (by the UNSC or else) and that, in practice, measures such as those undertaken in application of UNSCR 1267 may remain in place for several years before a final decision is taken, estimating the amount necessary to cover basic expenses would be close to impossible. Furthermore, should such an estimate be made, the estimated (and potentially large) amounts of funds would escape the freezing measures and, consequently, remain at the disposal of persons and entities who have been designated as potential, which entirely defeats the overarching goal of the freezing measures.

252. As for the lack of measures taken under UNSCR 1373 or in response to another country's freezing mechanism, while it is difficult for the assessment team to establish precisely whether Mauritius's assistance was requested or not, considering other countries' experience, including that of other small jurisdictions around the world, it seems very unlikely that no request was ever made to freeze terrorist funds under UNSCR 1373 or under another country's actions.

253. Overall, the freezing measures adopted in the laws and regulations do not cater for the situations covered under SR III and lack adequate procedures.

254. The Mauritian authorities are recommended to:

- Reconsider the mechanisms set out to implement UNSCR 1267;
- Ensure that all financial institutions under the purview of the FSC are immediately informed of all changes to the consolidated list of terrorists under UNSCR 1267;
- Ensure that all persons and entities designated by the UN SC 1267 Committee are considered as terrorists and their funds and other assets are immediately frozen upon identification;
- Establish clear mechanisms for the implementation of UNSCR 1373;
- Establish clear mechanisms to examine and, where appropriate, give effect to the actions initiated under the freezing procedures of other jurisdictions;
- Ensure effective communication of all actions taken under the freezing mechanism to all the financial sector, including in cases other than the circulation of the 1267 lists;
- Provide adequate guidance to the financial institutions and other persons or entities that may be holding targeted funds or other assets concerning their obligations under the freezing mechanisms;
- Set out effective procedures for considering de-listing request and make the public;
- Set out procedures for unfreezing in a timely manner the funds or other assets inadvertently affected by the freezing measures and make the public;
- Set out procedures for access to funds in accordance with UNSCR 1452;
- Set out procedures to challenge freezing measures;
- Take measures to ensure protection of the rights of bona fide third parties; and
- Ensure effective monitoring of compliance with the obligations under SR III.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	NC	<ul style="list-style-type: none"> • The procedures in place are not effective and would not enable the freezing without delay funds and other assets of persons designated under UNSCR 1267; Dissemination to the financial institutions may take up to a few weeks upon amendments of the UNSC consolidated list; • There are no effective procedures in place to freeze without delay terrorist funds or other assets of persons designated in the context of UNSCR 1373; • There are no effective procedures in place to examine and, if appropriate, give effect to freezing actions initiated by other jurisdictions; • There are no effective systems for communicating actions taken under UNSCR 1373 and actions initiated by other jurisdictions; • Lack of clear guidance; • There are no effective and publicly-known procedures for considering de-

		listing requests; <ul style="list-style-type: none"> • There are no effective and publicly-known procedures for unfreezing; • There are no effective procedures in place to ensure the protection of the rights of bona fide third parties; • No dissemination mechanism under UNSCR 1373; • Lack of overall effectiveness.
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Authorities

2.5 The Financial Intelligence Unit and its functions (R.26)

2.5.1 Description and Analysis

Legal Framework:

255. Section 9 of FIAMLA established the Mauritian Financial Intelligence Unit (the “FIU”) on June 19, 2002. The AML Miscellaneous Provisions Act (AMLMP) 2003 amended the original powers and functions given to the FIU, in particular, converting the previous role of the External Review Committee to a Board structure, limiting the previous wide scope of the FIU’s guidance issuing power to the more specific area of “manner of reporting of STRs,” confirming the Director’s power to request further information in relation to a reported STR, and assigning the power to supervise and enforce AML/CFT compliance in the financial sector to the designated supervisory authorities (BOM and FSC). The AMLMP also amended the legal framework for FIU’s operating environment through addressing the issue of confidentiality of reporting by banks and establishing an obligation for the BOM and FSC to report relevant suspicions to the FIU.

256. The FIAMLA Regulations 2003 (FIAMLR) No. 10 also authorizes the FIU to issue guidelines for the purposes of the FIAMLA and the regulations. The mission was advised of a legal opinion from the Solicitor-General that confirms that this power to issue guidance extends only to the manner of STR reporting as set out in section 10(2) of FIAMLA.

257. The FIU is an administrative style FIU which receives STRs and further information from the reporting institutions defined in section 14 of FIAMLA.¹³ It performs operational and strategic analysis, disseminates disclosures of STR related cases indicating possible ML/TF offenses to designated investigatory and supervisory authorities and also disseminates strategic and operational intelligence to a wider range of authorities determined, at the Director’s discretion, in accordance with S21 and 30(2) of FIAMLA.¹⁴

258. The reporting institutions obliged to report STRS are banks; nonbank financial institutions; cash dealers (money exchangers); and those designated nonfinancial businesses and professions which are currently defined as accountants, attorneys, barristers, chartered secretaries, notaries, and persons carrying on business of a casino, bookmaker, or totalisator under the Gambling Regulatory

¹³ Banks, financial institutions, cash dealers (money exchangers), or member of a relevant profession or occupation. S3 defines the latter category to include accountant, attorney-at-law (lawyer), barrister, chartered secretary, notary and persons that carry on a business of a casino, bookmaker, or totalisator under the Gambling Regulatory Authority Act (previous to Sept 10, 2007 the Gaming Act).

¹⁴ Section 3.7 provides fuller description and analysis of the STR reporting system.

Act.¹⁵ Trust and Company Service Providers (TCSPs) are covered by the FIAMLA reporting obligation as they fall within the domestic definition of Management Companies which are licensed under the Financial Services Act as a financial institution.¹⁶ The two financial sector supervisors also provide information to the FIU where their regulatory work (usually through on site examinations) identifies possible suspicious transactions relating to ML/TF (S22 FIAMLA).

259. The FIU's analytical process involves an initial evaluation phase to grade and rate, and the subsequent use of appropriate analytical techniques to support or disprove indications of suspicion. The FIU obtains and uses information from a variety of closed and open information sources, including law enforcement and various commercial and public authority database holdings and records. Further information is requested from financial institutions which make the initial disclosure or from institutions that the FIU considers may have a connection to the reported transaction. This is legally authorized by Section 13(2) of FIAMLA. The FIU has an electronic reporting and storage system for the STRs, although to date, most STRs have been provided on the FIU's paper form.

260. Dissemination under S13(1) is achieved through a controlled process. When the Director considers that information on any matter should be disseminated to an investigatory or supervisory authority, the information is referred to the Board. . The FIU's Board, which under FIAMLA S12 administers the FIU, has a role in providing consent to disseminations of statutory reports, including proactive disseminations to overseas FIUs. A fuller assessment of the respective roles of the Director of the FIU and the Board is included at R26.6 (operational autonomy). Cases reports (statutory reports) where ML is suspected are disseminated to ICAC. Disseminations involving ML are also disseminated to the Police where there is knowledge of an active police investigation or where the suspected underlying offense is drugs related. Cases involving terrorist financing would be disseminated to the Police who have the power and responsibility to investigate such cases. To date the FIU has received one "FT" related STR.

261. The FIU continues to monitor cases it has disseminated to the relevant authorities. Any additional information is disseminated as a further statutory report. The FIU also provides Intelligence Reports based on their research and strategic analysis of STRs and other information sources to which it has access. Where the FIU becomes aware of any information which may be relevant to the functions of any supervisory authority or to an investigation or prosecution being conducted by an investigatory authority, the FIU passes on the information to the relevant authorities under S21 of FIAMLA. The FIU also discloses information under S30(2) where it considers that the disclosure to be necessary in the interests of the prevention or detection of crime; in connection with the discharge of any international obligation to which Mauritius is subject; or pursuant to an order of a Judge. . The FIU provides information to the financial sector supervisory authorities (FSC and BOM) when it becomes aware of any information that may be relevant to their regulatory role, for example, issues of possible noncompliance with reporting requirements or "fit and proper" considerations.

262. The FIU has a technical department and the Assistant Director is the Head of the Technical Department. The Technical Department comprises of the Financial Investigative Analysis, Research

¹⁵ The Gambling Regulatory Authority (GRA) Act 2007 replaced the Gaming Act 1973 on September 10, 2007.

¹⁶ The FSA replaced the Financial Services Development Act midway during the mission. Reference to FSD was amended to the FSA.

& Monitoring, Information Technology & Security and Legal. The Financial Investigative Analysis Division receives, processes, analyzes, and interprets suspicious activities relating to money laundering and terrorist financing. The Information Technology & Security Division focuses on the implementation of IT strategies, control, and security of the information and IT systems. Core staff operating in the Financial Investigative Analysis Department includes a Senior Financial Intelligence Analyst (not filled at the time of mission), three Financial Intelligence Analysts, three Assistant Financial Intelligence Analysts, two Research Intelligence Officers, three Field Intelligence Officers and one Police Liaison Officer. The staff in the Information Technology & Security Division includes one IT Security Officer, one Information Control Officer and two IT Assistants. Legal support is provided by the Legal Officer. The FIU's field intelligence officer's role is two fold. They perform field-based nonobtrusive observation regarding the activity identified in disclosures and also obtain information from the various off line sources that the FIU uses to support its analytical function.

263. The Corporate Affairs Division deals with the finance and general administration, office security, procurement, and human resources management. Its staff includes one Finance and Administrative Manager, one Administrative and Accounting Assistant, two Office Secretaries, one Receptionist, one Driver/General Assistant, and two General Assistants.

264. To support its core FIU functions, S10 of FIAMLA also empowers the FIU to obtain and use additional information, consult and share information with the Commissioner of Drugs, Police, ICAC and the supervisory authorities designated by the FIAMLA (the BOM and FSC), issue guidelines to financial institutions, cash dealers and members of the relevant professions or occupations on the manner and requirements for the reporting of STR and related further information, exchange information with overseas FIUs and "comparable bodies" and undertake research¹⁷ to identify the causes and consequences of ML and TF. Since the 2003 amendments, the FIU's previous powers with respect to monitoring for compliance for nonreporting have been assigned to the BOM and FSC for the financial and nonbank financial institutions which they regulate. Criminal prosecution for noncompliance with reporting requirements lies with the Police. The FIU does not have power to require reporting institutions to block or freeze funds or accounts, where money laundering is suspected. Such action involves a lengthier process involving the Police and ICAC. The process to freeze funds is analyzed further at Recommendation 3.

Establishment of FIU as National Centre (c. 26.1):

265. The FIU is an administrative style FIU and its functions and powers are provided solely within the FIAMLA.

266. The FIAMLA S9 and S10 establish the FIU as:

“a Financial Intelligence Unit which shall have all the powers necessary to administer, and exercise its functions under, this Act.

and

“ the central agency in Mauritius responsible for receiving, requesting, analyzing and disseminating to the investigatory and supervisory authorities disclosures of financial

¹⁷ The research function was added through the Finance Act of 2006.

information:

- (a) concerning suspected proceeds of crime and alleged money laundering offenses;
- (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.

267. The FIU is established as the central agency to process STRs from financial institutions and DNFBPs obliged by the provisions of FIAMLA to report to the FIU. The Assessors were also advised of legal advice from the Solicitor General (but did not sight the same) that restricts the ability of the FIU to seek further information from reporting institutions where the initial information does not come from reporting institutions designated by the FIAMLA. Notwithstanding this limitation, the FIU is able and has, in fact, provided a level of in-house analysis on such non-STR sourced information and in some cases made disclosures of information under S21 to the BOM and FSC, and to other bodies under Section 30(2) (b).

Guidelines to Financial Institutions on Reporting STR (c. 26.2):

268. S10 (2) (c) of FIAMLA allows the FIU to issue guidelines to reporting institutions on the manner in which STRs and further information relating to such reports should be provided to the FIU. A Guidance Note for paper-based reporting was issued in January 2003 which provides guidance for the institutions obliged to report pursuant to FIAMLA on the manner in which they should report. The detail of its guidance was appropriate for the early educational stages of the reporting regime where the emphasis was placed appropriately on ‘culture change and awareness raising for the reporting institutions.’

269. At the time of the mission, a number of the references needed updating. For example, the large cash threshold and the list of Reporting Institutions/Persons obliged to make STRs does not fully accord with the specific categories designated in FIAMLA. Subsequent to the mission, the threshold reference was updated. Together with the STR paper-based reporting form, the guidance, however, does provide adequate assistance as to the manner (form and content) in which reports should be made to the FIU. The assessors were advised that an expected upgrade of the Guidance Note has currently been placed on hold. Separately, an on-line, secure web-based reporting system was recently established for designated MLRO’s in reporting institutions and will be progressively implemented. The on-line reporting application provides an excellent mechanism for efficient STR reporting and is user friendly.

270. The 2003 amendments to the FIAMLA restricted the FIU’s authority to provide guidance to the “manner” in which the reporting institutions are required to provide reports of suspicion and additional information to the FIU. The FIAMLA Regulations 2003 Regulation No. 10 also authorizes the FIU to issue guidelines for the purposes of the FIAMLA and the regulations; however, the mission was advised of a legal opinion from the Solicitor-General that confirms that this power to issue guidance extends only to the manner of STR reporting as set out in Section 10(2) of FIAMLA. Under the FIAMLA S18, the responsibility for issuing guidance on all other AML/CFT matters resides with the designated supervisory authorities: namely the BOM, FSC, and the GRA. The mission was advised that the FIU has subsequently restricted its guidance to purely providing written guidance on the modality of reporting, although it does provide annual outreach workshops to the

reporting sector and exchanges information on typologies with the designated supervisors in the financial sector.

271. It appears that responsibility for providing guidance on indicators to assist reporting institutions to identify potentially suspicious transactions is now considered to lie with the supervisory authorities (BOM, FSC, and GRA) designated in FIAMLA S18. The assessment team considers that the quality and quantity of reports to the FIU could be enhanced through the FIU's guidance being wider in scope to include up to date, sector specific indicators. The need for such guidance is especially relevant to the DNFBP sectors such as, accountants, and law practitioners that do not have a designated supervisory or monitoring authority for the purposes of issuing AML/CFT guidance.

Access to Information on Timely Basis by FIU (c. 26.3):

272. The FIU produces a high-quality analytical product for dissemination. The FIU has developed its own in-house Data Management system and uses the I2 Link software packages. All STRs and information that the FIU receives are subject to evaluation and grading by an experienced analyst or the Assistant Director based on appropriate criteria, before those considered to be of interest are subjected to fuller in-depth analysis.

273. The FIU uses the powers under S13(2), 14, and 22 for the collection of financial information through the STR process including information obtained from the BOM and FSC. The broad S11(2) "consult and seek assistance" authorizes the FIU to obtain access to a wide range of information sources, both closed and open source, including those from Customs, the Police, the FSC and BOM, and the National Transport Authority. The open sources include the Civil Status Office (national I.D. card), Passport and Immigration, the Registrar General for Land Titles, the Registrar of Companies, the Registrar of Associations, Social Security, commercial databases such as Dunn and Bradstreet and World Check, press and internet monitoring, and the EU/UN terrorism lists. The FIU is active in seeking information from international FIUs directly. The FIU seeks information from Interpol through the Police. The assessors were advised that the FIU currently does not have access to any currency and monetary disclosures made to Customs, due to the restrictions within the Customs Act (s131A). The FIU does not have access to tax data.

274. In terms of timely access, the FIU only has on-line access to its own holdings. The FIU has access to nondisclosure-based information held by Customs, via uploading of CD replication of the Customs database. The CD is renewed on a fortnightly basis. The field intelligence officers undertake the searching and information gathering on site at many of the other authorities named above. The Police Liaison Officer seconded to the FIU is used to confirm whether persons of interest are under active investigation by the Police and to collect criminal histories from police databases.

275. The FIU also uses formal letter arrangements to seek information from the Commissioner of the Police for driver's licenses and criminal convictions. Similarly, the FIU writes to the registrar of associations for information. The timing for providing such information can take four weeks on average.

276. The FIU advised the mission that STRs are often received only after a couple of months and, in some cases, up to a year after the suspected transactions occurred. A key obstacle to improving the timeliness of STR reporting lies with the current interpretation of FIAMLA in respect to specifying the timeframe in which reporting institutions must provide reports to the FIU. S14(1) states that

reports should be made “forthwith” to the FIU. The FIU’s current Guidance interprets this to be 30 days following the determination of the suspicion. This prescription, while perhaps appropriate in the early stages of the Mauritian AML/CFT regime, is not in line with international standards.

277. The FIU provided the assessors with the following tables which indicate the scale, trend, and incidence of STRs it has received in the last 5 years.

Table 14. STRs Received from 2002 to 2007

	2002	2003	2004	2005	2006	2007*	Total
Reporting Institutions	12	134	68	76	116	47	453
Investigatory Authorities	3	12	44	13	23	4	99
Supervisory Authorities	3	1	2	0	2	0	8
Others	1	10	5	0	6	0	22
Total	19	157	119	89	147	51	582

Table 15. Breakdown of STRs Filed by Reporting Institutions under Section 14 of FIAML Act

By Category	2002	2003	2004	2005	2006	2007*	Total
Banks	8	66	34	47	83	38	276
Offshore Management Companies	4	60	26	17	12	7	126
Corporate Trustees/Custodians	0	0	1	0	0	0	1
Foreign Exchange Dealers	0	1	2	7	0	0	10
Insurance Companies	0	3	1	3	17	2	26
NBFIS	0	2	1	1	1	0	5
Relevant Professions	0	2	3	1	3	0	9
Total	12	134	68	76	116	47	453

Table 16. Request for Information to/from Overseas Counterparts

	2003	2004	2005	2006	2007*	Total
Requests made to overseas counterparts	46	44	70	80	64	304
Requests received from overseas counterparts	8	15	14	12	11	60

Table 17. Feedback Received

	Total Number of Dissemination Reports	Total Number of Feedback Received
ICAC	174	0
MPF	51	6
COD	10	0
CED	16	2
IT	16	0
PMO	2	0
FSC	43	11
BOM	15	11
MRA	31	0
TOTAL	358	30

278. The FIU accesses a wide range of information sources which assists it to provide quality analytical reports.

279. The relatively small number of STRs does, however, raise doubts as to whether the FIU has access to sufficient financial information. Areas which indicate that the FIU possibly receives an inadequate number of STRs include the significant downward trend and volume of STRs from the Management Companies and Registered Agents (TCSPs) that service the rapidly expanding global business company market, the paucity of reports from the NBFIs, relevant professions or legal practitioners, accountants and chartered secretaries, and the gambling sector. The comparatively low level of STRs available can affect an FIU's analysis of the STRs it does receive as it limits the linkages that can flow from access to a wider pool of STRs.

280. From an intelligence gathering standpoint, the FIU has shown considerable initiative in the way it has applied the general powers contained in the FIAMLA s11(2). However, there is concern that the legal basis for this use of the section may require strengthening through more specific clarification.

281. On balance, the FIU has access to a wide range of information to enable it to analyze the STRs it receives, although there are questions on the low volume of STRS and time in which it can access such information. The quality of analysis while commendable, would benefit from creating more effective electronic gateways to access the information to which it already has access and establishing a non-STR related gateway with the BOM. The lack of effective oversight for AML/CFT responsibilities within the sectors not regulated by the BOM and FSC has potentially created a degree of nonchalance, disinterest, and lack of awareness in these sectors.

282. The lack of meaningful feedback on the value of the product the FIU disseminates is a further concern. The assessors were advised that POCA S81 prevents ICAC from providing specific feedback on the value and end use made of the FIU's disclosures. Similarly, the feedback from the other designated investigatory authorities, Customs, and the Police while legally permitted, could be improved.

Additional Information from Reporting Parties (c. 26.4):

283. Under FIAMLA, the FIU may request additional information directly from the reporting institutions, namely banks, financial institutions, cash dealers and members of relevant professions or occupations. Where a suspicious transaction has been reported to the FIU, it may request additional information directly from

reporting institutions pursuant to Section 13 (2) of the FIAMLA. S13(2) also provides the FIU with the power to seek additional information from “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.”

284. Under the 2003 amendments made in the AMLMP, the BOM is obliged to make reports of suspicious activity to the FIU and also provide additional information on that report should the FIU so request. In practice, the FIU writes to the relevant reporting party and requests the information to be provided within seven days and S19 of the FIAMLA provides the offense for noncompliance with such request. To date, the FIU considers it has not had major difficulty with compliance, although it is concerned that it lacks the powers to enforce compliance with the reporting provisions of the FIAMLA and the FIU is heavily reliant on the willingness, resources, and priorities of the designated supervisory (BOM, FSC) and investigatory authorities (ICAC, Police) to undertake appropriate regulatory or investigation. The current lack of effective AML/CFT oversight for the sectors not supervised by the BOM or FSC accentuates the problem.

285. The FIU considers that the power to request information under S13(2) of FIAMLA is restricted to the institution which filed a STR under S 14(1). Furthermore for requests received from local investigatory authorities, overseas FIUs and other government agencies, the FIU has no power to request further information from reporting institutions. The assessors were advised of, but did not sight legal advice from the Solicitor-General that confirmed this interpretation.

Dissemination of Information (c. 26.5):

286. S10(1) of FIAMLA authorizes the FIU, as the central agency in Mauritius responsible for disseminating to the investigatory and supervisory authorities disclosures of financial information concerning suspected proceeds of crime, alleged money laundering offenses and the financing of any activities or transactions related to terrorism. Information-based intelligence, including financial information, grounds for suspicion, and the alleged money laundering process, are disseminated to the investigatory or supervisory authorities after obtaining the consent of its Board under Section 13 (1) of the FIAMLA Act.

287. The FIU disseminates information relating to suspected money laundering or financing of terrorism offenses to:

- (i) investigatory authorities to determine the criminal liability and prosecution of person alleged to be involved; and
- (ii) supervisory authorities for them to conduct the necessary inspection and take any appropriate regulatory action against the person that might be involved.

288. One STR regarding suspected terrorist financing have been received. No disseminations have been made.

289. FIAMLA S15(2)(f) also provides for the inclusion of information by the reporting institution as to the impact of the suspicious activity on the “financial soundness of the reporting institution or person.” Not unexpectedly, the FIU advised that this information is rarely self disclosed and if it occurs, would be provided immediately to the relevant regulatory authority if it concerns an institution supervised by the FSC or BOM.

290. Where the FIU becomes aware of any information which it has acquired in the course of carrying out its functions and which may be relevant to the functions of any of the designated supervisory authorities (at the time of mission the BOM and FSC) the FIU passes on such information under S21 of FIAMLA. The FIU also

provides information to a wider range of noninvestigatory or supervisory authorities under 30 (2) of the FIAML Act. Information is disclosed under S30(2) where it “appears to the FIU” to be necessary 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. In practice, the FIU has disseminated strategic-based intelligence to government bodies, in addition to those authorities that receive the STR based disclosures.

291. The following table provides details of the disseminations made by the FIU:

Table 18. (c) Number of Reports Disseminated

(These reports includes STRs, cases generated by the FIU, Intelligence collected from overseas FIUs and other intelligence which may not be related to STRs disseminated)

	ICAC	MPF	COD	MIN	FSC	BOM	MRA	O/FIU	TOTAL
2003	31	3	0	0	3	1	3	1	42
2004	54	8	4	0	6	2	5	7	86
2005	48	19	4	0	15	7	10	5	108
2006	34	11	2	1	12	3	26	1	90
2007*	7	10	0	1	7	2	19	1	47
TOTAL	174	51	10	2	43	15	63	15	373

Operational Independence (c. 26.6):

292. The FIU is an independent body under the aegis of the Ministry of Finance and Economic Development and is administered by a Board (comprising a Chairperson and two other members). The Board members are paid on fee basis from the FIU’s budget. Section 10 of FIAMLA provides that the Director may exercise all the functions of the FIU, but the Act also gives the Board a role in this process. The FIU is funded through the annual Parliamentary budgetary process. FIAMLA s33 also provides for funding to be met from government grants and donations following the consent of the Minister. The Director may appoint such persons to assist him. The FIU’s annual budget for the latest year is 19,325,966 Rupees (approximately US\$651,494, as of October 9, 2007). In practice, donations are restricted to external assistance from public international organizations for conducting and participating in seminars and training. The Chairperson and members of the Board are appointed by the President on the recommendation of the Prime Minister made in consultation with the Leader of the Opposition. The FIU Director is appointed using the same process.

293. The operational independence of the FIU was raised in the previous AML/CFT assessment in 2003, in particular the role of the then review committee in providing approval for the Director to carry out his functions and exercise his powers for any action envisaged by the FIU. The authorities considered the AMLPA 2003 and provided a legislative remedy through replacing the Committee with a Board.

294. The wording of FIAMLA and observed practice still gives cause for some concern as to the operational autonomy of the Director, and hence, the FIU to make decisions regarding dissemination of disclosures of financial information. FIAMLA S13 requires the Director to refer potential disseminations to the Board which shall consider the information and either: “consent to the director referring the information” to the appropriate investigatory or supervisory authority, or request the Director to determine “whether supporting information” is

available that would justify subsequent dissemination. The assessors were advised that, in practice, the Board's consent is also sought for proactive dissemination of intelligence to overseas FIUs, but not in cases responding to requests from overseas FIUs made in accordance with the Egmont principles of information sharing.

295. The Board and Director usually meet to consider potential disseminations on a regular or when required basis. Where dissemination is considered a priority by the Director, for example, when there is a concern about flight of funds or where the suspected activity and transactions involves a person or entity that the FIU understands is already under investigation, or in response to a request from an overseas FIU, the Board will meet to decide the best course of action in the matter. The operational arrangements agreed with the Board allow the Director to disseminate and seek consent at subsequent Board meetings or through earlier liaison with the Chairman. It is unclear what implications arise if the Director or persons appointed by him step outside this arrangement. The arrangements are within the scope of the Board's power to determine its own arrangements pursuant to FIAMLA S12(5). The assessors were advised that no disseminations have ever failed to receive Board consent and it is only on rare occasions that the Board has referred it back for further information.

296. The arrangements with the current Board appear to work in practice in that the assessors were advised of no instances where the Board has failed to give consent. Also, no evidence was provided to the assessors that indicate that the Board's involvement adversely affects the timing of disseminations. However, it is arguable that the director's operational independence to disseminate could be compromised should a future Board, or even the current one, wish to change the current arrangements which the Board has not documented.

297. In assessing the operational autonomy of the FIU, a key factor is whether the Board is considered part of the FIU. This view can be defended as FIAMLA defines the Board's role to "administering the FIU" and FIAMLA S9 in establishing the FIU provides that the FIU should have "all the powers necessary to administer and exercise its functions" and these include the function of disseminating. The contrary argument is that the Board is not part of the FIU. FIAMLA S11 (1) also states that the functions of the FIU, including disseminations and staff appointments, shall be exercised by the Director or such persons appointed by the Director. The Board's part-time members are not appointed by the Director. The assessors did not have sight the Terms and Conditions of the Boards' appointment; however, it is understood that such conditions do not specifically prevent Board members from concurrently being engaged in an employment or advisory role with the reporting institutions, which may represent a conflict of interest situation. In this regard, a previous potential conflict of interest situation was resolved in an appropriate, public, and transparent manner. Further, the Board's current administrative role includes the appointment of staff to the FIU based on the recommendation of the Director. This again seems inconsistent with the powers given to the Director under S11 and S9(3) to appoint staff to assist him.

298. The assessors consider that the existing operational arrangements are currently effective in that they do not appear to have adversely affected the dissemination of STR-related disclosures to date, and in effect provide the Director with a useful additional source of legal and industry knowledge to exercise the analytical and dissemination function. However, the undocumented nature of the arrangements, the potential conflict of interest, and the apparent internal consistency in FIAMLA in assigning functional and administrative powers to the Director and the Board, respectively, do represent a significant risk to a Director's future capacity and authority to make such decisions on dissemination. In the assessors' opinion, the current Director's experience in the position effectively mitigates the risk to his operational independence; however, such latitude may not be as forthcoming to a future Director or should a new Board wish to take a more operational role, as is permitted under the FIAMLA. The assessors consider that the role of the Board should be revised to advisory rather than consent. The responsibility to appoint staff should also lie with the Director.

Protection of Information Held by FIU (c. 26.7):**Security of Information**

299. All information received by the FIU is classified as confidential and is protected by the provision in Section 30 (1) of the FIAML Act. The Director, every officer of the FIU, and the Chairperson and members of the Board shall take the oath of confidentiality before they begin to perform any duties under the Act. They are also required to maintain the confidentiality of any matter relating to the relevant enactments during and after their relationship with the FIU. Noncompliance with the oath would subject the offender to criminal offense charges.

300. To ensure protection of the information, the FIU has created a dedicated environment with the following systems:

- (i) Access Control (physical office and secure storage of confidential materials);
- (ii) Screening of employees and screening of individuals in and out of the office;
- (iii) System to track down movement of information;
- (iv) Segregation of duties;
- (v) Dedicated IT System with respect to database;
- (vi) Encryption of information;
- (vii) Network monitoring;
- (ix) Email and use of Internet monitoring;
- (x) Centralized system of telephone; and
- (xi) Dedicated business system and operations.

301. A new on-line STR reporting service, known as the Online Secured STR (OSS), provides added security to the STR reporting process through use of login and password protection and use of suitably encrypted https service.

302. The FIU has also a set of procedures relating to the following:

- (i) Request for information to and from overseas FIUs;
- (ii) Procedures for collection of information;
- (iii) Procedures for dissemination of information;
- (iv) Procedures for access to information.

303. The FIU staffing includes an IT security officer with direct access to the Assistant Director, and breaches of security are subject to formal internal investigation and report to the Director.

304. All exchanges of information with members of the Egmont Group are conducted through the Egmont Secure Web (ESW). The ESW is accessed by the Research Intelligence Officers directly from their workstation.

Dissemination in accordance with the law

305. As noted in R26.5 financial information acquired by the FIU in the course of its function under the FIAML Act is disseminated under Section 13 (1), after approval of the Board, to relevant investigatory and/or supervisory authorities, with a view to the determination of any criminal liability and the prosecution of or action against, the persons accordingly. Strategic information may be disclosed under Section 30 (2) of the Act

if the disclosure appears to the FIU to be necessary to enable the FIU to carry out its functions; in the interests of the prevention or detection of crime; in connection with the discharge of any international obligation to which Mauritius is subject; or pursuant to an order of a Judge. The FIU may also pass on information to investigatory or supervisory authorities under Section 21, where it becomes aware of any information which may be relevant to their respective functions.

306. The FIU has documented procedures that include provision for separate higher level authorization which acts as a guard to ensure that disseminations are not only of the appropriate quality and justified, but are in accordance with the aforementioned avenues for dissemination. The assessors were made aware of concern as to the speed in which the FIU makes disseminations. However, review of the FIU's procedures and statistics indicates that there are appropriate benchmarks in place so that high priority disseminations are made within 24 hours in appropriate defined circumstances and in other cases involving less complex disseminations within an appropriate timeframe. Complex cases naturally take longer to develop; however, the assessors consider the benchmark and statistics indicate that appropriate turnaround times are achieved. Notwithstanding the FIU's internal processes, ICAC has a perception that there is undue delay in receiving STRs from the FIU. There is a need to differentiate between the often lengthy delay in STRs being provided to the FIU and the FIU's turnaround time after it has received a report. The assessors consider the FIU to have an efficient internal process.

307. Regarding the security of information specifically provided to the FIU from international sources, S21(4) of the FIAMLA provides appropriate coverage as follows:

(4) "If any information 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."

308. Concern was expressed to the assessors that the current wording of the S30 confidentiality provisions may allow for information held by the FIU, including STRs, to be used as evidence in open court. Section 30 states that:

(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 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."

309. The assessors were advised that the provision is a cause of concern for some in the reporting sector, and it may be an underlying factor in the apparent reluctance of certain businesses or professions to report. There has also been a previous instance of the naming in Court of a staff member involved in the reporting of an STR. While the current wording of section 30(2) of FIAMLA appears to leave the discretion to the Director, legal advice may be necessary to clarify the admissibility of an STR or the existence of same in court proceedings.

Publication of Periodic Reports (c. 26.8):

310. Under the FIAMLA S34, the FIU is required to provide an:

“annual report on its activities to the Minister, containing such statistical and other information as the Minister may require.”

311. Furthermore, the new research function provided to the FIU in 2006 requires the FIU to:

“undertake, and assist in, research projects in order to identify the causes of money laundering and terrorist financing and its consequences.”

312. The FIU publishes an Annual Report which includes statistics on the number of STRs received and disseminations made as well as information on the activities of the FIU. The FIU released its Annual Reports in 2003, 2004, 2005, and 2006. The 2006 report contains a good variety of statistics showing dissemination and reporting trends for STRs. The latest report lacks information on sanitized typologies of ML or FT scenarios, even though replication of typologies is available through the Egmont and FATF-sourced information or through sanitized generalizations based on Mauritian examples. The assessors were advised that the lack of feedback from the investigative authorities has hindered the preparation of typologies based on domestic scenarios. The 2006 annual report mentions that one of the priorities for 2007 is to “produce typological reports based on STRs received as well as feedback from investigators.” However, it is not clear how and when such information will be made available to the reporting institutions, given the delay in upgrading the 2003 Guidance Note.

313. A National Survey on the Risks, Extent and Trend of Money Laundering and Financing of Terrorism in Mauritius was conducted by the FIU and a report was published in May 2006. Copies of the Annual Reports and National Survey Report on the Risks, Extent and Trend of Money Laundering and Financing of Terrorism in Mauritius are available on the FIU’s website.

Membership of Egmont Group (c. 26.9):

314. The FIU has been a member of the Egmont Group since July 2003 and is the African representative on the Egmont Committee. Under FIAMLA S20(1), the FIU is 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.

315. The FIU has been very active in fostering the development of FIUs and information sharing and awareness raising in the ESAAMLG region and has sponsored the Indian FIU in its application for Egmont status. It has played an active role in the sponsoring the Bangladeshi FIU and other countries in the African region and is assisting the FIUs of Malawi and the Seychelles in joining the Egmont Group.

Egmont Principles of Exchange of Information Among FIUs (c. 26.10):

316. The FIU takes account of the Egmont principles in fulfilling its core functions as well as when exchanging information with its overseas counterparts.

317. With respect to the exchange of information with other members of the Egmont Group, the FIU does not require a Memorandum of Understanding (MOU). The FIU will enter an MOU should the other FIU

require one to support information sharing. The MOU signed by the FIU sets out the principles on which financial information would be exchanged and it is modeled on the Principles of Information Exchange between FIUs set by the Egmont Group.

318. Regardless of the existence or otherwise of a formal MOU, the FIU places written conditions to require that information it provides can only be used for intelligence purposes and not for judicial or evidential purposes. Also, the FIU in Mauritius requires that it is informed if this information is further disseminated to other FIUs. These conditions embrace the Statement of Purpose and the Principles for Information Exchange prescribed by the Egmont Group.

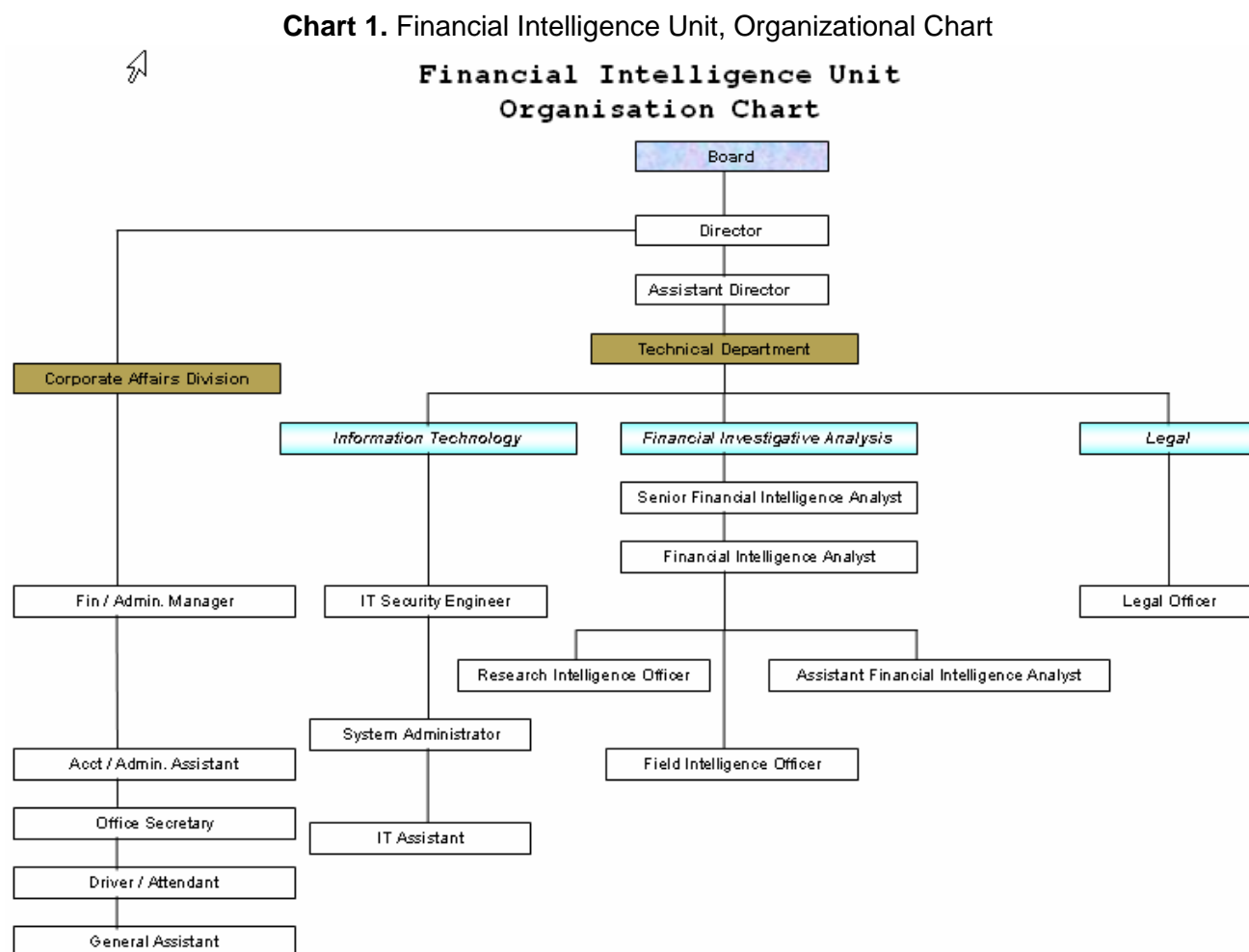
319. The FIU also exchanges information with other FIUs which are not members of the Egmont Group on the basis of reciprocity or under MOUs signed with these countries. The FIU has signed a number of MOUs with countries which domestic legislation requires that an MOU be signed prior to exchange of information. Eleven MOUs have been signed by the FIU in Mauritius:

- Financial Intelligence Centre (FIC) of South Africa in August 2003.
- Australian Transaction Reports & Analysis Centre (Austrac) of Australia in October 2003.
- Service d'Information et de Contrôle sur les Circuits Financiers (SICCFIN) of Principality of Monaco in June 2004.
- Anti-Money Laundering Office (AMLO) of Kingdom of Thailand in October 2004.
- Financial Intelligence Processing Unit (CTIF-CFI) of Belgium in November 2005.
- Financial Transactions and Reports Analysis Centre (Fintrac) of Canada in June 2006.
- Cellule Traitement Du Renseignement et Action Contre Les Circuits Financiers Clandestins (TRACFIN) of France in October 2006.
- Financial Reporting Authority (Cayfin) of Cayman Islands in December 2006.
- Serious Organised Crime Agency of the United Kingdom of Great Britain (SOCA- the UK FIU) in June 2007.
- Indonesian Financial Transaction Reports and Analysis Centre of the Republic of Indonesia in June 2007.
- Meldpunt Ongebruikelijke Transacties van of Netherlands Antilles in June 2007.

320. Members of the Egmont Group are required to have the minimum IT infrastructure to connect with the Egmont Secure Web to facilitate the exchange of information. In some circumstances, where administrative FIUs cannot provide law enforcement information due to the limitation in their powers, the FIU in Mauritius will at times contact the law enforcement agencies in those countries with the approval of its Board in order to access such information. This would be accomplished with the knowledge of the local FIU.

Adequacy of Resources to FIU (c. 30.1):

321. The current FIU staff is 25. The organizational structure is shown below:



322. A full description of the staffing breakdown for the different functions is provided in the description section of Rec 26.

323. The FIU's funding is represented by the following table:

Table 19. The FIU's Funding

Financial Year	Government Grant
2002/2003	5,436,439
2003/2004	13,954,108
2004/2005	20,593,790
2005/2006	19,325,966

324. The FIU's commitment to improving its long-term capacity in staff expertise and IT functionality is evidenced by the following table which shows the significant allocation of the total FIU budget to these two key areas.

Table 20. The FIU's funding allocation to Training & IT

Financial Year	Training & Seminars	IT Infrastructure
2002/2003	472,751	3,316,069
2003/2004	1,422,596	1,106,950
2004/2005	783,582	2,050,326
2005/2006	1,218,580	5,049

325. The FIU, like other authorities in Mauritius, has difficulty in retaining skilled staff that can command significantly higher remuneration in the private sector, especially in the burgeoning financial services sector. This situation is likely to remain and possibly be exacerbated in the near future as the government's drive to encourage the growth and diversification of the Mauritian economy places an increasing premium on retaining employees or attracting potentially skilled recruits in the private sector. At the time of the assessment, the FIU was actively recruiting to fill seven of its 25 staffing positions. The FIU is fortunate to have considerable long-term institutional memory in its executive ranks, as both the current Director and Assistant Director have been with the FIU since its inception.

326. Despite the current staffing squeeze, the FIU's previous investment in the efficiencies provided through IT and training serve it well, as evidenced by the observed quality of its analytical product.

Integrity of FIU Authorities (c. 30.2):

327. The staff of the FIU and the Board are required by FIAMLA to answer an Oath of Confidentiality in the Supreme Court of Mauritius and to provide a written declaration of assets and liabilities. The Act also requires all officers of the FIU, the Director, and the Board to declare any future material changes to the original declaration of financial position. Common with many countries, the FIU adheres to an Equal Opportunity Policy. In doing so, the FIU does not compromise on the minimum professional standards considered necessary to work in its various areas, and this is especially so in the areas of analysis and IT.

328. The recruitment process is quite intensive with successful applicants being screened by the executive management team and then separately by the Board comprising of the chairman of the FIU Board and the executive management team. The selected applicants are required to complete a comprehensive pre-employment form which contains considerable information on personal details, criminal or civil records, and memberships, political or otherwise. The staffing profile and examples of recent advertisements demonstrate that the FIU places a premium on recruiting graduate qualified staff.

Training for FIU Staff (c. 30.3):

329. Considerable training is provided to FIU staff. All new staff are required to undertake a comprehensive induction course which was developed internally. The contents include:

- The Role of the FIU in fighting Money Laundering/Terrorist Financing

- Behavior and Conduct of an FIU's Officer
- Use of Computer and Security of Files on Computer at the FIU
- What is intelligence and Grading of Information
- Focusing on the FIAML Act 2002 and other Legal Tools to fight ML/FT
- Investigative Analysis Techniques
- Building up Professional Competency
- Managing cases
- Reporting obligations & customers' identification by reporting institutions
- Staff is also requested to read the FIU in action, Egmont 100 cases, the FATF 40 + 9 Recommendations, and the Mauritian AML/CFT legislation.

330. Technical staff receives continuous on the job training, as well as appropriate external courses. The pre-assessment questionnaire also noted considerable participation by FIU staff in targeted training courses across a range of topics which the assessors consider relevant to the work undertaken by FIU staff.

Statistics (applying R.32 to FIU):

331. The FIU's data management system keeps, and is able to produce, statistics on the following:

1. Number of STRs received by sector, institutions whether locally or from branches of international institutions incorporated in Mauritius;
2. STRs giving rise to dissemination, connected STRs;
3. Dissemination to investigatory and supervisory authorities;
4. Dissemination to overseas FIUs and to overseas law enforcement agencies;
5. Dissemination to government ministries;
6. Number of reporting institutions traced as a result of an STR;
7. Number of times particular reporting institutions would be contacted for additional information under section 13 (2) of the FIAML Act;
8. Amount of money disclosed in an STR;
9. Classification of the indication of money laundering in terms of:
 - (a) external or incoming money laundering i.e., crime committed overseas;

- (b) outgoing money laundering i.e., crime committed locally and money leaving the country;
- (c) internal money laundering, i.e., crime committed locally and money laundered locally.

10. Classification of alleged predicate offenses after analysis of an STR by category;
11. Set aside cases by sector and by reporting institutions;
12. Request for information received from overseas FIUs;
13. Request for information made to overseas FIUs;
14. Further statistics on cases disseminated:
 - (a) types of instruments used;
 - (b) techniques of laundering;
 - (c) number of international jurisdiction involved;
 - (d) nationality of subject involved.

332. The more sensitive statistics naturally are not provided for public scrutiny, but are available to the appropriate AML/CFT stakeholders in Mauritius, including the AML/CFT Committee and the government. Reports involving large cash transactions are not relevant as large cash transactions above 500,000 rupee are prohibited in the FIAMLA. FIAMLA does not provide for the reporting of cross-transport transportation of currency or bearer negotiable instruments or international wire transfers.

333. While the statistical capability of the FIU is impressive, the overall ability of the FIU and the authorities to assess the effectiveness of the STR regime in Mauritius is compromised by the lack of consolidated analysis that is able to demonstrate the value added by the STR-related disseminations provided by the FIU to the investigatory and supervisory authorities. In particular, whether the disseminated information resulted in investigation, prosecution, or conviction for money laundering. The FIU is restricted in its ability to compile such statistics due to the lack of feedback from the Customs, ICAC, and the Police. The assessors were advised that ICAC is prevented from providing feedback on the use it makes of the FIU's disseminations pursuant to the confidentiality provisions of POCA S81.

2.5.2 Recommendations and Comments

- Address the current administrative role of the Board so that the Director has the ultimate authority to undertake all actions in the exercise of all the functions provided to him under the FIAMLA, including final authority to appoint staff and make disseminations in all cases. Possibilities to consider include: amending FIAMLA to remove the consent provisions and replace this role to advisory, or making the Board a formal part of the FIU answerable to or appointed by the Director, or permanently delegating the Board's 'consent' role to the Director. The working arrangements of the Board should be documented.
- Review and amend, where necessary, s. 81 of POCA to allow ICAC to provide feedback to the FIU on the value of disseminations in a manner that does not compromise ICAC investigations.
- Clarify whether the scope of FIAMLA S10(2)(c) legally provides for the FIU to issue guidance on indicators of suspicious transactions to assist financial institutions and DNFBPs to meet their reporting

obligations. The ability of the FIU to provide such guidance should be seen as complementing, rather than replacing, guidance issued by the FSC, BOM, or GRA. In the absence of supervisory or monitoring authority being assigned for the remaining DNFBP sectors, the FIU should be assigned the responsibility for providing guidance on indicators and typologies as part of its responsibility in providing guidance on the manner of reporting.

- Provide all reporting sectors with more specific indicators of ML/TF based on sector and Mauritian characteristics. This will require close cooperation between the FIU and relevant authorities designated to provide such guidance to the financial and DNFBP sectors. This encompasses the BOM, FSC, GRA, and any authority(s) or SROs designated in future to provide AML/CFT Guidance to the non-FSC supervised DNFBP businesses and professions.
- Implement ways to improve the FIU's access to timely information by providing outreach in order to improve the reporting performance of reporting institutions in those sectors and institutions considered to be under reporting or displaying poor reporting performance. This should include providing feedback to the disciplinary bodies referred to in S18(4) of FIAMLA and requiring them to take a more proactive role, in partnership with the FIU, to monitor and act on issues of noncompliance.
- The FIU should seek to provide information to reporting institutions when it makes a dissemination based on an STR(s).
- Clarify the legal position on the admissibility of STRs in court proceedings, including the adequacy of the provisions to protect the identity of persons who report STRs to the FIU in good faith.
- Encourage further use of appropriate tactical enforcement, regulatory, or disciplinary action by supervisory authorities and police. Cases of long-term systemic and unresolved reporting performance should be brought to the attention of the AML/CFT committee to encourage appropriate action.
- Determine and make known the extent to which legal privilege applies for the law practitioners.
- Develop more appropriate gateways for the FIU to have on-line, real time access to information from databases, where possible and cost efficient..
- Clarify the current FIAMLA S11(2) "consult powers and seek assistance" power are sufficient to enable the Director to obtain further information from other authorities in those cases where the suspicion of ML/TF has arisen from disclosures made by the investigatory or supervisory authorities.
- For the wider efficiency perspective, consider providing the FIU with an administrative power to block transactions and accounts suspected of ML/TF and provide the Mauritian AML/CFT system with a more responsive framework.
- Provide the FIU with access to the disclosures of cash and monetary instrument disclosures received by Customs.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	LC	<ul style="list-style-type: none"> Concern exists over FIAMLA's legal framework that potentially limits the Director's operational autonomy to disseminate because of the way in which it prescribes the respective roles of the Board and Director. Similar concern over the documentation of the Board's arrangements and role in appointing staff to the FIU. In terms of practice, no evidence of undue external influence was noted. The FIU's written guidance to reporting institutions to fulfill their reporting obligations needs to be updated to reflect all the categories of institutions, businesses, and professions that are subject to the FIAMLA reporting obligation. The FIAMLA S10(2) is currently interpreted to limit the scope of the FIU to provide guidance on ML/FT indicators. Accordingly, reporting institutions not subject to monitoring by a designated AML/CFT supervisory authority such as the BOM or FSC, do not have assistance on ML/FT indicators specific to their sectors. (For assessment of AML/CFT Guidance provided by non-FIU authorities, see R.25.1) Statistics indicate under reporting from various sectors and general tardiness in reports being provided to the FIU – this limits its access to timely financial information. Lack of on-line access to many data sources and relatively lengthy process in obtaining information from the Police and some other authorities. Lack of feedback from the Police plus lack of legal gateway with ICAC limits the FIU's access to useful feedback as to the value of their cases and work – and to this potential source of information. No gateway for disclosure of Customs Currency Disclosure information to the FIU Legal obstacles prevent the FIU from obtaining further information with respect to non-STR related requests from the authorities. Current practice re dissemination on ML split between ICAC and the Police appears to cause a level of confusion and demarcation and possible potential duplication between the investigatory authorities.

2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offenses, and for confiscation and freezing (R.27, & 28)

2.6.1 Description and Analysis

Legal Framework:

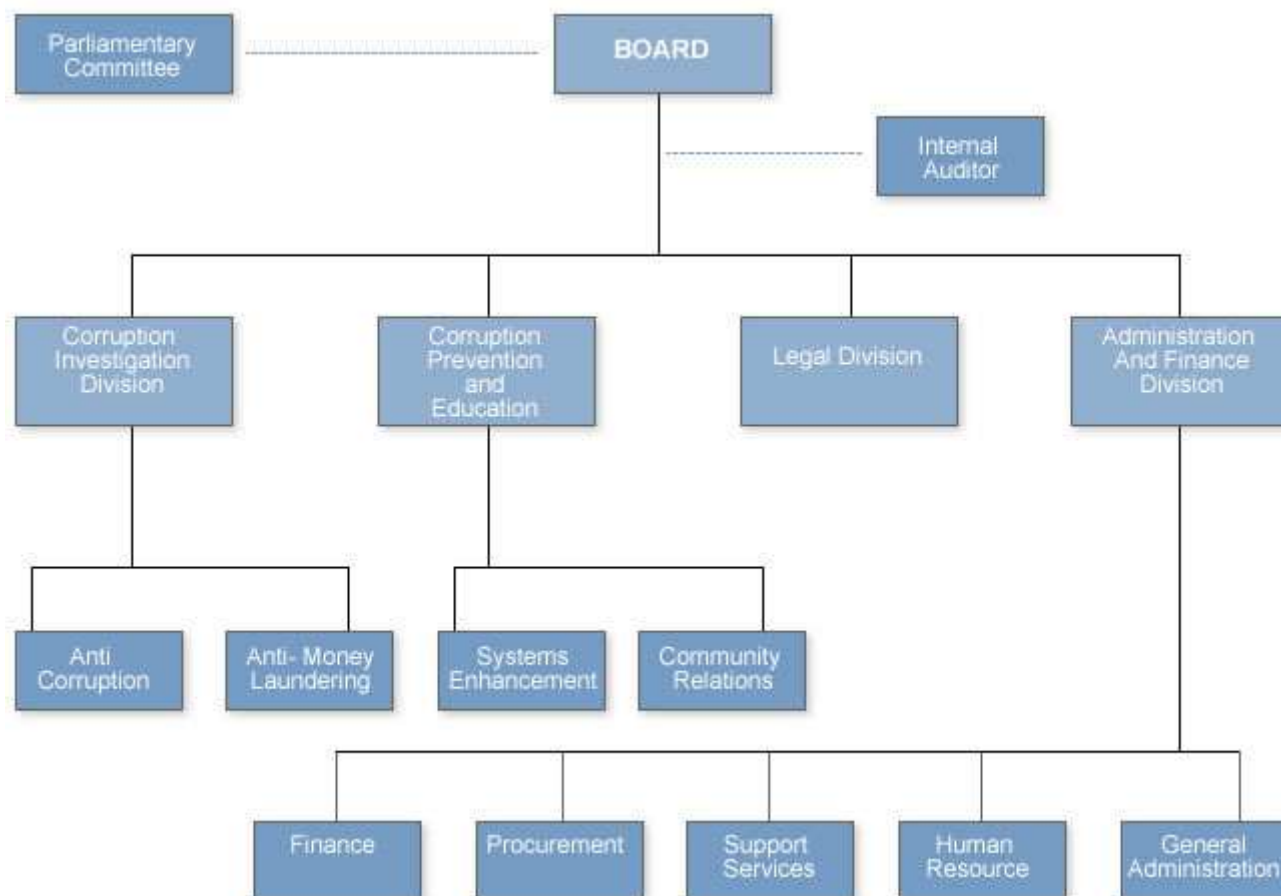
Designation of Authorities ML/FT Investigations (c. 27.1):

334. The authorities responsible for the investigation and prosecution of the money laundering offenses (both under the FIAMLA and DDA) are the Independent Commission Against Corruption (ICAC), the Police and the Attorney General's Office (AGO). A Drug Assets Forfeiture Office (DAFO) was also established to identify all assets subject to confiscation after a conviction has been pronounced under the DDA.

335. The authorities responsible for the fight against terrorist financing are the Police, in particular the National Security Service, and the AGO.

336. The ICAC was established in 2002 with the enactment of the Prevention of Corruption Act (POCA; Section 19). It is the primary authority responsible for the investigation into corruption and money laundering cases. It is a body corporate consisting of three members, namely the Commissioner and 2 Deputy Commissioners. The ICAC is structured as follows:

Chart 2. ICAC Structure



337. It has a total staff of 150, 65 within the Corruption Investigation Division, 20 of which are dedicated to the investigation into money laundering cases. Most of the current ICAC staff was hired in the course of last year, after the contracts of the previous staff came to an end. The professional staff have banking, economic, legal, or police backgrounds. Some have benefited from punctual training provided by international organizations and foreign countries, but there is no standard AML training for staff.

338. Most of the ICAC's statutory functions under the POCA relate to the fight against corruption. The bulk of the ICAC's work is, therefore, dedicated to the prevention of corruption and the investigation into alleged cases of corruption. Some of the statutory functions, however, specifically refer to the fight against money laundering: The ICAC is empowered to cooperate and collaborate with international institutions, agencies, or organizations in the fight against money laundering; detect and investigate money laundering cases; execute any request for assistance referred to ICAC by the FIU; take such measures as may be necessary to counter

money laundering in consultation with the FIU; and cooperate and collaborate with the FIU in fulfilling common objectives (Section 20(11) (o), (p), (q) and (r) POCA).

339. The text of POCA is somewhat inconsistent with respect to the initiation of an investigation by the ICAC: the list of functions under Section 19 POCA indicates that the ICAC may only initiate an investigation on the basis of a prior referral from the FIU (Section 19(1) (o)). The POCA was amended in 2006 to provide for two further cases, namely, to enable the initiation of an ICAC investigate money laundering after referral from the Commissioner of the Police (Sections 45(2) a), as well as on the ICAC's own initiative (Section 46(1) (a)), but the list of functions in Section 19 was not updated accordingly. A reading of Section 19 could only therefore, give rise to misinterpretation.

340. The ICAC may, with the approval of the DPP, lead the prosecution of the cases that it has investigated when the cases are lodged before the Magistrate's Court or the Intermediate Court.

341. The Mauritius police force has a total of 12,469 officers which includes some 4,000 to 5,000 police officers in uniforms (see organizational chart annexed).¹⁸ Two branches may investigate money laundering cases, the Central Crime Investigation Division (CID) and the Anti-Drugs and Smuggling Unit (ADSU):

- The Central CID is a specialized unit of the Mauritius Police Force, which deals with sensitive cases and cases involving larger public interest. It deals with all the cases of bribery, fraud, homicides and, to some extent, money laundering. It has several separate units, two of which may be called upon for an investigation into money laundering: the Special Cell (which deals with large or complex cases and has a staff of 10) and the Fiscal unit (which investigates tax evasion and has a staff of 12 who may be called to assist the Special Cell with the investigation of money laundering cases). Most of the police officers in the Special Cell have received some form of training in AML/CFT on an ad hoc basis. It is unclear whether investigators from the Fiscal Unit have received any training in AML matters. There is no general training on AML/CFT. In complex money laundering cases, the CID either calls upon external experts to help with the investigation (such as experts from the Bank of Mauritius when complex banking records are collected), or, as in most cases, refers the matter to the ICAC.
- The ADSU's main responsibilities are to suppress the supply of illicit drugs, arrest drug offenders (Consumers and Traffickers) and have them prosecuted, locate and destroy illicit cannabis plantations, prevent the entry of illicit drugs at the airport/seaport and through Postal Services, and prevent and detect smuggling. It is also responsible for the investigation of money laundering offenses under the Dangerous Drugs Act. Other functions include the enforcement of laws relating to other crimes which have a bearing on the drugs network, such as larcenies, gambling and prostitution.

342. Overall, the police's role in the investigation into money laundering cases is marginal; most of the cases are investigated by the ICAC and the police only investigate the (few) cases that are referred by the FIU and those that are part of an investigation into drug offenses under the DDA.

343. As is the case for the ICAC, the DPP may, in certain cases, delegate to the Police the prosecution of cases brought before the magistrate's Court and the Intermediate Court. The Central CID has a team of "prosecutors," in other words police officers who underwent a specific training that enables them to handle cases in court.

¹⁸ The Republic of Mauritius does not have an army or other form of military force, the police, therefore, assumes a para-military role as well as law enforcement and other duties, such as those undertaken by the Coast Guard.

344. A National Security Service was established under Section 18 of the Police Act (although under a different name), mainly to obtain, correlate and evaluate intelligence relevant to national security, and communicate to the relevant law enforcement agencies and to the Prime Minister such intelligence that may be considered in the interest of national security. Should a case of terrorism or terrorism financing arise, it would be investigated by the National Security Service.

345. The Attorney General is the principal legal adviser to the Government of Mauritius. All actions made by or against the government are made in the name of the Attorney General. Most of the Attorney General's functions are exercised by the Solicitor General's and the Director of Public Prosecution's departments.

a) The Solicitor General is the highest public officer of the AGO after the Attorney General. He advises the State and the various departments; handles major litigation in which the State, its agencies, or officers, is a party. This includes defending the State in the different courts as well as filing suits on behalf of the State. His main roles are to handle civil matters, tender legal advice to government departments and ministries in an independent and impartial manner, and work in close collaboration with the Parliamentary Counsel and other law officers in the drafting of all legislations. He also defends the interests of the State in the superior courts including the Privy Council.

b) The Director of Public Prosecution (DPP), assisted by a number of Law Officers, advises on criminal cases and represents the State in major criminal matters before the Courts. He may also offer advice to the various law enforcement agencies with respect to the conduct of enquiries. Pursuant to Section 72 of the Constitution, the DPP exercises its function in full independence and is not subject to the direction or control of any other person or authority. The office of the DPP, therefore, effectively operates independently of the Attorney-General and of the politicians in the exercise of its powers.

Pursuant to Section 72(3) of the Constitution, one of the DPP's main powers is to institute and undertake criminal proceedings before any Court of law (not being a Court instituted by a disciplinary law). These powers may be exercised by the DPP in person or through other persons acting with his general or specific instructions. In practice, most cases are prosecuted by the AGO's Senior Officers. In a number of cases, however, including money laundering cases, the DPP may delegate the prosecution "externally" and may authorize public authorities, such as the Police and the ICAC, to lead the prosecution of the cases that they have investigated.

346. Although the Solicitor General's and the DPP's functions are entirely separate, the AGO officers cumulate functions in both. In other words, they may be called upon to prosecute civil matters on a specific day and criminal matters on another¹⁹. No specific AML/CFT training is provided but some of the staff have been to various workshops organized overseas.

347. The Commissioner of the Drug Assets Forfeiture Office (DAFO) is responsible for inquiring into the funds and other assets of persons convicted under the DDA and referred for enquiry by the DPP. After completion of the enquiry, it is his duty to send a report to the DPP. He may either recommend the revocation of the freezing order made the Court, or an application for forfeiture of the assets. He is appointed under the DDA by the Prime Minister and acts independently addition to the Commissioner, the DAFO currently has a staff of 11 investigators, many of whom have worked for the police (and the ADSU in particular).

¹⁹ The authorities informed the assessment team that, as of February 2008, the AGO officers no longer accumulate functions in both the Solicitor General's and the DPP's office. The Attorney General's Office is now divided into the Civil Advisory and the Litigation Unit (Solicitor General), the Criminal Advisory and Litigation Unit (the DPP) and the Legislative Drafting Unit.

Ability to Postpone/Waive Arrest of Suspects or Seizure of Property (c. 27.2):

348. Only the police may arrest suspects and seize property without a court order. Both CID and ADSU Police officers may postpone or waive the arrest of suspected persons and/or the seizure of the money for the purposes of identifying persons involved in such activities or for evidence gathering. They may use their own discretion in the matter and suspend the arrest or the seizure on the merits of the case. The ICAC does have seizing powers, but they are limited and do not extend to seizing the proceeds of crime.

Additional Element - Ability to Use Special Investigative Techniques (c. 27.3):

349. Section 55 of the DDA specifically makes provision for the recourse, by the police, to controlled delivery (and, by extension, related undercover investigations) for the purposes of an investigation led by the ADSU. A police officer not below the rank of superintendent of police may authorize the passage or entry into Mauritius of any consignment of dangerous drugs suspected of being dispatched with a view to the commission of an offense under the DDA, for the purpose of identifying the persons involved in the commission of the offense. The police officer may, in addition, cause the consignments to be lawfully intercepted and allowed to proceed upon its way either intact or after seizure of the dangerous drugs contained therein and may also direct their replacement by substances other than dangerous drugs.

350. The POCA does not provide the ICAC with similar powers to use special investigative techniques.

351. Terrorist financing: The Police Act enables the National Security Service “to do all such other things as may be necessary” for the proper performance of its functions (Section 18). Provision is made for intelligence gathering under Section 25 POTA, but it relates to investigations into acts of terrorism and not terrorism financing.

Additional Element - Use of Special Investigative Techniques for ML/FT Techniques (c. 27.4):

352. Controlled deliveries and undercover operations are undertaken by the ADSU but their extent remained undisclosed.

Additional Element - Specialized Investigation Groups & Conducting Multi-National Cooperative Investigations (c. 27.5):

353. There are no permanent or temporary groups in place that specialize in investigating the proceeds of crime other than the ICAC and the Police. “Horizontal groups” are not a common feature of the Mauritian government, although the police has, in some instances, required the help of experts from the central bank to assist in police investigations.

Additional Elements - Review of ML & FT Trends by Law Enforcement Authorities (c. 27.6):

354. No review of the money laundering trends has been conducted so far. The same applies for terrorist financing since no elements of the offense have been detected in Mauritius.

Ability to Compel Production of and Searches for Documents and Information (c. 28.1):

355. All authorities responsible for the investigation of money laundering and terrorist financing cases have the necessary powers to compel production of transaction records and any other relevant documents, either on their own initiative (ICAC, in certain circumstances) or, more generally, with the necessary court order.

356. Pursuant to Section 52 of the POCA, the ICAC may, where it has reasonable grounds to believe that there is, on specified premises or in any place of business, evidence which may assist in its investigation, issue a warrant authorizing its officers to enter and search the premises and remove therefrom any document or material which may provide evidence relevant to the investigation conducted by ICAC. Although the wording of the law does not specifically say so, the premises that the ICAC is empowered to search include all premises and places of business with exception of banks. This limitation is a result of the confidentiality requirements set out in Section 64 of the Banking Act.

357. For the disclosure of information from financial institutions such as banks, the ICAC must apply for a court order under Section 54 of the POCA 2002. This particular section and section 39 (now repealed) of Banking Act 1988, created some level of confusion as to the procedure to be adopted for such disclosures during the first years following the establishment of ICAC. This confusion was especially due to the lack of precision in the wording of Section 54 of the POCA 2002. It gave rise to two possible interpretations of the said Section, one of which contended that the ICAC should apply to the Judge in Chambers before it could gain access to such financial information, while the other suggested that Section 39 (now repealed) of the Banking Act 1988 expressly permitted the ICAC to have access to such financial information without the need to go before a Judge in Chambers. According to ICAC's 2003–04 annual report, this confusion in the law created many obstacles in the investigations carried out by the ICAC inasmuch as banks were refusing to comply with the orders for disclosure issued by ICAC under Section 54. The legislator intervened by enacting Section 64 of the Banking Act 2004 which made it clear that the ICAC should apply to the Judge in Chambers for an order of disclosure in all the cases where information from financial institutions was required for the purposes of an investigation under the POCA. Since then, several such applications have been made. Orders for disclosure have been granted upon the Judge in Chambers being satisfied that there existed reasonable suspicion in each case that warranted the application.

358. Police officers investigating a money laundering offense under the FIAMLA must also apply for a court order for disclosure in order to lift the confidentiality requirement of the Banking Act.

359. All information obtained in application of Sections 52 and 54 may be used as evidence in the prosecution of the money laundering offense or the predicate offenses, as well as in related actions such as freezing and confiscation measures.

360. On the orders for disclosure: the ICAC expressed some concerns about the value of the FIU report for the purposes of its own investigation and about the difficulty to obtain orders for disclosure of financial records held by banks. As mentioned above, pursuant to the Banking Act, banking records may only be provided on the basis of a Court order for disclosure. To obtain the order, the ICAC must show sufficient evidence to enable the Judge to form an opinion on the validity of the application. According to the ICAC, the information provided by the FIU is not sufficient to satisfy the Judge that the application is legitimate and does not constitute a “fishing expedition.” This is in particular the case when the dissemination reports refer to money transfers initiated outside Mauritius without providing any information on the nature of the suspicious transaction or the predicate offense. The ICAC, therefore, claimed that it finds itself in a “Catch 22” situation whereby it must gather sufficient information to apply successfully for an order, but cannot provide the necessary information in the absence of a court order. The assessors found, however, that the information gathered and disseminated by

the FIU was adequate and relevant (see write up under Recommendation 26). It seems, therefore, that the problem lies more in the authorities' (including the judges') understanding and perception of the purpose of the FIU's disseminated reports rather than in the quality of the reports themselves. It is common practice for disseminations from administrative-style FIUs, such as the one in Mauritius, to be used purely as intelligence vehicles rather than as evidence. Their purpose is to provide leads and to enable the investigative authorities to focus, and not to provide hard evidence. The problem raised by the ICAC seems to call for additional training and education of the authorities involved, and the judges in particular, rather than for a change in the FIU's practice.

361. Under the DDA, the police may apply for a court order granting access to all relevant documents. Where the Judge in Chambers is satisfied by information on oath that there are reasonable grounds to suspect that a money laundering offense (and others under the Act) has been or is likely to be committed, he may issue a warrant authorizing any police officer to have access to all bank, financial, and commercial records that may reasonably concern transactions related to the offense (Section 56 (d) DDA). The Judge may also place a bank account under surveillance when it is suspected of being used for operations related to the offense, and may authorize the police officer to tap or place under surveillance the telephone lines used by the person suspected of participation in the offense, for a period not exceeding 6 months, and to have access to, or place under surveillance, the computer system used by the suspect (Section 56 (a) and (b) DDA). All information obtained in application of Section 56 may be used as evidence.

362. The Commissioner of the Drugs Assets Forfeiture Office, the DAFO, also has specific powers to gather the necessary information. He may summon any person, including any bank or other body or organization, to give evidence or to produce any record, book, document, or other article or to make any disclosure relating to the possessions of the convicted person or his family (Section 45 subsection 4 of the DDA). These powers are vested in the Commissioner himself and do not require prior application for a court order. All provisional measures are taken by the Judge (cf write-up under Recommendation 3). The information obtained will be used in the Commissioner's report to the DPP.

363. There are no specific provisions that would apply to investigations into a terrorist financing offense. The powers vested upon the police are, therefore, the same as under the FIAMLA and a court order is necessary to obtain information from and search the premises of banking institutions.

c) seize and obtain records, etc.

364. The ICAC may apply for an attachment order under Section 56 of the POCA 2002 when it has reasonable grounds to suspect that a person has committed a money laundering (or corruption) offense. Attachment orders are granted by the Judge in Chambers provided that the latter is satisfied that the suspicion of the Commission is reasonable. The consequence of the order being granted is the temporary attachment in the hands of third parties money or property belonging to a suspect and the prohibition of the transfer or disposal of such money or property so attached, except in such manner as may be specified in the order. The ICAC is responsible for ensuring that the order of attachment is made public, in the Gazette and in at least two daily newspapers, and to give notice of the order to all notaries, banks, financial institutions, and cash dealers, as well as any other person who may hold or be vested with the property belonging to or held in behalf of the suspect (Section 56(3) of the POCA). Unless revoked by the Judge before then, the order remains in force for 60 days and may be renewed for successive periods of 60 days on application made by the ICAC (Section 57 of the POCA).

Power to Take Witnesses' Statement (c. 28.2):

365. Unlike the police, the Director-General of the ICAC may (without the need for a prior application to the Court):

- (a) order any person to attend before him for the purpose of being examined;
- (b) order any person to produce before him any book, document, record or article;
- (c) order that information which is stored in a computer, disc, cassette, or on microfilm, or preserved by any mechanical or electronic device, be communicated in a form which is visible and legible;
- (d) by written notice, order a person to furnish a statement in writing made on oath or affirmation setting out all information which may be required under the notice. (Section 50 of the POCA as amended in 2005).

366. In carrying out his investigation, the Director-General of the ICAC may conduct such hearings as he considers appropriate and has discretion as to whether to conduct the hearings in public or in private (Section 50 of the POCA).

367. No such hearings have been conducted since the inception of the ICAC because their procedural aspects have not yet been defined. Pursuant to Section 87 of the POCA, it is the Prime Minister's prerogative to issue the necessary regulation. At the time of the assessment, the ICAC was working on a proposal for such regulation.

368. The other authorities involved in money laundering investigations do not have the powers to take witness statements.

Adequacy of Resources to Law Enforcement and Other AML/CFT Investigative or Prosecutorial Agencies (c. 30.1):

369. The number of officers in charge of money laundering investigations in the police is not high but overall nevertheless seemed sufficient considering the fact that most cases are investigated by the ICAC. While it makes sense for the ADSU to investigate money laundering offenses under the DDA, the need for a division of labor within the CID (i.e., between the Special Cell and the Fiscal Unit) is less obvious and the actual role of the Fiscal unit in money laundering cases was not made entirely clear. The number of police officers who may conduct prosecutions is unclear, so is their training: while it is clear that they receive general prosecutorial training, the mission was not aware of that training addressing the prosecution of money laundering cases under the FIAMLA and the DDA.

370. The ICAC has a large number of staff, most of which is, however, dedicated to the fight against corruption.

371. The fact that the AGO's senior officers deal both with civil and criminal work, as opposed to being specialized in one type or the other, does not necessarily raise concerns in the sense that money laundering

cases are usually prosecuted by the same persons who have become specialized in the matter through practice²⁰.

372. The delays observed in the issuance of court orders necessary for the purposes of the investigations led by the ICAC or the Police would tend to indicate that the resources of the Courts are not sufficient to absorb all aspects of their work.

Integrity of Competent Authorities (c. 30.2):

373. The “Principles of Police Ethics” require all police officer to act with fairness and to carry out their functions with integrity and impartiality. They also upon them to perform their duties with diligence, making proper use of their discretion and set out the circumstances under which they may, if necessary, have recourse to the use of force.

374. The employment of ICAC staff is governed by the ICAC “General Conditions of Service, Code of Conduct and Procedure for Discipline”. Upon signing a contract of employment, any new staff must accept in writing the terms of the General Conditions and must take an oath of secrecy for all matters relating to his or her employment. Under the General Conditions, he or she must also ensure that none of his or her assets bring him or her into conflict with his or her duties. There is however no additional requirements dealing with staff integrity and ethics.

375. No information was provided for the other relevant authorities.

Training for Competent Authorities (c. 30.3):

376. The ICAC has organized a training for its staff on AML measures with the assistance of the Office of Technical Assistance (OTA) of the United States’ Government. A two-week course was provided in early 2007 and regular visits from the OTA mentor to the ICAC have been scheduled over a period of two years. None of the other authorities responsible for the investigation and the prosecution have been provided or have organized comprehensive AML training for their staff, but several of the persons met had participated in ad hoc seminars and workshops conducted overseas by other countries or international organizations.

377. Some authorities have explicitly expressed the wish for further training in anti-money laundering measures and procedures, as well as in money laundering trends. The assessors found that further training and education would be beneficial overall.

Additional Element (Rec 30) - Special Training for Judges (c. 30.4):

378. No AML training is provided to judges of the Intermediate and Supreme Courts who try money laundering cases lodged before them under the FIAMLA and the DDA and the mission was not made aware of their participation in ad hoc seminars abroad.

²⁰ Moreover, the authorities mentioned that, as of February 2008, the prosecutors no longer deal with both civil and criminal work; they are attached to either the civil or the criminal units (see footnote to para. 344 above)

Implementation and Statistics (applying R.32):

379. The police officers and the ICAC regularly make use of the powers vested upon them by the various acts and regularly apply for court orders granting them access to the necessary documents, or allowing them to search and seize as necessary. According to the authorities, the delivery of the court order is usually fairly swift, but can take up to one month depending on the judge's availability.

380. The ICAC issued some 40 search warrants in money laundering investigations. The number of court orders that it requested are set out below:

Table 21. Applications made by the ICAC to the Judge in Chambers for ML investigation

	2002	2003	2004	2005	2006	2007
Attachment Order	-	3	7	8	6	7
Disclosure Order	-	-	7	24	18	86

381. See also the statistics under Recommendations 1 and 2 for the number of ML investigations conducted.

382. It seems that in some instances, the need of the investigative authorities is not particularly well understood by the Judges in Chambers, in particular with respect to the disclosure of financial records. Further training, not only on money laundering techniques but also on the functioning of the overall framework and the respective roles of the various authorities involved seems particularly

383. Overall, the authorities appear to have sufficient powers to conduct their respective functions in an appropriate fashion, but the need for AML/CFT training was perceived by the assessors as important in a number of instances and in particular within the police, ICAC, and the judiciary.

2.6.2 Recommendations and Comments

- The authorities are recommended to reconsider the division of money laundering cases (other than drug-related cases) within the Central CID and, if the division is maintained, ensure that the respective roles, functions, and powers of both units are clearly defined;
- They are further recommended to ensure that attachment orders may be provided on a timely basis;
- In order to facilitate the investigations of money laundering cases initiated on the basis of an STR, it is recommended that the authorities ensure that all the relevant authorities involved in the investigation, prosecution, and trial of money laundering cases have a common understanding of the purpose and the use of the FIU reports as intelligence (as opposed to evidence) which should provide sufficient grounds to initiate and focus subsequent investigations, as well as to obtain the necessary court orders for disclosure of any necessary records, including bank records.

- It is also recommended that further training on Mauritius's AML/CFT framework and on money laundering as well as terrorist financing trends and typologies is provided to all authorities involved in the fight against money laundering and terrorist financing.
- On a minor point and in order to avoid any confusion as to the initiation of ICAC-led investigations into money laundering cases, it is also recommended that the authorities bring the wording of Section 19(1) (0) of the POCA in line with the possibilities offered by Sections 45(2) (a) and 46(1) (a) of that same act.

2.6.3 Compliance with Recommendations 27 & 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	LC	<ul style="list-style-type: none"> • The role of the Fiscal Unit (Central CID) is not entirely clear and the relevance of the Unit in the AML framework was not established.
R.28	LC	<ul style="list-style-type: none"> • The process by which the investigative authorities may be granted orders for disclosure seem unnecessarily lengthy. • The timing of attachment measures does not always seem to be appropriate, with orders for attachment being requested or being granted too late.

2.7 Cross Border Declaration or Disclosure (SR.IX)

2.7.1 Description and Analysis

Mechanisms to Monitor Cross-border Physical Transportation of Currency (c. IX.1, IX.2, IX. 4):

384. In 2006, the Customs Act 1988 (the "Customs Act") was amended to include a provision on cash couriers set out in Section 131A. In February 2007, a disclosure system was implemented by the Customs Authority (which, since July 2006, has been a part of the Revenue Authority). Section 131A(1) of the Customs Act allows the Director General of Customs (defined by Section 4 of the Mauritius Revenue Act to include any customs officer) to, "on reasonable grounds, require any person making a physical cross-border transportation to make a written truthful disclosure on a form approved by the Director-General, of the amount of currency or bearer negotiable instruments in his possession, their origin and their intended use." Such disclosures are kept by the Customs Authority at their headquarters.

False Disclosure of Currency (IX.2)

385. Section 131A(2) states that "any person making a disclosure under subsection (1) may be questioned by an officer on the particulars of the disclosure and in the course of any questioning, the officer may inspect the person's travel documents including passport or laissez-passer and tickets." Section 131A(3) states that "where an officer has reasonable cause to believe that the disclosure made by a persons under subsection (1) is false or misleading in any material particular, the officer may detain and search the person in accordance with section 132." Section 132 allows a customs officer to detain and search a person whom the officer believes is unlawfully carrying any goods subject to the control of Customs or any prohibited goods. Banknotes are classified under the "H.S.Code," heading 49 07.003 in the first schedule of the Customs Tariff Art 1969 and are therefore subject to customs control. This allows Customs to detain currency where there is a false disclosure.

386. While the Customs Act provides that the disclosure provisions apply to both inbound and outbound transportation of cash in that "physical cross-border transportation" is defined to mean in-bound or out-bound physical transportation of currency or bearer negotiable instruments from one country to another country, in

practice, the Customs Authority only has a presence in the arrivals hall of the airport and at the arrivals area for ferries which come in from Madagascar, Reunion Island and Rodrigues. Customs officers are only available in the departure area of the airport if they receive credible information in advance that someone of interest is leaving Mauritius. After the onsite visit, the Customs Authority indicated that they are now present on a more regular basis in the departure area of the airport²¹. Customs have indicated that they will be present in all departure halls at the ports in 2008. Containers are x-rayed with large container x-ray machines on a sampling basis. Approximately 10 percent of containers are x-rayed. A smaller x-ray machine will be in service by the end of 2007 at the new courier facility located near the airport. DHL has the largest amount of courier business in Mauritius. Customs officers will be present at this facility in 2008.

387. Inbound suitcases at the airport are x-rayed on a random basis by a private local security company employed by the airports authority. All departing suitcases are x-rayed but the private local security company is looking for weapons and explosives and not for cash or bearer instruments. There is currently no screening of hand luggage although the Customs Authority is in the final stages of seeking tenders for four hand screening machines which will be placed at the arrivals hall at the airport, the main post office, a new courier facility which is located at the airport for parcels, and at the ferry terminal for ferry passengers coming in from Madagascar, Reunion Island, and Rodrigues. These machines should be in place at the above locations by mid 2008.

388. Note also that only inbound and outbound persons can be stopped and searched. The law does not apply to transit passengers.

Restraint of Currency (c. IX.3):

389. Under Section 131A(4), if the customs officer suspects that the money or bearer negotiable instrument disclosed is involved with money laundering or terrorist financing, the officer must refer the matter to the police. In this case, the currency will be restrained.

390. After the on site visit, the authorities advised the mission that in the case under Section 131A(3), where the officer has detained the person because the officer believes that there is a false or misleading disclosure, the currency will be restrained. This is legally possible under Section 151(a) of the Customs Act which states that: “the following goods may be seized by an officer (a) all goods imported into Mauritius, including but not limited to those listed below in relation to which an offense under the customs laws is reasonably suspected to have been committed by any person.” Section 131(5) creates an offense for a person making a false or misleading disclosure, fails to answer questions under Section 131A(2) or who refuses to make a disclosure. Therefore, the Customs Authority has the power to restrain the currency. Large amounts of currency will be transferred by the Customs Authority to the Central Bank for safekeeping until the matter is disposed of. Smaller amounts are kept in the Customs safe at the Port or the Airport.

Access of Information to FIU (c. IX.5):

391. While the Customs Authority keep the written disclosures made by passengers, the FIU has no direct access to them. The Customs Authority advised the mission after the on site meeting of cases where there have

²¹ In March 2008 the Customs Department advised the mission that it had implemented a disclosure system to outbound cross-border transport of currency and is intending to do the same at courier services. The mission could not independently verify this.

been detentions of currency through false or misleading disclosures. There is, however, no legal provision which authorizes the Customs Authority to make such disclosures to the FIU²².

Domestic Cooperation between Customs, Immigration and Related Authorities (c. IX.6):

392. There is coordination to some degree with the drugs police. When hard drugs (usually heroin) are detected, usually in small amounts of one kilo, the drugs are seized by the Customs Authority and turned over to the ADSU group of the police (who are responsible for drugs interdiction) who use the drugs to conduct controlled delivery operations). The Customs Authority have contacted the police in relation to two cases of cross boarder transport of cash or precious metals. After the onsite mission, the authorities advised that one case has already been prosecuted and another is underway. No case of money laundering or terrorist financing has been reported to the police by customs to date.

393. There is a legal gateway for this cooperation under Section 131A(4) where the Customs Authority suspect money laundering or terrorist financing. Section 10(2) of FIAMLA also allows the Customs Authority to cooperate with the FIU regarding AML/CFT matters. While the Customs authority will advise the FIU about areas of concern as well as specific cases, it does not always do so in a timely manner. Recent possible cases of money laundering are currently being investigated by customs but they will not advise the FIU or the police until they have completed their investigations.

International Cooperation between Competent Authorities relating to Cross-border Physical Transportation of Currency (c. IX.7):

394. Mauritius has entered into Customs Mutual Administrative Agreements (CMAAs) with a number of countries. Mauritius has signed CMAAs with The Kingdom of Belgium, the Islamic Republic of Pakistan, the Republic of Madagascar, France, the United States and the Netherlands. The Customs Authority is also a member of the WCO.

Sanctions for Making False Declarations / Disclosures (applying c. 17.1-17.4 in R.17, c. IX.8 and Sanctions for Cross-border Physical Transportation of Currency for Purposes of ML or TF (applying c. 17.1-17.4 in R.17, c. IX.9):

395. Section 131A(5) creates an offense for making false disclosures, refusing to answer questions or refusing to make a disclosure under Section 131A. Sanctions for conviction of this offense include a fine not exceeding 500,000 rupees and imprisonment for a term not exceeding three years. In practice, if a passenger is convicted of a false statement, the person would be free to leave Mauritius when that person has paid their fine. For example, in one case, the person was fined 50,000 rupees by the Supreme Court but had the seized money restituted to him under the same court order.

396. There is no specific offense or sanction in the Customs Act for persons who carry out a physical cross-boarder transportation of cash for money laundering or terrorist financing purposes. For this, the authorities rely on the money laundering and terrorist financing offenses in the FIAMLA and the terrorist financing legislation, respectively.

²² In March 2008 the Customs Authority advised the assessment team that there is an MOU between the Customs Authority and the FIU under which Customs "shall provide data and any further information related to intelligence, statistics or similar information as may be requested by the FIU in fulfilling its function and strategic action under FIAMLA 2002." The assessment team could not independently verify this.

Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	PC	Very limited outbound disclosure system; no gateways for disclosure of information to the FIU or to foreign customs services; currently no ability to check passengers against the UN 1267 lists;

3 PREVENTIVE MEASURES—FINANCIAL INSTITUTIONS

Customer Due Diligence & Record Keeping

3.1 Risk of money laundering or terrorist financing

397. As the Mauritius economy becomes more global, the risk of money laundering increases. For example, as the International Resorts Schemes program increases, more foreign high net worth individuals will be buying expensive resort property in Mauritius and settling the transactions through the Mauritius banking sector. The Bank of Mauritius is well placed to monitor this increased business risk. With regard to the balance of risk of money laundering and terrorist financing to financial institutions, the mission concluded that the potential risk was greater in the banking sector—the sector regulated by the Bank of Mauritius—than the other sectors. The banking sector is the largest sector, it appears to be more international in its outlook and it is actively seeking to attract customers from outside Mauritius. The customer bases of the insurance and investment sectors—regulated by the FSC—are generally domestic, although some investment firms are successfully attracting foreign customers. The mission has taken account of this balance of risk in the ratings it has issued for section three.

398. Historically, the FSC has concentrated its focus on management companies, which administer legal persons and legal arrangements which it considers to have a higher risk of money laundering than other sectors that it regulates.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)

3.2.1 Description and Analysis

399. The Financial Intelligence and Anti-Money Laundering Act 2002 and the Financial Intelligence and Anti-Money Laundering Regulations 2003 (as amended in 2005) are the primary legislations that impose the adoption of preventive AML/CFT measures on financial institutions. Section 17 of the FIAMLA lays down the requirement for a financial institution to undertake verification of identity of all customers and other persons with whom they conduct transactions and to keep records. These requirements are bolstered by Section 55 of the Banking Act 2004, which provides that only persons whose true identity has been established may open an account for deposits of money.

400. Two regulatory bodies are particularly relevant when considering the AML/CFT measures required of financial institutions. The Bank of Mauritius is responsible for banks, nonbank deposit taking institutions (mainly leasing companies which are regulated by the Bank of Mauritius for deposit-taking activities and also by the FSC for their leasing activities) and cash dealers. It has issued Guidance Notes on Anti-Money Laundering and Combating the Financing of Terrorism. Until the mission, the FSC operated under the Financial Services Development Act 2001. This Act was replaced by the Financial Services Act 2007 during the mission. Until the mission the FSC regulated investment and insurance institutions under the Insurance Act,

the Securities (Central Depository, Clearing and Settlement) Act, the Stock Exchange Act, the Unit Trust Act and any trustee managing a unit trust established under the Unit Trust Act. During the evaluation, a new Insurance Act 2005 and a new Securities Act 2005 came into force, which repealed the Stock Exchange and Unit Trust Acts, although there are savings provisions. The FSC has issued a Code on the Prevention of Money Laundering and Terrorist Financing intended for Investment Businesses and a Code on the Prevention of Money Laundering and Terrorist Financing intended for Insurance Entities.

401. The Bank of Mauritius is a long-established supervisory body. It was clear to the mission from meetings with the Bank and with institutions it regulates and supervises that the central bank has a thorough and professional grip on institutions. It knows its institutions and treats breaches of standards seriously.

402. Section 50(5) of the Bank of Mauritius Act 2004 specifies that any person who does not comply with guidance issued under Section 50(4) (for example, the Bank of Mauritius Guidance Notes on AML/CFT) shall commit an offense and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding five years. Similarly, Section 100(4) of the Banking Act 2004 provides that any person who fails to comply with guidelines issued under Section 100 (for example, the Bank of Mauritius Guidance Notes on AML/CFT) shall commit an offense and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment not exceeding 2 years. These two laws provide strong penalties for breaches of the Bank of Mauritius Guidance Notes on AML/CFT. A number of the FATF Criteria in the methodology are required to be in law or regulation issued or authorized by a legislative body. As the Bank of Mauritius Guidance Notes are not law or regulation under the FATF's Methodology (notwithstanding the criminal penalties that apply to breaches of the Guidance Notes), they cannot be treated as law or regulation when considering the asterisked Criteria in the Methodology.

403. Under the Methodology, a number of the Criteria may be met by "other enforceable means" rather than by law or regulation. Other enforceable means refers to guidelines, instructions, or other documents or mechanisms that set out enforceable requirements with sanctions for noncompliance and which are issued by a competent authority (e.g., a supervisory body) or an SRO. Implementation of the framework is a key element in assessing enforceability. The sanctions for noncompliance should be effective, proportionate, and dissuasive.

404. The Bank of Mauritius has issued detailed Guidance Notes on AML/CFT which generally appear to be implemented by financial institutions. The Guidance Notes are subject to sanction and the Bank of Mauritius has applied sanctions for failures of their licensees regarding AML/CFT measures. For the purposes of this report, the Guidance Notes are treated as enforceable.

405. Following its meetings with executives of the Bank of Mauritius and representatives of financial institutions that it licenses, the mission concluded that the Bank of Mauritius has adopted a very serious and professional approach to countering money laundering and terrorist financing, and that it has made strong efforts to supervise and monitor its licensees in this regard.

406. The FSC has issued AML/CFT Codes to its various members. Until the enactment of the new Financial Services Act during the evaluation, the FSC had a comparatively limited range of sanctions in respect of AML/CFT. Administrative enforcement action was limited to the issue of directions to comply with the Codes and the revocation of licenses. In discussions during the evaluation some FSC executives advised that they felt they would have had difficulties in applying sanctions for breaches of the Codes due to possible lack of legal authority. In March 2008, the FSC's Chief Executive indicated to the mission that he was of the view that the FSC had the regulatory powers at the time of the onsite mission to impose sanctions. Therefore, there was a reluctance to apply sanctions except where there had been a court determination of a case or the licensee in question approached the FSC with a concern about their own operation. Examples of sanctions which had been

issued were not provided during the evaluation. Nevertheless, after the mission, the FSC provided examples of directions issued to insurance companies in respect of poor AML/CFT measures. In light of this, the mission considers the Codes to be enforceable. The mission found that some institutions subject to supervision by the FSC had sound AML/CFT measures in place, while other licensees were either not subject to Codes or compliance with the Codes was not complete (see the paragraphs on implementation below). Some licensees not subject to one of the Codes, such as leasing and factoring businesses, are subject to licensing conditions which require, inter alia, that such licensees should adopt, enforce and re-assess on an annual basis their AML/CFT frameworks.

407. The FSC has advised the mission that, where the risk of ML/FT was perceived to be relatively high, namely, with respect to investment businesses, the definition of Investment Businesses under the Code for Investment Businesses was extended by FSC to capture all operators within that sector. With regard to the other financial institutions it licenses, the FSC has advised that, for those not captured by the definition of financial institution under the FIAMLA, the risk of money laundering was perceived to be low and, therefore, no AML/CFT measures were issued by the FSC. Until the introduction of the new Financial Services Act, the statutory on-site inspection powers were limited.

408. The introduction of the Financial Services Act 2007 during the mission means that the FSC now has a much greater arsenal of powers of sanction and explicit on-site inspection provisions. Based on meetings with FSC staff, it was clear to the mission that, going forward, the FSC intends to use the tools in the new Act to enforce the AML/CFT framework it administers.

409. The foregoing should not detract from the significant efforts made by the FSC to conduct on-site inspections and to encourage a culture of AML/CFT compliance among institutions in the years prior to the mission.

410. Implementation of AML/CFT Measures across the Required Financial Institutions

411. A number of the types of financial institution as defined by the FATF are not covered by the Bank of Mauritius Guidance Notes or the FSC's Codes. The Bank of Mauritius regulates deposit takers (banks and other deposit takers) and cash dealers (defined as persons licensed by the Bank to carry on the business of foreign exchange dealer or money-changer). The Banking Act 2004 includes in the definition of banking business such services as are incidental and necessary to banking. The Bank of Mauritius has successfully used this definition to license wire transfer service providers in Mauritius and consider the definition covers money and value transfer services. Nevertheless, the mission has concerns that in the absence of an explicit and clear provision bringing wire transfer providers into the Mauritius AML/CFT framework means the interpretation of the banking legislation by the Bank and the successful resolution of a challenge to that interpretation may be problematic. The mission has concerns that value transfer services are not covered by the legislation. Explicit provisions in legislation also do not cover the issuing and means to payment and trading in money market instruments.

412. The coverage of the supervisory framework of the FSC regarding nonbank institutions is demonstrated in the table below which specifies whether nonbank institutions in the FATF definition of financial institutions are covered by the AML/CFT legislative framework and the regulatory laws and license conditions issued by the FSC. As three new laws (the Financial Services Act 2007, the Securities Act 2005, and the Insurance Act (2005) came into force during the mission, the table demonstrates the position prior to the mission and during the mission (Y indicates that a type of institution is covered, X indicates that a type of institution is not covered).

Table 22. Non-Bank Financial Institutions Licensed by the FSC

Financial Institutions	• FIAMLA (1)	• FSDA (2)	• IA 87 (3)	• SEA 88 (4)	• AML LC (5)	• FSC Codes (6)	• FSA (7)	• IA 05 (8)
ing	• The definition of Financial Institution under the FIAMLA does not include specialized finance institutions such as credit companies, leasing and factoring companies.							
umer it	• X	• Y	• N/A	• N/A	• X	• X	• Y	• N/A
hase) it nce panies	• X	• Y	• N/A	• N/A	• X	• X	• Y	• N/A
age it	• X	• Y	• N/A	• N/A	• X	• X	• Y	• N/A
ring ncial ing	• X •	• Y	• N/A	• N/A	• X	• X	• Y	• N/A
ing panies ng in ferable rities modity es ng broker	• X • Y	• Y	• N/A	• N/A	• X	• X	• Y	• N/A
stment er cipating curities s and rovision ancial ces ed to issues stment er dual collective dual ctive olio agement stment er(a)/In nent	• Y • Y •	• X • N/A	• N/A	• N/A	• X	• Y	• Y	• N/A
	• Y	• Y	• N/A	• N/A	• Y	• Y	• Y(b)	• N/A

Managers/Portfolio Managers	•	N	•	N/A	•	N/A	•	N/A	•	Y	•	X	•	Y	•	N/A
Managers/No Securities	•	Y	•	N/A	•	N/A	•	N/A	•	Under Consideration	•	Y	•	Y	•	N/A
Investment Manager (c)	•	Y	•	N/A	•	N/A	•	N/A	•	Under Consideration	•	Y	•	Y	•	N/A
Asset Manager	•	Y	•	N/A	•	N/A	•	N/A	•	Under Consideration	•	Y	•	Y	•	N/A
Record Keeping	•															
Administering Managing																
Assets or																
Relay on																
Use of																
Persons																
Median of	•	X	•	Y	•	N/A	•	N/A	•	Y	•	Y	•	Y	•	N/A
Entities	•	Y	•	N/A	•	N/A	•	N/A	•	X	•	Y	•	Y	•	N/A
Medians	•	X	•	N/A	•	N/A	•	N/A	•	X	•	Y	•	Y	•	N/A
Medians (CIS)	•	X	•	Y	•	N/A	•	N/A	•	Y	•	X	•	Y	•	N/A
Director	•															
Underwriting	•															
Insurance																
Other																
Investment																
Insurance																
Insurance Companies	•	Y	•	Y	•	Y	•	N/A	•	X	•	Y	•	Y	•	Y
Insurance	•	Y	•	Y	•	Y	•	N/A	•	X	•	Y	•	Y	•	Y

1. FIAMLA - Financial Intelligence and Anti Money Laundering Act 2002

2. FSDA – Financial Services Development Act 2001 (repealed by FSA)

3. IA 87 – Insurance Act 1987 (repealed by Insurance Act 2005)

4. SEA 88 – Stock Exchange Act 1988

5. AML LC – AML Requirements imposed by FSC by way of Licensing of Conditions

6. FSC Codes – FSC Codes on the Prevention of ML and TF intended for Insurance Entities and Investment Business

7. FSA – Financial Services Act 2007

8. IA 05 – Insurance Act 2005

9. SA 05 – Securities Act 2005

- a) Licensed under section 14 of the FSD Act.
- b) These financial institutions will be either licensed under the FSA (Asset Managers – non securities) or under the Securities Act 2005 (Investment Advisers) depending on whether the assets will be non-securities or securities.
- c) To be licensed under the Securities Act 2005.

413. Prior to the mission, in order for the full AML/CFT framework to apply to institutions, the table would need to show with a Y that the FIAMLA, the Financial Services Development Act, the Codes and a relevant regulatory law applies to each type of financial institution. The table currently shows that this is not always the case. Lending and leasing institutions are not covered by AML/CFT law, regulation or other enforceable means. While stockbrokers were regulated under the Stock Exchange Act 1988 before the evaluation, investment dealers trading in transferable securities participating in securities issues and undertaking individual and collective portfolio management were not regulated until during the mission. Total coverage of the safekeeping and administration of cash and liquid securities was not completely covered until the time of the mission. The new Securities Act sets out an enhanced licensing and regulatory framework for a wider range of intermediaries, including various categories of investment dealers (full service investment dealers, brokers and discount brokers), who must apply to be licensed under the Securities (Licensing) Rules 2007 made under the Act and which came into force on 28 September 2007.

414. In addition, the AML/CFT framework does not appear to cover providers of financial guarantees and commitments; trading in exchange, interest rate and index instruments and otherwise investing, administering or managing funds or money on behalf of other persons. There are also 120 co-operative credit unions in Mauritius with assets of 1,692,202,849 rupees, according to statistics provided. These credit unions are registered with a Registrar of Co-Operatives and not with the FSC. The credit unions are not subject to the AML/CFT framework but are required to be covered by the FATF standard in that they are collecting repayable funds from their members and loaning those funds on commercial terms to their members.

415. The risk implications of the institutions not covered by the AML/CFT and regulatory framework could not be judged by the mission – the Mauritius authorities did not provide a risk assessment to the mission.

Prohibition of Anonymous Accounts (c. 5.1):

416. In respect of the identity of customers, section 55 of the Banking Act 2004 provides that every financial institution shall only open accounts for deposits of money and securities, and rent out safe deposit boxes, where it is satisfied that it has established the true identity of the person in whose name the funds or securities are to be credited or deposited or the true identity of the lessee of the safe deposit box, as the case may be. In addition, it states that every financial institution shall require that each of its accounts be properly named, at all times, so that the true owner of the accounts can be identified by the public and no name shall be allowed that is likely to mislead the public. With reference to numbered accounts, section 55 of the Banking Act 2004 provides that every financial institution shall require that each of its accounts be properly named at all times, so that the true owner of the accounts can be identified by the public and no name shall be allowed that is likely to mislead the public. This prevents the maintenance of numbered accounts.

417. Section 17 of the FIAMLA requires financial institutions, cash dealers and members of relevant professions and occupations to verify, in such manner as may be prescribed the true identity of all customers and other persons with whom they conduct transactions. Furthermore, regulation 3 of the Financial Intelligence and Anti-Money Laundering Regulations 2003 expressly prohibits financial institutions from opening anonymous or fictitious account.

418. Section 17 of the FIAMLA and regulation 3 of the Financial Intelligence and Anti-Money Laundering Regulations 2003 also apply to institutions regulated by the FSC. The Codes also contain detailed provisions on identifying and verifying customers.

When is CDD required (c. 5.2):

419. Section 17(a) of the FIAMLA requires every bank, financial institution, cash dealer or member of a relevant profession or occupation to verify, in such manner as may be prescribed, the true identity of all customers and other persons with whom they conduct transactions. In this respect, regulation 4 of the Financial Intelligence and Anti-Money Laundering Regulations 2003 provides that subject to regulation 5 (which states that relevant persons need not comply with identification procedures in respect of a limited range of specified types of customer), every relevant person shall, in the circumstances set out in paragraph 2 of regulation 4, establish and verify:

- (a) the identity and the current permanent address of an applicant for business; and
- (b) the nature of the applicant's business, his financial status and the capacity in which he is entering into the business relationship with the relevant person.

420. The circumstances in paragraph 2 of regulation 4 referred to above are:

- (a) where the parties form, or resolve to form, a business relationship between them;
- (b) in respect of a one-off transaction, where a relevant person dealing with the transaction knows or has reasonable grounds to suspect that the transaction is a suspicious transaction;
- (c) in respect of a one-off transaction, where payment is to be made by, or to the applicant for business of an amount in excess of 350,000 rupees or an equivalent amount in foreign currency; and
- (d) in respect of 2 or more one-off transactions, where it appears at the outset or subsequently to a relevant person dealing with any of the transactions, that the transactions are linked and that the total amount, in respect of all of the transactions, which is payable by or to the applicant for business is in excess of 350,000 rupees or an equivalent amount in foreign currency.

421. Where, at the time of the transaction, the amount of money involved is not known, the obligation to establish the identity of the applicant for business applies as soon as the amount becomes known or the threshold of 350,000 rupees cash, or an equivalent amount in foreign currency is reached.

422. Law or regulation does not cover the undertaking of customer due diligence where there is a suspicion of money laundering in connection with a non-occasional transaction and where the institution has doubts about the veracity or adequacy of previously obtained customer identification information. Paragraph 6.08 of the Guidance Notes on AML/CFT requires financial institutions to undertake customer due diligence measures where it has not satisfactorily established or has doubts or suspicion regarding the true identity of the customer.

423. The Bank of Mauritius has also provided financial institutions falling under its purview with guidance on when they are required to carry out customer due diligence measures. Paragraphs 6.24 to 6.35 of the Guidance Notes on AML/CFT emphasize that financial institutions need to obtain all information necessary to establish to their satisfaction the identity of the applicant for business and the purpose and nature of the business relationship. The Guidance Notes also contain provisions on wire transfers which require AML/CFT measures to be undertaken in respect of all wire transfers.

424. Regulation 4 of the 2003 Regulations also applies to entities regulated by the FSC.

425. In addition, section 4 of the FSC's Codes on the Prevention of Money Laundering for investment entities and insurance entities require financial institutions to undertake effective customer due diligence measures:

establishing a business relationship with an applicant for business;

carrying out a one-off transaction or occasional transactions where the total amount of the transactions which is payable by or to the applicant for business is above 350,000 rupees or an equivalent amount in foreign currency; or

there is a suspicion of money laundering or terrorist financing.

426. This final bullet point is in addition to the regulations as it goes beyond occasional transactions to cover suspicion in all circumstances.

Identification measures and verification sources (c. 5.3):

427. Section 17(a) of the FIAMLA requires every bank, financial institution, cash dealer or member of the relevant profession or occupation to verify, in such manner as may be prescribed, the true identity of all customers and other persons with whom they conduct transactions. Regulation 4(4) of the Financial Intelligence and Anti-Money Laundering Regulations 2003 provides that, subject to the exceptions in regulation 5, every relevant person shall, in the circumstances set out in paragraph (2), establish and verify:

(a) the identity and the current permanent address of an applicant for business; and

(b) the nature of the applicant's business, his financial status and the capacity in which he is entering into the business relationship with the relevant person.

428. Subject to paragraph (6), which deals with introductions, where an applicant for business is an individual customer, he shall, for the purposes of paragraph (1)(a), submit to a relevant person, the original or a certified copy of an official valid document containing details of his current permanent address, a recent photograph of him and such other documents as may be required, to enable the relevant person to establish his identity. Proof of identity shall be evidenced, in the case of:

(a) a body of persons, whether corporate or unincorporated, by:

(i) official documents and such other information as may be required which collectively establish their legal existence;

(ii) a certified copy of the resolution of the Board of Directors or managing body and the power of attorney granted to its managers, officers or employees to transact on its behalf; and

(b) every manager, officer and employee referred to in sub-paragraph (a)(ii), by the same documents as those specified in paragraph (4).

429. According to the Interpretation and General Clauses Act, words applied to a person or individual shall apply to and include a group of persons, whether corporate or unincorporated.

430. The Bank of Mauritius has also in the Guidance Notes on AML/CFT provided banks, non-bank deposit taking institutions and cash dealers with guidance on identification procedures to be applied to their customers and clients.

431. Paragraph 6.45 onwards deals with the account opening requirements for personal customers. Applicants for business who are not resident in Mauritius but who make face-to-face contact with a financial institution, should be required to complete a standard application form which should incorporate the following details: true name; current permanent address; mailing address; telephone and fax number; date and place of birth; nationality; occupation and name of employer (if self employed, the nature of the self employment); signature/signatures; authority to obtain an independent bank reference. The form, duly filled in must be supported by a clear legible copy of any of the following documents: National Identity Card; current valid passports; current valid driving licenses; armed forces identity card.

432. Paragraph 6.48 states that it is most important that the procedures adopted to confirm identity for non-face-to-face verification be at least as robust as those for face-to-face verification.

433. Non-Residents applying from abroad should be required to complete a standard application form, which should incorporate similar details to those for residents except that passport details, or National Identity Card, driving license or armed forces identity card details have been added to the form. The application form, duly filled in, should be accompanied by any of the following supporting documents to verify identity: National Identity Card; current valid passports; current valid driving licenses; armed forces identity card. This supporting documentation should be duly certified as a true copy by a lawyer, accountant or other professional persons who clearly adds to the copy (by means of a stamp or otherwise) his name, address and profession to aid tracing of the certifier if necessary and which the financial institution believes in good faith to be acceptable to it for the purposes of certifying. For address purposes the institution should obtain an original or certified copy of a utility bill addressed to the applicant at the address from which he, she or they are applying, and an original or certified copy of a bank statement addressed to the applicant at the address from which he, she or they are applying.

434. Provisions are also included on locally resident and foreign companies, partnerships/unincorporated businesses, clubs and charities, societies and trusts. In summary, for individuals who are controllers, the same documents are required as for the identification of personal customers. For companies official documents which collectively establish the legal existence of the entity should be obtained. For unincorporated businesses the necessary license given by the competent authorities for the conduct of such business should be requested and retained. In the case of partnerships, an original or certified copy of the partnership deed should be obtained. With regard to clubs and charities, a certified copy of the constitution should be requested (the Bank of Mauritius may wish to consider adding a reference to retention as well). In the case of societies, the original or certified copy of the Acte de Societe should be requested and obtained. Finally, for trusts, certified extracts of the original trust deed or probate copy of the will creating the trust should be requested and obtained.

435. Section 4 of the FIAMLA and the underlying regulations also apply to entities regulated by the FSC.

436. In addition, section 4 of the FSC's AML/CFT Codes provide that CDD measures that should be taken by financial institutions include identifying and verifying the identity of the applicant for business using reliable, independent source documents, data or information.

Identification of Legal Persons or Other Arrangements (c. 5.4):

437. Section 17(a) of the FIAMLA requires every bank, financial institution, cash dealer or member of the relevant profession or occupation to verify, in such manner as may be prescribed, the true identity of all customers and other persons with whom they conduct transactions. In addition, regulation 4(7) of the Financial and Anti-Money Laundering Regulations 2003 specifies that a relevant person shall, at the time of establishing the business relationship, take reasonable measures to determine whether the applicant for business is acting on behalf of a third party.

438. Regulation 4(1) of the Financial Intelligence and Anti-Money Laundering Regulations 2003 provides that every relevant person shall, in the circumstances set out in paragraph (2) of the Regulation, establish and verify, inter alia, the identity and permanent address of the applicant for business, the nature of the applicant's business, his financial status and the capacity in which he is entering into the business relationship with the relevant person.

439. The language of the legislation does not require verification that a person is authorized to act on behalf of the customer.

440. With reference to Criterion 5.4(b), subject to paragraph (6) of regulation 4, regulation 4(5) provides that proof of identity shall be evidenced, in the case of a body of persons whether corporate or unincorporated, by, inter alia, official documents and such other information as may be required which collectively establish their legal existence. Under the Interpretation Act this reference to body of persons includes all legal persons and legal arrangements.

441. The Bank of Mauritius Guidance Notes on AML/CFT provides banks, nonbank deposit taking institutions and cash dealers with guidance on identification procedures to be applied to their clients. Paragraphs 6.56 to 6.76 of the Guidance Notes provide detailed information on account opening for institutions.

442. With regard to locally incorporated companies, paragraph 6.56 specifies that financial institutions should verify the identity of those who have control over the company's business and assets, more particularly their directors, their significant shareholders and their authorized signatories. Institutions should also verify the legal existence of the company.

443. Paragraph 6.57 states that the following documents should be obtained and retained in the case of locally incorporated companies:

- (i) In respect of employees authorized to open and operate accounts on their behalf, their directors and significant shareholders the same documents as are required for the identification of a personal customer;
- (ii) A certified copy of the resolution of the Board of Directors or managing body and the power of attorney granted to its employees to open and to operate accounts on their behalf; and
- (iii) Official documents which collectively establish the legal existence of that entity, e.g., the original or certified copy of the certificate of incorporation of the company, details of its registered office and place of business etc.

444. Paragraph 6.58 adds that enquiries should be made to confirm by verifying with the Registrar of Companies, that the company continues to exist and has not been, or is not in the process of being, dissolved, struck off, wound up or terminated. Institutions are advised that in cases of doubt enquiries should be made by conducting a visit to the place of business of the company, to verify that the company exists for a legitimate trading or economic purpose.

445. Where the applicant for business is a foreign company, paragraph 6.60 provides that the same documents as are required for locally incorporated companies should be requested and retained.

446. Where the applicant for business is a partnership or an unincorporated business, paragraphs 6.63 and 6.64 state that the necessary license given by the competent Authorities for the conduct of such business should be requested and retained and in the case of partnerships, an original or certified copy of the partnership deed obtained.

447. In the case of accounts to be opened for clubs or charities, paragraph 6.67 states that financial institutions should at the very beginning satisfy themselves as to the legitimate purpose of the organization by requesting a certified copy of the constitution of the club or charity and also in case of doubt by paying a visit to its premises, where practicable, to satisfy themselves as to the true nature of its activities. They may also satisfy themselves by independent confirmation of the purpose of the club or charity.

448. In the case of sociétés, paragraph 6.70 provides that the original or certified copy of the Acte de Société should be requested and retained. For Mauritian sociétés, paragraph 6.71 states that the financial institution should ensure, by verifying with the Registrar of Companies, that the société continues to exist. As regards foreign sociétés the financial institution should obtain a certificate of good standing from them, as required by paragraph 6.72.

449. In the case of trusts, paragraph 6.75 provides that certified extracts of the original trust deed or probate copy of a will creating the trust, documentary evidence pertaining to the appointment of the current trustees and the nature and purpose of the trust, as well as documentary evidence as are required for personal customers on the identity of the current trustees, the settlor and/or beneficial owner of the funds and of any controller or similar person having power to appoint or remove the trustees should be requested and retained.

450. Section 17(a) of the FIAMLA and regulation 4 of the underlying regulations also apply to the entities regulated by the FSC. Regulation 4(5) provides proof of identity to be evidenced when providing for managers, officers and employees to act on behalf of a legal person.

451. With reference to Criterion 5.4(b), paragraph 4.1.2 of the FSC's Codes set out detailed requirements with respect to legal persons and arrangements. For the purposes of the FSC's Codes, where an applicant for business is a legal person or arrangement, licensees must verify and establish the existence of the legal person or arrangement; and the identity of the principals of the legal person or arrangement.

452. The paragraph goes on to say that these requirements can be achieved in a variety of ways depending upon the nature of the applicant - for example in relation to private companies, trusts, partnerships, and societe:

453. For private companies, the requirements are:

Obtaining an original or appropriately certified copy of the certificate of incorporation or registration;

Checking with the relevant companies registry that the company continues to exist;

Obtaining details of the registered office and place of business;

Verifying the identity of the principals of the company as above;

Verifying that any person who purports to act on behalf of the company is so authorized, and identifying that person.

454. For trusts, the requirements are:

Obtaining an original or appropriately certified copy of a trust deed or pertinent extracts thereof;

Where the trust is registered - checking with the relevant registry to ensure that it does exist;

Obtaining details of the registered office and place of business of the trustee;

Verifying the identity of the principals of the trustee.

455. For partnerships, the requirements are:

Obtaining an original or certified copy of the partnership deed;

Obtaining a copy of the latest report and accounts;

Verification of the nature of the business of the partnership to ensure that it is legitimate;

Verifying the identity of the significant partners;

Verifying that any person that purports to act on behalf of the Partnership is so authorized, and identifying that person.

456. For sociétés, the requirements are:

Obtaining an original or certified copy of an acte de société;

in the case of Mauritian sociétés, checking with the Registrar of Companies that the société continues to exist;

In the case of foreign sociétés obtaining a certificate of good standing in relation to them;

Verifying the identity of the principals, administrators or gérants;

Verifying that any person that purports to act on behalf of the société is so authorized, and identifying that person.

Identification of Beneficial Owners (c. 5.5; 5.5.1 & 5.5.2):

457. With reference to Criteria 5.5 and 5.5.1. Regulation 4 of the Financial Intelligence and Anti-Money Laundering Regulations 2003 requires financial institutions to establish and verify the identity of an applicant for business. Paragraphs (7) to (10) of regulation 4 cast a duty on financial institutions to take reasonable measures to determine whether applicants for business are acting on behalf of a third party. If they are so acting, institutions are required to undertake due diligence on the third party. The Mauritius authorities

consider that these provisions apply to beneficial owners. Where a relevant person determines that the applicant for business is acting on behalf of a third party it must keep a record that sets out:

- (i) where the third party is a natural person, the identity of the third party;
- (ii) where the third party is a body corporate or unincorporate, proof of identity as specified in paragraph (5); and
- (iii) the relationship between the third party and the applicant for business.

458. These provisions do not apply to an omnibus account which is held by a relevant person, although the regulation goes on to state that every relevant person shall comply with any code or guidelines issued by its supervisory authority in respect of omnibus accounts. A suspicious transaction report must be made to the Financial Intelligence Unit if a relevant person is not able to determine that the applicant for business is acting for a third party.

459. The Bank of Mauritius has also provided guidance at paragraphs 6.26, 6.27 and 6.74 to 6.76 of the Guidance Notes on AML/CFT.

460. If funds that are to be deposited or transferred are being supplied on behalf of a third party, then the identity of the third party should be established and verified. In case a financial institution is not able to determine whether the applicant for business is acting for a third party, it should make a record of the grounds for suspecting that the applicant for business is so acting and make a Suspicious Transaction Report to the Financial Intelligence Unit.

461. Financial institutions need to obtain all information necessary to establish to their full satisfaction the identity of the applicant for business and the purpose and nature of the business relationship or transaction. Financial institutions should keep on their files full information on ultimate beneficial owners in case they are not the same persons as the applicant for business. The Mauritius authorities have advised that full information includes verification of identity information.

462. There are specific provisions in the Guidance Notes with respect to the verification of the identity of beneficial owners with respect to trusts. Financial institutions should exercise particular caution with respect to trusts, given the common perception that trusts are often misused for laundering the proceeds of crime and hiding terrorist funds. Certified extracts of the original trust deed or probate copy of a will creating the trust, documentary evidence pertaining to the appointment of the current trustees and the nature and purpose of the trust, as well as such documentary evidence as is required for personal customers on the identity of the current trustees, the settlor and/or beneficial owner of the funds and of any controller or similar person having power to appoint or remove the trustees, should be requested and retained. Financial institutions should also obtain written confirmation from the trustees that they are themselves aware of the true identity of the underlying principals, i.e., the settlors/named beneficiaries, and that there are no anonymous principals.

463. Although paragraphs 7 and 8(a)(i) of Regulation 4 refers to determining whether an applicant for business is acting on behalf of a third party and recording information relating to that determination, the references to third parties will not necessarily capture all beneficial owners. It is possible that beneficial owners may be embedded in a relationship some distance (e.g., by virtue of layers of legal persons/arrangements) from the applicant for business so that the applicant for business is not acting on their behalf. The FATF's definition of beneficial owner is the natural person who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. The definition also incorporates

those persons who exercise ultimate effective control over a legal person or arrangement. The Guidance Notes contain comprehensive provisions on beneficial ownership and meetings with the Bank of Mauritius and financial institutions made it clear that ascertaining beneficial ownership is viewed seriously.

464. Turning to Criterion 5.5.2, paragraphs 6.56 to 6.76 of the Guidance Notes on AML/CFT provide comprehensive information on account opening for institutions and the requirements to obtain beneficial ownership information as discussed in respect of Criterion 5.4(b) and Criterion 5.5.

465. Paragraph 6.34 states that the main objective of financial institutions in the case of entities should be to identify those who have control over the business and the assets. Financial institutions are advised that, as with personal accounts, 'know your customer' is an ongoing process. If changes to the company structure or ownership occur subsequently, or if suspicions are aroused by a change in the nature of the business transacted or the profile of payments through a company account, further checks should be made to ascertain the reason for the changes.

466. With reference to Criterion 5.5.2, although the Mission considers the Criterion to be met, it is recommended that an explicit requirement for institutions to understand the ownership and control structure of the customer should be included in the Guidance Notes. Currently, this requirement is only implied in the Guidance Notes although this understanding appears to be sought in practice by institutions. However, Criterion 5.5.2(b) is asterisked and law or regulation does not require a determination of the natural persons who ultimately own or control the customer.

467. With reference to Criteria 5.5 and 5.5.1, Regulation 4 of the Financial and Anti- Money Laundering Regulations 2003 apply to the institutions regulated by the FSC.

468. Under section 4 of the FSC's Codes, financial institutions must identify and verify the identity of the beneficial owner such that the financial institution is satisfied that he knows who the beneficial owner is. The beneficial owner is described as the natural person (s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also considered including those persons who exercise ultimate effective control over a legal person or arrangement.

469. Turning to Criterion 5.5.2, under section 4.1 of the FSC's Codes, where the applicant for business is a legal person or arrangement, financial institutions must identify and verify the identity of the principals thereof, that is, those natural persons with a controlling interest and those who comprise the mind and management of the legal person or arrangement. A principal of an applicant for business is any person who is a beneficial owner of, or who has a beneficial interest in, or has direct or indirect control of any relationship established with a financial institution and include settlors or contributors of capital (whether named or otherwise), trustees, beneficiaries, protectors, enforcers, company director, controlling shareholders, account signatories, significant partners including limited partners, and any person operating under a Power of Attorney.

470. In footnote 6 to the Codes the FSC notes that it understands that in the case of discretionary trusts it is not always possible to expect a licensee to obtain verification of identity of all class members. It can also be difficult to verify the identity of minor beneficiaries. In such cases, the FSC considers that verification of identity of such beneficiaries may be delayed until prior to the making of any distributions to them. In footnote 7 to the Codes the FSC states that it expects licensees to verify the identity of at least two directors of corporate applicants for business. In footnote 8 to the Codes the FSC advises that it regards as controlling shareholder- any person who is entitled to exercise, or control the exercise of, 20 per cent or more of the voting power at general meetings of the company or one which is in a position to control the appointment and/or removal of directors holding a majority of voting rights at board meetings on all or substantially all matters. In footnote 9

to the Codes the FSC advises that it regards as significant any partner owning or controlling 20 percent or more of a partnership.

471. With reference to Criterion 5.5.2, the requirements of the Codes implicitly require institutions to understand the ownership and control structure of the customer. Also, law or regulation does not require a determination of the natural persons who ultimately own or control the customer.

Information on Purpose and Nature of Business Relationship (c. 5.6):

472. Regulation 4(1)(b) of the Financial Intelligence and Anti-Money Laundering Regulations 2003 provides that financial institutions should establish and verify the nature of the applicant's business, his financial status and the capacity in which he is entering into the business relationship with the relevant person. In addition, paragraph 6.15 of the Bank of Mauritius Guidance Notes on AML/CFT states that when a business relationship is being established, the nature of the business that the customer expects to conduct with the financial institutions should be ascertained at the outset, to show what might be expected as normal activity. In order to be able to judge whether a transaction is or is not suspicious, financial institutions should have a clear understanding of the legitimate business of their customers and effect an ongoing monitoring of the activities of those customers in order to detect whether those transactions conform or otherwise with the normal or expected transactions of that customer. Paragraph 6.27 provides that financial institutions need to obtain all information necessary to establish to their satisfaction the identity of the applicant for business and the purpose and nature of the business relationship or transaction.

473. Section 4 of the FSC's Codes require that the customer due diligence measures undertaken by financial institutions must include obtaining information on the purpose and intended nature of the business relationship.

Ongoing Due Diligence on Business Relationship (c. 5.7; 5.7.1 & 5.7.2):

474. With respect to ongoing due diligence, provisions are not contained in law or regulation, while paragraphs 6.107 to 6.109 of the Guidance Notes include provisions on ongoing monitoring of accounts and transactions. The guidance is comprehensive.

475. Ongoing monitoring is described as an essential aspect of effective KYC procedures. The extent of the monitoring needs to be risk-sensitive. For all accounts, financial institutions should have systems in place to detect unusual or suspicious patterns of activity. Certain types of transactions should alert financial institutions to the possibility that the customer is conducting unusual or suspicious activities. They may include transactions that do not appear to make economic or commercial sense, or that involve large amounts of cash deposits that are not consistent with the normal and expected transactions of the customer. Very high account turnover, inconsistent with the size of the balance, may indicate that funds are being "washed" through the account. Examples of suspicious activities are given at annexes E and F. Financial institutions are enjoined to study money laundering or terrorist financing typologies coming their way or published by the FATF.

476. Financial institutions are required to undertake intensified monitoring for higher risk accounts. Every financial institution should set key indicators for such accounts, taking note of the background of the customer, such as the country of origin and source of funds, the type of transactions involved, and other risk factors. For higher risk accounts:

Financial institutions should ensure that they have adequate management information systems to provide managers and MLROs with timely information needed to identify, analyze and effectively monitor higher risk customer accounts. The types of reports that may be needed in the AML/CFT area include transactions made through an account that are unusual; and

Financial institutions should develop a clear policy and internal guidelines, procedures and controls and remain especially vigilant regarding business relationships with PEPs and high profile individuals or with persons and companies that are clearly related to or associated with them. As all PEPs may not be identified initially and since existing customers may subsequently acquire PEP status, regular reviews of at least the more important customers should be undertaken.

477. The Guidance Notes do not include a specific requirement for institutions to ensure that documents, data or information collected under the customer due diligence process is kept up to date and relevant by undertaking reviews of existing records, particularly for higher risk customers.

478. As stated above, provisions on ongoing due diligence are not contained in law or regulation. Paragraph 4 of the FSC's Codes states that customer due diligence measures undertaken by a financial institution must include conducting ongoing due diligence on the business relationship. Ongoing customer due diligence measures should also include scrutiny of transactions throughout the course of the business relationship to ensure that the transactions in which the customer is engaged are consistent with the financial institution's knowledge of the customer and his business and risk profile (including where necessary, the source of funds). The Codes do not cover the keeping up to date of documents, data or information collected under the customer due diligence process.

Risk – Enhanced Due Diligence for Higher Risk Customers (c. 5.8):

479. Regulation 9 of the Financial Intelligence and Anti-Money Laundering Regulations 2003 requires banks, financial institutions and cash dealers to implement internal controls and other procedures to combat money laundering and financing of terrorism, which must include programs for assessing risk relating to money laundering and financing of terrorism. The regulation also requires such internal controls and procedures to include enhanced due diligence procedures with respect to persons and business relations and transactions carrying high risk and with persons established in jurisdictions that do not have adequate systems in place against money laundering and financing of terrorism.

480. Paragraph 6.18 of the Guidance Notes on AML/CFT specifies that regulation 9(d) of the Financial Intelligence and Anti-Money Laundering Regulations 2003 requires financial institutions to implement due diligence procedures with respect to persons and business relations and transactions carrying high risk and with persons established in jurisdictions that do not have adequate systems in place against money laundering and the financing of terrorism. Paragraph 6.19 onwards provide that, accordingly, financial institutions should develop clear customer acceptance policies and procedures, including a description of the types of customer that are likely to pose a higher than average risk to a financial institution. In preparing such policies, factors such as the customer's background, nature of business or social engagement, country of origin with a view to determining whether those countries have adequate systems in place against money laundering and the financing of terrorism, public or high profile position and other risk indicators should be considered. Customer acceptance policies and procedures should accordingly be graduated and require more extensive due diligence for higher risk customers, such as politically exposed persons where decisions to enter into such business relationships should be taken with the concurrence of senior management.

481. Regulation 9 of the Financial Intelligence and Anti-Money Laundering Regulations 2003 also applies to the entities regulated by the FSC.

482. In addition, paragraph 4.6 of the FSC's Codes requires that financial institutions must apply enhanced due diligence measures in all high risk business relationships, customers and transactions. These include both

high risk business relationships assessed by the financial institution based on the customer's individual risk status (to which provision, the mission suggests reference to transactions could also be made) and the following categories of business relationships: PEPs, non-face to face business relationships and NCCTs and non-equivalent jurisdictions. Where this is the case, financial institutions may rely upon copies that have been appropriately certified and when designing internal procedures, licensees must have regard to the need for enhanced due diligence and additional monitoring procedures for transactions and business relationships involving NCCTs and non-equivalent jurisdictions.

Risk – Application of Simplified/Reduced CDD Measures when appropriate (c. 5.9):

483. Regulation 5 of the Financial Intelligence and Anti-Money Laundering Regulations 2003 lists instances where financial institutions falling under the purview of the Bank of Mauritius are not required to comply with the identification procedures. It shall not be a requirement for a relevant person to comply with identification procedures where:

- (a) the applicant for business is itself a bank, a financial institution or a cash dealer; and is based either in Mauritius or in an equivalent jurisdiction;
- (b) in respect of a life insurance policy the annual premium does not exceed 40,000 rupees; or the single premium does not exceed 100,000 rupees; or
- (c) the proceeds of a one-off transaction are not paid, but are directly reinvested in another transaction on behalf of the person to whom the proceeds are payable, provided the relevant person keeps a record of those transactions.

484. Notwithstanding this provision of the regulations, reduced or simplified customer due diligence measures are still required in some cases as the regulation goes on to state that in the circumstances referred to at (a) above, financial institutions are required to obtain and retain from the applicant for business, written documentary evidence of the existence of its legal entity and of its regulated status. Simplified or reduced customer due diligence is not required for the insurance policies at (b) but the Bank of Mauritius advised that only insurance sector licensees could act for customers in respect of such products.

485. Financial institutions falling under the responsibility of the Bank of Mauritius have also been provided with guidance with respect to instances where identification procedures need not be applied. Paragraphs 6.91 to 6.94 of the Guidance Notes on AML/CFT issued by the Bank state that where an applicant for business is itself a financial institution based in Mauritius or in a jurisdiction which has a legislation equivalent to Mauritius as specified in Appendix B verification of identity shall not be required. This language still requires identification to be made. Appendix B lists 35 jurisdictions which are deemed by the Bank of Mauritius to have legislation/status/procedures equivalent to Mauritius. The financial institution should, however, obtain and retain a written declaration from the other financial institution that it holds documentary evidence of the existence of the legal entity, its regulated or listed status. In the case of:

Public companies listed on a recognized, designated and approved Stock/Investment Exchange as shown in Appendix A or subsidiaries thereof, financial institutions are not required to verify the identity of their directors or significant shareholders. Verification of the identity of their authorized signatories will be enough. Financial institutions are, however, required to obtain a copy of the annual report and accounts of such entities and to keep them on record. Appendix A contains lists of 13 recognized investment exchanges, 51 designated investment exchanges, 86 approved exchanges and the list of EEA Regulated Markets under Article 16 of the European Union Investment Services Directive (some of which are

contained in the other lists).

Parastatal bodies in Mauritius, documentary evidence of the residential address of their authorized signatories may not be sought. The Mauritius authorities have advised the mission that such bodies are well known and obtaining such documentary evidence may not be necessary.

486. The Guidance also repeats the provisions of regulation 5 in relation to a one-off transaction.

487. Regulation 5 of the Financial Intelligence and Anti-Money Laundering Regulations 2003 apply equally to entities regulated by the FSC.

488. Paragraph 4.5 of the FSC's Codes states that in general the full range of customer due diligence measures should be applied to all applicants for business. However, where the risk of money laundering or the financing of terrorism is lower and where information on the identity of the applicant and of the beneficial owner of the applicant for business is publicly available or where adequate checks and controls exist elsewhere in national systems, it might be reasonable for licensees to apply reduced or simplified due diligence measures when identifying and verifying the identity of the applicant for business. By way of example the Codes allow financial institutions to apply reduced or simplified CDD measures where applicants for business include:

A regulated financial services business based in Mauritius or in an equivalent jurisdiction, provided that the financial institution is satisfied that the applicant for business is not acting on behalf of underlying principals. Financial institutions must obtain and retain documentary evidence of the existence of the financial services business and of its regulated status. Regulated for the purposes of the Codes means that the entity must be licensed or registered and should be subject to the supervision of a public authority (empowered with either regulatory or criminal sanction) for AML/CFT purposes. The same lists of equivalent jurisdictions and Recognized/Designated/Approved Stock/Investment Exchanges as are contained in the Bank of Mauritius Guidance Notes are contained in appendices to the Codes. Appendix 2 states that the criteria used to determine whether a jurisdiction has equivalent anti-money laundering legislation includes: FATF membership, EU membership, information available to the FSC about the AML/CFT laws of certain FATF/EU jurisdictions excluded from the list and information available to the FSC about the AML/CFT laws of certain non-EU and FATF jurisdictions that do appear on the list;

Public companies listed on the Stock Exchange of Mauritius or on recognized, designated and Approved Stock/Investment Exchanges or subsidiaries thereof. Financial institutions must obtain a copy of the annual report and accounts of such entities and must verify that the individuals that purport to act on behalf of such entities have the necessary authority to do so. Financial institutions must also obtain and retain documentary evidence of the existence of the public company and of its listed status;

Government administrations or enterprises and statutory bodies;

A pension, superannuation or similar scheme that provides retirement benefits to employees where contributions are made by way of deduction from wages and the scheme rules do not permit the assignment of a member's interest under the scheme. In all transactions undertaken on behalf of an employer-sponsored scheme Financial institutions must at a minimum identify and verify the identity of the employer and the trustees of the scheme (if any) as per the criteria set out in the Code.

489. Where financial institutions determine that simplified or reduced CDD measures should apply to an applicant for business that does not fall within the examples above, financial institutions must obtain the FSC's prior approval before applying such reduced or simplified measures. In considering such applications, the FSC will take into account the criteria established by licensees for such risk determination and the extent to which

licensees are able to justify such criteria. The Codes add that for the avoidance of doubt, reduced or simplified due diligence measures do not apply to applicants for business acting as trustees.

Risk – Simplification / Reduction of CDD Measures relating to overseas residents (c. 5.10):

490. The requirements of regulation 5 of the Financial Intelligence and Anti-Money Laundering Regulations 2003 and paragraphs 6.91 to 6.94 of the Guidance Notes on AML/CFT as outlined above limit the application of simplified or reduced customer due diligence measures to jurisdictions which the Bank of Mauritius considers to be equivalent. Hence, the application of simplified or reduced customer due diligence measures is limited to jurisdictions that Mauritius is satisfied are in compliance with and have effectively implemented the FATF Recommendations.

491. The requirements of regulation 5 of the Financial Intelligence and Anti-Money Laundering Regulations 2003 and paragraph 4.5 of the FSC's Codes as outlined above limit the application of simplified or reduced customer due diligence measures to jurisdictions which the FSC considers to be equivalent except for certain transactions in life insurance products. Hence, the application of simplified or reduced customer due diligence measures is limited to jurisdictions that Mauritius is satisfied are in compliance with and have effectively implemented the FATF Recommendations except for these life insurance transactions.

Risk – Simplified/Reduced CDD Measures Not to Apply when Suspicions of ML/TF or other high risk scenarios exist (c. 5.11):

492. Section 14 of the FIAMLA provides that any transaction which a bank, financial institution, cash dealer or member of a relevant profession or occupation has reason to believe may be a suspicious transaction must be reported to the Financial Intelligence Unit. Regulation 4 of the Financial Intelligence and Anti-Money Laundering Regulations 2003 provides that the identity of the applicant for business must be verified, inter alia, in respect of a one-off transaction, where a relevant person dealing with the transaction knows or has reasonable grounds to suspect that the transaction is a suspicious transaction. Paragraphs 6.91 to 6.94 of the Guidance Notes on AML/CFT provide examples of when reduced or simplified customer due diligence measures may be undertaken. Whilst these paragraphs provide the only circumstances in which reduced or simplified customer due diligence measures may be undertaken, institutions are not prevented from undertaking such measures when there is a suspicion of money laundering or terrorist financing.

493. Section 14 of the FIAMLA and regulation 4 of the underlying regulations apply equally to institutions regulated by the FSC. Reduced or simplified customer due diligence measures do not apply in circumstances other than what is set out in paragraph 4.5 of the FSC's Codes as specified above. The FSC has advised that nothing in the Codes suggests that section 4.3 overrides the requirements under section 4 to undertake customer due diligence where there is a suspicion of money laundering or terrorist financing. Nevertheless, institutions are not explicitly prevented from undertaking reduced or simplified measures where there is a suspicion of ML/FT.

Risk Based Application of CDD to be Consistent with Guidelines (c. 5.12):

494. Financial institutions are not permitted to undertake reduced or simplified customer due diligence measures except as specified in paragraphs 6.91 to 6.95 of the Guidance Notes on AML/CFT.

495. Under paragraph 4.5 of the Codes issued by the FSC, where licensees determine that reduced or simplified customer due diligence measures should apply to an applicant for business that does not fall within

the examples listed in the paragraph, licensees should first obtain the FSC's approval. In considering applications, the FSC will take into account the criteria established by licensees for such risk determination and the extent to which licensees are able to justify such criteria. .

Timing of Verification of Identity – general rule (c. 5.13):

496. It is mandatory for financial institutions to verify the identity of customers before opening any account, accepting any deposit of money and securities and renting a safe deposit box. Section 55 of the Banking Act 2004 provides that every financial institution shall only open accounts for deposits of money and securities, and rent out safe deposit boxes, where it is satisfied that it has established the true identity of the person in whose name the funds or securities are to be credited or deposited or the true identity of the lessee of the safe deposit box, as the case may be. This provision is repeated in paragraph 6.01 of the Guidance Notes on AML/CFT, while paragraph 6.02 emphasizes the importance of verifying the true identity of customers before opening any relationship.

497. Regulation 3 of the Financial Intelligence and Anti-Money Laundering Regulations 2003 states that no bank or financial institution shall allow any person with whom it forms a business relationship to conduct any transaction by means of a reference account unless the identity of the applicant has been verified in accordance with the regulations. As discussed in connection with Criterion 5.5, regulation 4 states that relevant persons must, at the time of establishing the business relationship take reasonable measures to determine whether the applicant for business is acting on behalf of a third party. Where the third party is a natural person, the identity must be recorded. Where the third party is a body corporate, proof of identity must be recorded.

498. Paragraph 6.26 of the Guidance Notes on AML/CFT issued by the Bank of Mauritius states that if funds that are to be deposited or transferred are being supplied on behalf of a third party, then the identity of the third party should be established and verified. Paragraph 6.27 goes on to say that institutions should keep on their files full information on ultimate beneficial owners in case they are not the same persons as the applicant for business.

499. Regulation 4(7) of the Regulations requires reasonable measures to be taken to determine whether the applicant for business is acting on behalf of a third party at the time of establishing a business relationship. Criterion 5.5 discusses the potential difference between third parties in these circumstances and beneficial owners. The Guidance Notes require information to be obtained on beneficial ownership (see the discussion at 5.5). It is an implicit requirement of the Guidance Notes that such information should be obtained when the identity of the applicant for business is being obtained. In practice, it appeared to the mission that beneficial ownership was being obtained by financial institutions at customer take-on except at one institution where reduced or simplified customer due diligence measures would apply in some circumstances.

500. The regulations also apply to financial institutions regulated by the FSC. Paragraph 4.8 of the FSC's Codes require that financial institutions must take all reasonable measures to complete all customer due diligence measures for all applicants for business prior to the establishment of a new client relationship and prior to providing any financial services. Paragraph 4.1 makes it clear that, where the applicant for business is a legal person or legal arrangement, licensees must verify the identity of the principals thereof – a principal of an applicant for business is any person who is a beneficial owner of, or who has a beneficial interest in, or has direct or indirect control of any relationship established with the licensee.

501. Paragraph 4.8 goes on to state that where it is necessary to provide financial services to an applicant for business prior to the completion of customer due diligence measures, the decision to do so must be appropriately authorized by senior management and the reasons recorded in writing. The customer due

diligence measures must in any event be satisfactorily completed within thirty days of the establishment of the client relationship.

502. The basic rule is to take to verify the identity of the customer and beneficial owner before establishing the business relationship or conducting transactions for occasional customers.

Timing of Verification of Identity – treatment of exceptional circumstances (c.5.14 & 5.14.1):

503. The combination of section 55 of the Banking Act, regulations 3 and 4 of the Financial Intelligence and Anti-Money Laundering Regulations 2003 and paragraphs 6.26 and 6.27 of the Guidance Notes on AML/CFT do not contain any explicit provisions for delaying verification.

504. As indicated above, under paragraph 4.8 of the FSC's Codes, where it is necessary to provide financial services to an applicant for business prior to completion of customer due diligence measures, the decision to do so must be appropriately authorized by senior management and the reasons recorded in writing. The customer due diligence measures must in any event be satisfactorily completed within thirty days of the establishment of the client relationship. The paragraph also requires that the financial institution must have precise procedures in place concerning the conditions under which it may act for an applicant for business before completion of the measures. These procedures should, inter alia, limit the number and types of transactions that can be processed.

505. Criterion 5.14(a) provides that verification of identity of the customer and beneficial owner may be permitted following the establishment of the business relationship provided that it occurs as soon as reasonably possible. The Mauritius authorities have confirmed that completion of customer due diligence measures within thirty days is as soon as reasonably possible in the Mauritius business environment. The Codes do not include a requirement that verification of identity may only be delayed until following the establishment of the business relationship if this is essential not to interrupt the normal course of business. Institutions are required to put in place precise procedures concerning the conditions in which they will act for applicants for business, including the limitation of the number and types of transactions, but it would be helpful if the Codes were to explicitly say that institutions must effectively manage the money laundering risks.

Failure to Complete CDD before commencing the Business Relationship (c. 5.15):

506. As the discussion at Criterion 5.14 above makes clear, verification of identity must be completed before an account is opened, business relations commenced or a transaction performed.

507. Regulation 4(9) of the Financial Intelligence and Anti-Money-Laundering Regulations 2003 provides that, where a relevant person is not able to determine that the applicant for business is acting for a third party, a suspicious transaction report must be made to the Financial Intelligence Unit. Paragraphs 8.01 onwards of the Guidance Notes provide comprehensive provisions on the recognition and reporting of suspicious transactions. Paragraph 8.05 states that sufficient guidance must be given to staff to enable them to recognize suspicious transactions. Paragraph 8.06 notes that there is an obligation on all staff to report in writing to the Money Laundering Reporting officer suspicions of money laundering or terrorist financing. There is not an explicit obligation to consider making a suspicious transaction report where the financial institution is unable to meet the required customer due diligence measures. One institution advised the mission that it would not routinely consider making a suspicious transact report if it could not complete customer due diligence.

508. Regulation 4(9) of the Financial Intelligence and Anti-Money Laundering Regulations 2003 applies to entities regulated by the FSC. As the discussion at Criterion 5.13 above makes clear, verification of identity can be delayed by institutions. Paragraph 4.8 of the Codes issued by the FSC state that in the event that satisfactory

customer due diligence documentation has not been obtained financial institutions must have procedures in place to disengage from such relationships. Financial institutions should consider the potential risks inherent in engaging in any form of relationship with any applicant prior to satisfactorily completing CDD measures. Finally, the paragraph advises that failure or inability to obtain satisfactory customer due diligence documentation may in certain circumstances constitute a suspicion requiring a report to be made to the Financial Intelligence Unit.

509. Criterion 5.14 allows verification of identity to be delayed. The reference in the Codes to being able to disengage from relationships is not the same as being required by enforceable means to not open the account, commence the business relationship or perform the transaction when the institution is unable to comply with customer due diligence measures. Although institutions are advised that failure or inability to obtain satisfactory customer due diligence documentation may be suspicious, institutions are not required in a way which is enforceable to explicitly consider making a suspicious transaction report.

Failure to Complete CDD after commencing the Business Relationship (c. 5.16):

510. Criterion 5.16 covers business relationships which have already commenced and cross-refers to Criteria 5.2(e), 5.14, 5.17, and 5.3 to 5.5. The AML/CFT framework does not contain a provision in law or regulation which requires financial institutions to undertake customer due diligence measures when the institution has doubts about the veracity or adequacy of previously obtained identification data. In some of the circumstances envisaged by Criterion 5.16 the mission understands that a decision was made not to require institutions in certain circumstances to terminate relationships. There is not an explicit, enforceable requirement to consider making a suspicious transaction report when the business relationship has already commenced.

Existing Customers – CDD Requirements (c. 5.17):

511. In the case of accounts opened prior to 1989, i.e. for the period prior to the coming into force of the Banking Act 1988, banks and cash dealers were, under sections 40(2) and 40(3) of the Banking Act 1988, given until the end of 1990 to verify the true identity of their customers and to close any account for which the true identity of the customer could not be verified. It has been mandatory since the 1988 Act for both banks, nonbank deposit taking institutions and cash dealers to verify the true identity and address of their customers before opening any account, issuing a passbook, entering into a fiduciary relationship, renting a safe deposit box or establishing any other business relationship. In 2004, the Banking Act 1988 was replaced by the Banking Act 2004. Section 55 of the Banking Act 2004 requires banks to establish the true identity of customers.

512. In relation to relationships entered into prior to 21 June 2003, the date of the coming into operation of the Financial Intelligence and Anti-Money Laundering Regulations 2003, paragraph 6.08 of the Bank of Mauritius Guidance Notes on AML/CFT states that where financial institutions believe that they have not satisfactorily established or have doubts or suspicion regarding the true identity of their customer, they should follow the identification procedures stipulated in the Guidance Notes on AML/CFT issued by the Bank of Mauritius.

513. In a Code issued in 2003, the FSC expected licensees to proceed to verify the identity of all existing applicants for business in accordance with the criteria within the Code and to complete the exercise within a maximum period of twenty-four months from the date of the issue of the Code. The 2005 Codes do not contain provisions on existing customers. Those on-site inspections undertaken by the FSC have included reviews of

verification of existing customers. The FSC advised the mission that, where inspections had found lapses in such verification, it required licensees to remedy these lapses within a specified timeframe and to inform the FSC when the remedies were complete. Nevertheless, the enforceability of the 2003 initiative on existing customers is not clear in light of the responsibility placed on licensees. The mission also noted that one firm licensed by the FSC Codes advised that it had not reviewed the customer due diligence for existing customers.

Existing Anonymous-account Customers – CDD Requirements (c. 5.18):

514. The provisions of the 1988 and 2004 Banking Acts outlined in the discussion at Criterion 5.17 above and the Bank of Mauritius Guidance Notes on AML/CFT mean that anonymous accounts do not exist.

515. With reference to the FSC, in light of the comments at Criterion 5.17, it is theoretically possible that anonymous accounts might exist.

Implementation

516. The institutions supervised by the Bank of Mauritius appeared to comply with the generality of the standards laid down in the AML/CFT framework in respect of Recommendation 5. With reference to anonymous or fictitious accounts, the mission noted a report in the local press to the effect that a number of bank accounts had been uncovered in local banks which were fronts for local prominent Mauritians who were apparently evading tax. Following the press article, the Bank requested all banks to confirm whether they maintained any anonymous or fictitious account. All banks confirmed that they did not hold any fictitious or anonymous accounts. Banks in Mauritius were more international in their outlook than other firms and; as a generality it was clearly their intention to attract increasing number of overseas customers. They were clearly alive to the importance of customer due diligence. Customer due diligence appeared to be ascertained when establishing business relations. The identity of customers was verified and there was awareness of the need to verify the identity of beneficial owners of legal persons and legal arrangements (although one bank would sometimes verify the immediate beneficial owners but not necessarily the ultimate beneficial owners if there was a chain of legal persons/arrangements and of understanding the ownership and control structures of customers and the purpose and nature of business relationships. Ongoing due diligence was carried out. Banks were aware of the need to understand the risk posed by business relationships and that enhanced due diligence is required for higher risk categories. As indicated above one firm indicated it would not routinely consider making a suspicious transaction report if it could not complete customer due diligence. Other firms regulated by the Bank of Mauritius met by the mission, which carried out non-bank deposit taking business and foreign exchange business, had domestic customer bases. The customer due diligence required for these businesses is less sophisticated than that required for the banks. One firm was very well aware of the Guidance Notes. In a number of these businesses, whilst they were aware of AML/CFT there was a focus on mitigating commercial risk. Even in those businesses that were less knowledgeable about AML/CFT compared with the banks, customer due diligence appeared to be adequate. The Bank of Mauritius conducts comprehensive on-site inspection of the customer due diligence measures and other AML/CFT measures of regulated entities.

517. The mission found that some institutions subject to supervision by the FSC had sound AML/CFT measures in place. One firm, which was seeking to attract international customers, had appointed external consultants to enhance its procedures so that the firm could meet the challenges of an increased risk profile, and its approach was manifestly serious and on a par with the banks. A large firm in another sector regulated by the FSC had devoted enormous resources to seeking to ensure that customer due diligence of old and new customers is satisfactory and obtained at the appropriate time. Another firm with a local customer base also had high standards of customer due diligence and married the mitigation of commercial and anti-money laundering risk very well. However, in other cases adequate AML/CFT measures were not in place. One institution had yet to appoint a Money Laundering Reporting Officer notwithstanding on-site inspections over two or three years

by the FSC and a recommendation by the FSC that such an officer should be appointed. At the time of the mission that same firm was in the process of establishing formal procedures to comply with the relevant Code. Another institution requested by the mission to explain how it would advise the FSC on how it complied with the relevant Code found it difficult to do so. Another firm concentrated on mitigating commercial risk – it was not aware of the contents of the Codes – because none of the Codes applied to it. Following the assessment, the FSC advised that the Codes issued by the FSC apply to licensees falling within the definition of financial institutions under the FIAMLA and that where the risk was considered to be relatively high, namely with respect to investment businesses, the definition of investment businesses under the Code for Investment Businesses was extended by the FSC to capture all operators within that sector. The FSC has also advised that, with regard to other institutions licensed by the FSC and not captured by the definition of financial institution under the FIAMLA, the risk of money laundering appeared to be low and therefore no AML/CFT measures were issued by the FSC. No written assessment of risk was seen by the mission.

Foreign PEPs—Requirement to Identify (c. 6.1):

518. Paragraphs 6.95 to 6.102 and 6.109 of the Guidance Notes on AML/CFT contain detailed provisions on PEPs.

519. The Guidance Notes on AML/CFT issued by the Central Bank of Mauritius state that business relationships with individuals holding important public positions and with persons or companies clearly related to them may expose a financial institution to significant reputational and/or legal risks. Such politically exposed persons are individuals who are or have been entrusted with prominent public functions, including heads of state or of government, senior politicians, senior government, judicial or military officials, senior executives of publicly owned corporations and important political party officials. The possibility exists that such persons may abuse their public powers for their own illicit enrichment through the receipt of bribes, embezzlement, etc. There is a compelling need for a financial institution considering a relationship with a person whom it considers to be a PEP to identify that person fully, as well as people and companies that are clearly related to him/her.

520. Financial institutions should gather sufficient information from a new customer, and check publicly available information, in order to establish whether or not the customer is a PEP. Financial institutions should investigate the source of funds before accepting a PEP. Financial institutions can reduce risk by conducting detailed due diligence at the out-set of the relationship and on an ongoing basis where they know or suspect that the business relationship is with a politically exposed person. All financial institutions should assess which countries, with which they have financial relationships, are most vulnerable to corruption. Where financial institutions have business in countries vulnerable to corruption, they should establish who are the senior political figures in that country and, should seek to determine whether or not their customer has any connections with such individuals (for example they are immediate family or close associates). Financial institutions should note the risk that individuals may acquire such connections after the business relationship has been established.

521. In particular detailed due diligence should include:

Close scrutiny of any complex structures (for example, involving companies, trusts and multiple jurisdictions) so as to establish that there is a clear and legitimate reason for using such structures bearing in mind that most legitimate political figures would expect their personal affairs to be undertaken in a more than usually open manner rather than the reverse.

Every effort to establish the source of wealth (including the economic activity that created the wealth) as well as the source of funds involved in the relationship – again establishing that these are legitimate, both at the outset of the relationship and on an ongoing basis.

The development of a profile of expected activity on the business relationship so as to provide a basis for future monitoring. The profile should be regularly reviewed and updated.

A review at senior management or board level of the decision to commence the business relationship and regular review, on at least an annual basis, of the development of the relationship.

Close scrutiny of any unusual features, such as very large transactions, particular demands for secrecy, the use of cash or bearer bonds or other instruments which break an audit trail, the use of small and unknown financial institutions in secrecy jurisdictions and regular transactions involving sums just below a typical reporting amount.

522. Paragraph 6.109 states that there should be intensified monitoring for higher risk accounts. Every financial institution should set key indicators for such accounts. For higher risk accounts financial institutions should develop a clear policy and internal guidelines, procedures and controls and remain especially vigilant regarding business relationships with PEPs and high profile individuals or with persons and companies that are clearly related to or clearly associated with them. As all PEPs may not be identified initially and since existing customers may subsequently acquire PEP status, regular reviews of at least the more important customers should be undertaken.

523. The description of PEPs covers individuals who are or have been entrusted with prominent public functions in line with the FATF definition but, unlike the FATF definition only includes immediate family or close associates when a PEP is a senior political figure in a country vulnerable to corruption. Risk management systems are required to be in place to determine whether a customer or potential customer is a PEP – however, these provisions and the ascertaining of source of wealth and funds do not extend to beneficial owners. Senior management approval is not specified as being required to continue the relationship when a customer or beneficial owner is found to be, or subsequently becomes, a PEP once a customer has been accepted.

524. Under paragraph 4.6 of the FSC's Codes licensees should apply enhanced due diligence measures in all high risk business relationships, customers and transactions. These include both high risk business relationships assessed by the licensee based on the customer's individual risk status and certain categories of business relationships defined by the FSC. These include PEPS.

525. Paragraph 4.6.1 states PEPs are individuals who are or who have been entrusted with prominent public functions (for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations and important political party officials). Licensees should be aware that business relationships with family members of PEPs are deemed to pose a greater than normal money laundering risk to licensees by virtue of the potential for them to have benefited from corruption.

526. Licensees must know when they are in a relationship concerning a PEP and must be able to demonstrate the application of enhanced due diligence procedures in conducting such relationships. Licensees must have appropriate risk management systems to determine whether an applicant for business is a PEP. In addition, licensees must develop a clear policy on the acceptance of business relationships with such individuals. The approval of senior management should be obtained prior to establishing relationships with such applicants for business. Licensees must take reasonable measures to establish the source of wealth and

source of funds of a PEP. Lastly, licensees must conduct enhanced ongoing monitoring of their business relationships with PEPs.

527. The risks associated with PEPs differ according to the particular countries concerned. The risk of corruption in certain countries is higher than it is in others. Licensees should note the Transparency International Corruption Perceptions Index and take appropriate measures to manage the increased risks of conducting business with PEPs.

528. The description of PEPs in the Codes is close to that of the definition issued by the FATF except that the Codes do not refer to close associates. Risk management systems do not require financial institutions to determine whether a beneficial owner is a PEP. Senior management approval is not required once a customer is identified as a PEP after take-on, the PEP provisions in the Codes do not cover beneficial owners.

Domestic PEPs—Requirements (Additional Element c. 6.5):

529. Paragraph 6.95 of the Guidance Notes on AML/CFT provides that business relationships with individuals holding important public positions and with persons or companies clearly related to them may expose a financial institution to significant reputational and/or legal risks. Such politically exposed persons are individuals who are or have been entrusted with prominent public functions, including heads of state or of government, senior politicians, senior government, judicial or military officials, senior executives of publicly owned corporations and important political party officials.

530. For the purposes of the FSC's Codes, PEPs are individuals who are or who have been entrusted with prominent public functions (for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations and important political party officials). Hence, PEPs include persons holding prominent public functions domestically.

Domestic PEPs—Ratification of the Merida Convention (Additional Element c. 6.6):

531. Banks met by the mission were aware of the need to have enhanced customer due diligence measures for PEPs and appeared to clearly meet the relevant provisions of the Guidance Notes. Other entities regulated by the Bank of Mauritius had domestic customer bases—there was awareness of PEPs and the potential risks they posed. The Guidance Notes, which apply to domestic PEPs, appeared to be met. As discussed in the implementation paragraphs for Recommendation 5 some firms regulated by the FSC had very good AML/CFT standards—these applied equally to meeting the provisions of the Codes on PEPs. Also, as specified at Recommendation 5 at the time of the evaluation, one firm was in the process of establishing formal procedures to comply with the relevant Code and another institution stated that it would find it difficult to explain to the mission how it would advise the FSC on how it complied with the relevant Code. The Codes did not apply to one firm. One institution regulated by the FSC was not aware of the concept of PEPs.

Requirement to Obtain Information on Respondent Institution (c. 7.1):

532. Financial institutions falling under the purview of the Bank of Mauritius have been provided with guidance on correspondent services in paragraph 6.87 onwards of the Guidance Notes on AML/CFT.

533. Particular care should be taken where correspondent services involve jurisdictions where the correspondent financial institutions have no physical presence. If financial institutions fail to apply an appropriate level of due diligence to such services, they expose themselves to a range of risks and may find

themselves holding and/or transmitting money linked to terrorism, corruption, fraud or other illegal activity. Financial institutions should gather sufficient information about their correspondents to understand fully the nature of the correspondent's business. Factors to consider include: information about the correspondent's management, major business activities, where they are located and its money-laundering prevention and detection efforts; the identity of any third party entities that use the correspondent services; and the condition of the financial institution regulation and supervision in the correspondent's country. Financial institutions should only establish correspondent relationships with foreign financial institutions that are effectively supervised by the relevant authorities and have effective customer acceptance and KYC policies.

534. In particular, financial institutions should refuse to enter into or continue a correspondent relationship with a financial institution incorporated in a jurisdiction in which the correspondent has no physical presence and which is unaffiliated with a regulated financial group (i.e., it may involve a shell financial institution). Financial institutions should pay particular attention when continuing relationships with correspondents located in jurisdictions that have poor KYC standards or have been identified as being "non-cooperative" in the fight against anti-money laundering. Financial institutions should establish that their correspondents have due diligence standards as set out in these Guidance Notes, and employ enhanced due diligence procedures with respect to transactions carried out. A list of jurisdictions that have been classified as non-co-operative by the FATF is shown at Appendix E of the Guidance Notes.

535. Financial institutions should be particularly alert to the risk that correspondent services might be used directly by third parties to transact business on their own behalf. Such arrangements give rise to most of the same considerations applicable to introduced business and should be treated in accordance with the criteria set out for introduced business. The provisions on introduced business are contained in paragraphs 6.79 to 6.86 of the Guidance Notes. For the purposes of clarity, it would be helpful for this provision to be expressed in alternative language. One of the requirements for introduced business is that the financial institution is satisfied that the procedures laid down by the eligible introducer or group introducer meet the requirements specified in the FIAMLA, regulations made thereunder and the Guidance Notes. In addition, where a financial institution relies on customer identification documentation in the possession of an eligible or group introducer, it is not required to retain copies of the documentation in its own records where the institution is satisfied that he may obtain the information from the introducer on request.

536. There is no explicit reference to determination of the respondent's reputation from publicly available information and equally importantly, whether it has been subject to any money laundering or terrorist financing investigation or regulatory action.

Assessment of AML/CFT Controls in Respondent Institution (c. 7.2):

537. Paragraph 6.88 of the Guidance Notes on AML/CFT provides that financial institutions should gather sufficient information about their correspondents to understand fully the nature of the correspondent's business. Factors to consider include: information about the correspondent's management, major business activities, where they are located and its money-laundering prevention and detection efforts; the identity of any third party entities that use the correspondent services; and the condition of the financial institution regulation and supervision in the correspondent's country. Financial institutions should only establish correspondent relationships with foreign financial institutions that are effectively supervised by the relevant authorities and have effective customer acceptance and KYC policies.

538. Paragraph 6.89 provides that financial institutions should establish that their correspondents have due diligence standards as set out in the Guidance Notes on AML/CFT issued by the Bank of Mauritius, and employ enhanced due diligence procedures with respect to transactions carried out.

Approval of Establishing Correspondent Relationships (c. 7.3):

539. There is no reference in the Guidance Notes to obtaining senior management approval before establishing a correspondent relationship. In practice, it appeared to the mission that senior management approval was obtained. The Bank of Mauritius has also confirmed that such approval is obtained.

Documentation of AML/CFT Responsibilities for Each Institution (c. 7.4):

540. There is no specific requirement for financial institutions to ensure the respective AML/CFT responsibilities of each party to a correspondent relationship are documented. Nevertheless, representatives of banks met by the mission considered it prudent to document such relationships.

Payable-Through Accounts (c. 7.5):

541. Financial institutions should only establish correspondent relationships where the respondent has effective customer acceptance and KYC policies. Criterion 7.5 deals with payable-through accounts and there is no explicit requirement in the Guidance Notes that financial institutions in relationships involving payable through accounts should be satisfied that the respondent has performed all the normal customer due diligence obligations set out in Recommendation 5 on those of its customers that have direct access to the accounts of the correspondent financial institution and that the respondent institution is able to provide relevant customer data upon request to the correspondent.

542. It appeared to the mission from meetings with banks that the provisions on correspondent services in the Bank of Mauritius Guidance Notes are satisfied and that banks' standards in practice are stronger than the Guidance Notes. Banks were aware of the potential risks presented by correspondent banking relationships.

Misuse of New Technology for ML/FT (c. 8.1):

543. Section 3(2) of the Financial Intelligence and Anti-Money Laundering Act 2002 states that institutions which fail 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 offense shall commit an offense. Further, regulation 9 of the Financial Intelligence and Anti-Money Laundering Regulations 2003 provides that every relevant person shall implement internal controls and other procedures to combat money laundering and financing of terrorism, which shall include:

- (a) programs for assessing risk relating to money laundering and financing of terrorism;
- (b) the formulation of a control policy that will cover issues of timing, degree of control, areas to be controlled, responsibilities and follow-up;
- (c) monitoring programs in relation to complex, unusual or large transactions;
- (d) enhanced due diligence procedures with respect to persons and business relations and transactions carrying high risk and with persons established in jurisdictions that do not have adequate systems in place against money laundering and financing of terrorism;

- (e) providing employees, including the Money Laundering Reporting Officer, from time to time with training in the recognition and handling of suspicious transactions; and
- (f) making employees aware of the procedures under these regulations, the Act, Codes and Guidelines and any other relevant policies that are adopted by the relevant person;
- (g) establishing and maintaining a manual of compliance procedures in relation to anti-money laundering.

544. The foregoing provisions are very positive, although the AML/CFT framework does not direct the attention of institutions to the misuse of technological developments.

545. The FIAMLA and the Financial Intelligence and Anti-Money Laundering Regulations 2003 apply equally to institutions regulated by the FSC. Paragraph 6 of the Codes issued by the FSC states that licensees must implement appropriate and ongoing training for staff in general and the Money Laundering Reporting Officer in particular. Paragraph 6.1 goes on to say that in order to facilitate satisfactory recognition and handling of suspicious transaction reports, licensees must make arrangements for the ongoing training of all licensees. Training should cover recognition of suspicious transactions and additional measures to maintain a high level of awareness and vigilance between training sessions. Paragraph 6.3 adds that training for all employees should include the money laundering and terrorist financing vulnerabilities of relevant services and products. The positive provisions of the Codes do not direct the attention of institutions to the misuse of technological developments.

Risk of Non-Face to Face Business Relationships (c. 8.2 & 8.2.1):

546. Paragraphs 6.49 to 6.56 of the Guidance Notes on AML/CFT cover non-face-to-face customers. The Guidance Notes advise that it is most important that the procedures adopted to confirm identity for non-face-to-face verification be at least as robust as those for face-to-face verification. As with face-to-face verification, the procedures to check identity must serve two purposes, to ensure that a person bearing the name of the applicant exists and lives at the address provided, and that that the applicant is that person.

547. Accordingly, in accepting business from non-face-to-face customers financial institutions should apply equally effective customer identification procedures as for those available for interview; and other specific and adequate measures to mitigate the higher risk posed by non-face-to-face verification of customers.

548. Non-Residents applying from abroad should be required to complete a standard application form, which should incorporate the following details: true name; current permanent address; mailing address; telephone and fax number; date and place of birth; nationality; occupation and name of employer (if self employed, the nature of the self employment); passport details, or National Identity Card, driving license or armed forces identity card details (i.e., number and country of issuance), together with issue date and expiry date; signature/signatures; authority to obtain independent verification of any data provided.

549. The application form, duly filled in, should be accompanied by any of the following supporting documents with respect to identity: a clearly legible photocopy of any of the following documents: National Identity Card, current valid passports; current valid driving license as; and armed forces identity card. The supporting documents should be duly certified as a true copy by a lawyer, accountant or other professional persons who clearly adds to the copy (by means of a stamp or otherwise) his name, address and profession to aid tracing of the certifier if necessary and which the financial institution believes in good faith to be acceptable to it for the purposes of certifying. Address should be ascertained by obtaining an original or certified copy of

utility bill addressed to the applicant at the address from which he, she or they are applying, and an original or certified copy of a bank statement addressed to the applicant at the address from which he, she or they are applying.

550. The following additional steps may be taken: confirmation by the financial institutions from directory enquiries or from a recognized telephone directory for the locality from which the applicant is applying, containing an entry for the applicant and showing the address from which he, she or they are applying. Financial institutions may also rely on other regulated institutions to verify identity of non-resident customers, in accordance with paragraphs 6.79 to 6.86.

551. Paragraph 6.51 of the Guidance Notes identifies non-face to face business as being high risk and paragraph 6.109 of the Guidance Notes requires intensified monitoring of high risk relationships.

552. Non-face to face business relationships are covered at paragraph 4.6.2 of the Codes issued by the FSC. This paragraph is included in the section of the Codes which require licensees to apply enhanced due diligence measures in all high-risk business relationships, customers and transactions. Non-face-to-face business relationships, customers and transactions are therefore defined as high-risk.

553. Paragraph 4.6.2 advises that the FSC recognizes that much of the business conducted by licensees is conducted on a non-face to face basis with clients. Often it is either impossible or impractical for licensees to have or obtain original primary or secondary documentary evidence of identity. Where this is the case licensees may rely on copies that have been appropriately certified as outlined in paragraph 4.4 of the Codes. Where an licensee relies upon verification of identity documentation that are not in an original form, the documentation must be appropriately certified as true copies of the original documentation.

554. Where an employee of a licensee meets an applicant for business or the principals thereof face-to-face and has access to original verification of identity documentation, he or she may take copies of the verification of identity documentation and certify them personally as true copies of the original documentation. In other cases, copies of the verification of identity documentation can be certified in accordance with the normal certification process of the jurisdiction where the applicant for business is based. A list of examples of types of person who may certify documentation is provided by the FSC in the Codes:

A lawyer, notary, actuary or an accountant holding a recognized professional qualification.

A serving Police or Customs Officer.

A member of the judiciary

A senior civil servant

An employee of an embassy or consulate of the country of issue of the identity documentation.

A director or secretary (holding a recognized professional qualification) of a regulated financial services business in Mauritius or in an equivalent jurisdiction.

A Commissioner of Oath.

555. Paragraph 4 of the Codes provides that customer due diligence measures should include conducting ongoing due diligence on the business relationship and scrutiny of transactions throughout the course of the business relationship to ensure that the transactions in which the customer is engaged are consistent with the

licensee's knowledge of the customer and his business and risk profile (including where necessary, the source of funds).

556. The customer profile of institutions met by the mission was varied, with some institutions being concerned with local business only, while others (particularly banks and other investment institutions) had and were seeking greater international customers. These entities were generally aware of the greater risks posed by non-face to face business and therefore treated this business as higher risk. It appeared to the mission that, for institutions supervised by the Bank of Mauritius and all other institutions with a non-Mauritius customer base, all but one met the standards for non-face-to-face business. This institution was unable to explain how it would advise the FSC how it complied with the relevant Code. As specified in the implementation section of Recommendation 5, at the time of the evaluation one firm was in the process of establishing formal procedures to comply with the relevant Code and another firm was not subject to a Code.

3.2.2 Recommendations and Comments

557. The Guidance Notes on AML/CFT issued by the Bank of Mauritius and the Codes issued by the FSC contain detailed provisions on the procedures required by financial institutions to prevent money laundering and terrorist financing. It was apparent to the mission that the Bank of Mauritius treat their AML/CFT responsibilities seriously. A significant number of institutions met by the mission appeared to have robust AML/CFT measures in place. Virtually all institutions met by the mission had been subject to an on-site inspection. There are two main areas to be addressed in terms of language in the Guidance Notes and Codes. First, the Guidance Notes and Codes are not themselves law or regulation notwithstanding that a breach of these documents is a criminal offense. Second, there are a few areas where the Guidance Notes and Codes are more impressionistic than the Criteria in the Methodology. Also, not all financial institutions as defined by the FATF have been included in the AML/CFT framework. With reference to the language of the Bank of Mauritius Guidance Notes, the mission noted that there is some variety of language with regard to text which is enforceable. For example, words such as "are required", "must", "it is imperative that", "should", "it is incumbent on" and "it is important that" are used in section 5 of the Notes to establish enforceable measures. With reference to the Codes, "must" and "should" are used for enforceable measures while language such as "can", "may", "it will be considered reasonable", and "could be" are used for guidance. The supervisory bodies should consider using one form of language and one form of measures for guidance.

558. It is recommended that:

The AML/CFT framework should be extended to cover the full range of financial institutions (including cooperative credit unions) defined as such by the FATF;

Law or regulation should be amended to state that customer due diligence is required when there is suspicion of money laundering in connection with non-occasional transactions and where the institution has doubts about the veracity or adequacy of previously obtained customer identification documentation;

Law or regulation should be amended to require financial institutions to verify the identity of the beneficial owner;

Law or regulation should be amended, so that for customers that are legal persons or legal arrangements, financial institutions should be required to determine the natural persons who exercise ultimate effective control;

Law or regulation should be amended to require financial institutions to conduct ongoing due diligence on the business relationship;

Enhance the implicit language of the Guidance Notes to make it explicit that for legal persons and legal arrangements financial institutions should take reasonable measures to understand the ownership and control structure of the customer.

Amend the Guidance Notes and Codes to require financial institutions to ensure that documents, data or information collected under the CDD process is kept up to date and relevant by undertaking reviews of existing records, particularly for higher risk categories;

Amend the regulations made under FIAMLA to introduce reduced or simplified measures for the life insurance policies specified, or provide justifiable reasons for retaining the provisions;

Amend the Guidance Notes and Codes to allow verification of identity to be delayed provided that, inter alia, this is essential not to interrupt the normal course of business;

Amend the Guidance Notes and Codes so that where a financial institution is unable to comply with the CDD requirements it should consider making a suspicious transaction report;

In the circumstances specified in Criterion 5.16 require financial institutions to terminate the business relationship and consider making a suspicious transaction report;

The FSC should consider how to introduce an enforceable obligation on financial institutions on the CDD requirements for existing customers;

The Bank of Mauritius and the FSC should consider enhancing the Guidance Notes and the Codes respectively to use one form of language for enforceable measures and one form of language for guidance;

Amend the Guidance Notes to extend the definition of PEPs to include family and associates in all circumstances, to extend the provisions to beneficial owners who are PEPs (including obtaining source of wealth and funds) and to require senior management approval when a person becomes a PEP after the establishment of the relationship;

Amend the Codes so that close associates of PEPs and beneficial owners who are PEPs are covered (including obtaining source of funds and of wealth), and to require senior management approval when a person becomes a PEP after the establishment of the relationship;

Amend the Guidance Notes so that financial institutions determine the respondent's reputation from publicly available information and gather information on whether a respondent has been subject to an investigation or regulatory action; so that senior management approval is obtained for new correspondent relationships; so that the respective AML/CFT responsibilities of the correspondent and respondent are documented so that financial institutions in relationships involving payable – through accounts are satisfied that the respondent has performed all the normal CDD obligations in Recommendation 5 on customers with direct access to the accounts of the correspondent financial institution.

Amend the Guidance Notes and Codes to require institutions to have policies in place to prevent the misuse of technological developments, and amend the Guidance Notes to include ongoing due diligence to address the specific risks of non-face to face business.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	PC	<p>Not all financial institutions are covered, some institutions regulated by FSC have not implemented the Codes fully;</p> <p>Some elements are not included in law or regulation (some provisions on when to undertake CDD, verifying the beneficial owner, determining the natural persons who ultimately own or control the customer, ongoing due diligence);</p> <p>The Guidance Notes/Codes do not require CDD information to be kept up to date and relevant or require consideration of whether an STR should be made if an institution cannot obtain CDD information. The Guidance Notes/Codes do not limit delay to the verification of identity when this is essential not to interrupt the normal course of business and do not require consideration to be given to making a suspicious transaction report when CDD requirements cannot be complied with.</p>
R.6	PC	<p>Not all financial institutions are covered, some institutions regulated by FSC have not implemented the Codes fully;</p> <p>The Guidance Notes do not apply the definition of PEPs in all circumstances (e.g., family and associates in all circumstances beneficial owners and obtaining their source of wealth and funds of beneficial owners) and do not require senior management approval for persons who become a PEP after the commencement of a relationship;</p> <p>The Codes do not cover close associates and beneficial owners – including obtaining their source of wealth and funds.</p>
R.7	PC	<p>The Guidance Notes contain do not require financial institutions to determine the respondent's reputation from publicly available information; to gather information on whether a respondent has been subject to an investigation or regulatory action; senior management approval to be obtained for new correspondent relationships; for the respective AML/CFT responsibilities of the correspondent and respondent to be documented for institutions in payable – through accounts to satisfy themselves adequate CDD obligations have been performed on customers with direct access to the accounts of the correspondent financial institution.</p>
R.8	LC	<p>Not all financial institutions are covered, some institutions regulated by FSC have not implemented the Codes fully;</p> <p>The Guidance Notes and Codes do not require institutions to have policies in place to prevent the misuse of technological developments.</p>

3.3 Third parties and introduced business (R.9)

3.3.1 Description and Analysis

Requirement to Immediately Obtain Certain CDD elements from Third Parties (c. 9.1):

559. Paragraph (6) of regulation 4 of the Financial Intelligence and Anti-Money Laundering Regulations 2003 provides that where an applicant for business is introduced to a relevant person by an eligible introducer or a group introducer, it shall be sufficient compliance with the identification requirements for individuals and bodies of persons in paragraphs (4) and (5) where the relevant person:

- i) obtains and maintains documentary evidence that the eligible introducer or group introducer is regulated for the purposes of preventing money laundering and terrorist financing; and
- (ii) is satisfied that the procedures laid down by the eligible introducer or group introducer meet the requirements specified in the FIAMLA, or any code or guidelines issued by a supervisory authority.

560. A relevant person relying on customer identification documentation in the possession of an eligible introducer or group introducer shall not be required to retain copies of that customer identification documentation in his own records where he is satisfied that he may obtain that customer identification documentation from the eligible introducer or group introducer upon request. Every relevant person shall comply with the requirements specified in any code or guidelines issued by its supervisory authority, relating to the conduct of business with eligible introducers or group introducers.

561. Eligible introducer is defined as meaning any person who introduces an applicant for business to a relevant person in Mauritius and regulated under the FIAMLA or any similar legislation in an equivalent jurisdiction, or is subject to rules of professional conduct relating to the prevention of money laundering and terrorist financing; and is based either in Mauritius or in an equivalent jurisdiction.

562. Equivalent jurisdiction means such jurisdiction having standards pertaining to measures on anti-money laundering comparable to Mauritius as may be specified in the guidelines issued by the Financial Intelligence Unit under regulation 10.

563. Group introducer means an introducer which is part of the same group as the relevant person to whom the applicant for business is introduced and is, for anti-money laundering purposes, subject to either the consolidated supervision of a regulator in Mauritius or in an equivalent jurisdiction or is subject to the anti-money laundering regulations of a regulator in Mauritius or in an equivalent jurisdiction.

564. Paragraphs 6.79 to 6.86 of the Bank of Mauritius Guidance Notes are also relevant.

565. They state that although the ultimate responsibility for verifying the identity and address of customers always lies with the financial institution, it is recognized that to avoid duplication, financial institutions may rely on other eligible or group introducers to verify the identity of applicants for business.

566. An eligible introducer is specified as any person who introduces an applicant for business to a financial institution in Mauritius:

(a) is regulated under the Financial Intelligence and Anti-Money Laundering Act 2002 or any similar legislation in an equivalent jurisdiction, or is subject to rules of professional conduct relating to the prevention of money laundering and terrorist financing; and

(b) is based either in Mauritius or in an equivalent jurisdiction.

567. A group introducer is specified as an introducer which is part of the same group as the financial institution to whom the applicant for business is introduced and is, for anti-money laundering purposes, subject to either the consolidated supervision of a regulator in Mauritius or in an equivalent jurisdiction or is subject to the anti-money laundering regulations of a regulator in Mauritius or in an equivalent jurisdiction.

568. An equivalent jurisdiction is a jurisdiction which has a legislation equivalent to Mauritius as specified in Appendix B of the Guidance Notes.

569. Financial institutions may rely on an eligible or a group introducer to verify the identity of an applicant for business where:

(i) the financial institution obtains and maintains documentary evidence that the eligible introducer or group introducer is regulated for the purposes of preventing money laundering and terrorist financing; and

(ii) the financial institution is satisfied that the procedures laid down by the eligible introducer or group introducer meet the requirements specified in the FIAML, regulations made thereunder and the Guidance Notes.

570. Where a financial institution relies on customer identification documentation in the possession of an eligible or group introducer, it is not required to retain copies of the customer identification documentation in its own records where the financial institution is satisfied that he may obtain that customer identification documentation from the eligible introducer or group introducer upon request.

571. In addition, financial institutions should conduct periodic reviews to ensure that an introducer which it relies on continues to conform to the criteria set out above.

572. Financial institutions must request group or eligible introducers to provide them with a duly completed Group Introducers Certificate or Eligible Introducers Certificate as the case may be. It is left to financial institutions to design their own Group or Eligible Introducers Certificates, provided that the information called for in the certificate do not materially differ with the specimens at Appendices C and D. The certificate states that a certificate/summary sheet containing all relevant identification data and other relevant information pertaining to the applicant is enclosed with it. The financial institution must reach an agreement with the introducer that it will be permitted at any stage to verify the due diligence undertaken by the introducer.

573. The certificates referred to above provide comfort to financial institutions. Institutions may create their own certificates based on those in the Guidance Notes. The information in the institutions' certificates must not be materially different to that in the certificates in the Bank of Mauritius Guidance Notes (albeit that the information required is not as explicit as the necessary information in Recommendation 5) but this does not affect the requirement of the certificate that the underlying records of identity and copies of the documented evidence will be made available to the Mauritius institution upon request without delay. Representatives of banks interviewed by the assessment team indicated that in practice they obtain full copy documentation from introducers rather than use the certificates.

574. Regulation 4 of the Financial Intelligence and Anti-Money Laundering Regulations 2003 applies to institutions regulated by the FSC. Under the provisions of paragraph 4.7 of the FSC's Codes, financial institutions may rely on eligible or group introducers.

575. The use of intermediaries is not a prevalent practice in the domestic sector regulated by the FSC. Nevertheless, the Codes note that in recognition of the fact that a number of clients of licensees in Mauritius are introduced by intermediaries, licensees may find it necessary to place reliance upon eligible and group introducers in satisfying their obligation to undertake CDD measures.

576. Eligible introducers are specified as persons or entities which refer business to licensees and are regulated for money laundering purposes or/are subject to rules of professional conduct pertaining to money laundering and are based either in Mauritius or in a jurisdiction having in place anti-money laundering legislation that is at least equivalent to the legislation in Mauritius. Appendix II of the Codes contains a list of such jurisdictions.

577. A group introducer is specified as an entity that is part of the same group as the licensee and is subject for money laundering purposes either to the consolidated supervision of a regulator in Mauritius or in an equivalent jurisdiction or is subject to the anti-money laundering regulation of a regulator in Mauritius or in an equivalent jurisdiction.

578. Licensees may rely on eligible or group introducers to perform the following customer due diligence tasks:

Identifying and verifying the identity of the applicant for business using reliable, independent source documents, data or information;

Identifying the beneficial owner and taking reasonable measures to verify the identity of the beneficial owner - so that the Insurance Entity is satisfied that he knows who the beneficial owner is.

Obtaining information on the purpose and intended nature of the business relationship.

579. Licensees are advised that whenever they place reliance upon an eligible or group introducer, they should bear in mind that the ultimate responsibility to ensure that the CDD measures have been completed satisfactorily rests with the licensee. Responsibility for undertaking CDD measures for applicants for business cannot be abdicated by licensees to eligible or group introducers.

580. Licensees may rely on eligible/group introducers to perform their CDD obligations provided that the following criteria are met:

Licensees must obtain evidence of a group or eligible introducer's status in the form of a completed Group Introducer Certificate in Appendix III of the Codes or a completed Eligible Introducer Certificate in Appendix IV of the Codes. In addition, licensees must satisfy themselves independently that the procedures followed by eligible and group introducers are sufficiently robust to ensure that the CDD measures are conducted in accordance with the requirements of the Codes.

Licensees and the eligible/group introducer must establish their respective responsibilities in writing. For these purposes, licensees are required to establish clear procedures to determine an acceptable level of reliability on the eligible/group introducer.

It is not necessary for licensees to obtain copies of CDD documentation from the eligible/group introducer. Licensees should ensure that they have timely access to the CDD information maintained by the eligible/group introducer and that the CDD documentation will be made available from the eligible/group introducer upon request without delay.

The licensees must ensure that their agreements with the eligible/group introducers include specific clauses relating to commitments that the eligible/group introducer will perform all necessary CDD measures, will grant access to CDD information and will send copies of CDD documentation to the licensee upon request without delay.

Senior management or board of directors of licensees must conduct periodic independent testing of the arrangements by which licensees may gain access to CDD information or obtain CDD documentation maintained by the eligible/group introducer to ensure that the arrangements work as designed.

All copy documentation passed to licensees by eligible/group introducers must be certified.

581. Licensees may rely upon existing CDD documentation in the possession of an eligible or group introducer provided that the information contained within the documentation continues to be accurate at the

time that it is relied upon by the licensee. Reliance may only be placed upon an eligible or group introducer in circumstances where an applicant for business is acting on its own behalf and not as a nominee or trustee on behalf of an undisclosed underlying principal. The licensee must undertake and complete its own CDD measures if it has doubts about the eligible/group introducer's ability to undertake appropriate due diligence.

582. The specimen certificate in the Codes states that an introducer has conducted customer due diligence measures and holds sufficient information to establish the ownership and control structure of the applicant. There is no explicit requirement for financial institutions relying on third parties to immediately obtain from third parties the necessary information concerning the customer due diligence process.

Availability of Identification Data from Third Parties (c. 9.2):

583. Paragraph 6(b) of Regulation 4 of the Financial Intelligence and Anti-Money Laundering Regulations 2003 provides that a relevant person relying on customer identification documentation in the possession of an eligible introducer or group introducer shall not be required to retain copies of that customer identification documentation in his own records where he is satisfied that he may obtain that customer identification documentation from the eligible introducer or group introducer upon request.

584. Paragraph 6.84 of the Bank of Mauritius Guidance Notes on AML/CFT states that where a financial institution relies on customer identification documentation in the possession of an eligible or group introducer, it is not required to retain copies of the customer identification documentation in its own records where the financial institution is satisfied that he may obtain that customer identification documentation from the eligible introducer or group introducer upon request. Paragraph 6.85 goes on to say that, in addition, financial institutions should conduct periodic reviews to ensure that an introducer which it relies on continues to conform to the criteria set out above.

585. Paragraph 6.86 adds that financial institutions must request group or eligible introducers to provide them with a duly completed Group Introducers Certificate or Eligible Introducers Certificate as the case may be. It is left to financial institutions to design their own Group or Eligible Introducers Certificates, provided that the information called for in the certificate do not materially differ with the specimens at Appendices C and D. The financial institution must reach an agreement with the introducer that it will be permitted at any stage to verify the due diligence undertaken by the introducer.

586. The certificates in the appendices include a reference to the introducer having to provide underlying records of identity and copies of documentary evidence on request without delay. This provision cannot be amended by financial institutions.

587. Regulation 6 of the Financial Intelligence and Anti-Money Laundering Regulations 2003 also apply to institutions licensed by the FSC.

588. Paragraph 4.7 of the FSC's Codes provide that a relevant person relying on customer identification documentation in the possession of an eligible introducer or group introducer shall not be required to retain copies of that customer identification documentation in his own records where he is satisfied that he may obtain that customer identification documentation from the eligible introducer or group introducer upon request. The paragraph goes on to say that it is not necessary for financial institutions to obtain copies of CDD documentation from the eligible/group introducer. Financial institutions must ensure that they have timely access to the CDD information maintained by the eligible/group introducer and that the CDD documentation will be made available from the eligible/group introducer upon request without delay.

Regulation and Supervision of Third Party (applying R. 23, 24 & 29, c. 9.3):

589. Paragraph 6 of Regulation 4 of the Financial Intelligence and Anti-Money Laundering Regulations 2003 provides that where an applicant for business is introduced to a relevant person by an eligible introducer or a group introducer, it shall be sufficient compliance with the identification requirements of paragraphs (4) and (5) where the relevant person:

a) obtains and maintains documentary evidence that the eligible introducer or group introducer is regulated for the purposes of preventing money laundering and terrorist financing; and

b) is satisfied that the procedures laid down by the eligible introducer or group introducer meet the requirements specified in the Act, or any code or guidelines issued by a supervisory authority.

590. Paragraph 6.80 states that an eligible introducer based outside Mauritius must be regulated under legislation similar to the FIAMLA or be subject to rules of professional conduct relating to the prevention of money laundering and terrorist financing and based in an equivalent jurisdiction. A foreign group introducer is part of the same group as the financial institution to whom the applicant for business is introduced and is, for anti-money laundering purposes, subject to consolidated supervision in an equivalent jurisdiction. The same principles apply to introducers based in Mauritius.

591. Appendix C and appendix D of the Guidance Notes include a group introducers certificate and an eligible introducers certificate respectively. The group certificate requires the certifier to confirm that all necessary due diligence as required by group standards and local law has been satisfactorily undertaken. It also requires confirmation by the introducer that it is subject to consolidated supervision or subject to anti-money laundering regulations. The eligible introducers certificate requires confirmation that the introducer is subject to the FIAMLA and the Bank of Mauritius Guidance Notes or equivalent legislation. It also requires confirmation that the identity of the applicant has been obtained and that checks have been undertaken to confirm that the applicant's name and address shown on the application form is correct.

592. Regulation 2 of the Regulations requires introducers to be regulated under the FIAMLA or any similar legislation or to be subject to rules of professional conduct relating to the prevention of money laundering and terrorist financing.

593. Regulation 4(6) of the Financial Intelligence and Anti-Money Laundering Regulations 2003 applies to institutions licensed by the FSC. In addition, under the provisions of paragraph 4.7 of the FSC's Codes, financial institutions:

must obtain evidence of a group or eligible introducer's status in the form of a completed Group Introducer Certificate or a completed Eligible Introducer Certificate); and

must satisfy themselves independently that the procedures followed by eligible and group introducers are sufficiently robust to ensure that the CDD measures are conducted in accordance with the requirements of the Codes; and

the introducer must establish their respective responsibilities in writing. For these purposes, financial institutions are required to establish clear procedures to determine an acceptable level of reliability on the introducer; and

must ensure that their agreements with the introducers include specific clauses relating to commitments that the introducer will undertake all necessary CDD measures, will grant access to CDD information and will send copies of CDD documentation to the financial institution upon request without delay.

594. In addition, senior management or board of directors of financial institutions must conduct periodic independent testing of the arrangements by which financial institution may gain access to CDD information or obtain CDD documentation maintained by the eligible/group introducer to ensure that the arrangements work as designed.

595. The specimen group introducer certificate in the Codes requires the introducer to state that it is a member of a group of companies subject to group supervision. It also requires the introducer to certify that all necessary customer due diligence information measures as required by group standards and by local law for the purpose of combating money laundering and terrorist financing has been satisfactorily undertaken and completed. The specimen eligible introducer certificate in the Codes requires the introducer to confirm that it meets the FIAMLA and the FSC's Codes or equivalent legislation. The introducer also has to confirm it has undertaken and completed customer due diligence measures for the applicant and confirm that it possesses sufficient information to establish the ownership and control structure of the applicant.

596. Regulation 2 of the Financial Intelligence and Anti-money Laundering Regulations 2003 defines the concept of eligible introducer as a person regulated under the FIAMLA or any similar legislation in an equivalent jurisdiction or a person who is subject to professional rules of conduct relating to the prevention of money laundering and terrorist financing.

Adequacy of Application of FATF Recommendations (c. 9.4):

597. Regulation 2 of the Financial Intelligence and Anti-Money Laundering Regulations 2003 defines eligible introducer, equivalent jurisdiction and group introducer.

598. Eligible introducer means any person who introduces an applicant for business to a relevant person in Mauritius and:

a) is regulated under the Act or any similar legislation in an equivalent jurisdiction, or is subject to rules of professional conduct relating to the prevention of money laundering and terrorist financing; and

b) is based either in Mauritius or in an equivalent jurisdiction.

599. Equivalent jurisdiction means such jurisdiction having standards pertaining to measures on anti-money laundering comparable to Mauritius as may be specified in the guidelines issued by the Financial Intelligence Unit under regulation 10.

600. Group introducer means an introducer which is part of the same group as the relevant person to whom the applicant for business is introduced and is, for anti-money laundering purposes, subject to either the consolidated supervision of a regulator in Mauritius or in an equivalent jurisdiction or is subject to the anti-money laundering regulations of a regulator in Mauritius or in an equivalent jurisdiction.

601. Paragraphs 6.80 to 6.82 of the Bank of Mauritius Guidance Notes on AML/CFT are pertinent to which countries Mauritius considers adequately apply the FATF Recommendations.

602. An eligible introducer is any person who introduces an applicant for business to a financial institution in Mauritius:

(a) is regulated under the Financial Intelligence and Anti-Money Laundering Act 2002 or any similar legislation in an equivalent jurisdiction, or is subject to rules of professional conduct relating to the prevention of money laundering and terrorist financing; and

(b) is based either in Mauritius or in an equivalent jurisdiction.

603. A group introducer is an introducer which is part of the same group as the financial institution to whom the applicant for business is introduced and is, for anti-money laundering purposes, subject to either the consolidated supervision of a regulator in Mauritius or in an equivalent jurisdiction or is subject to the anti-money laundering regulations of a regulator in Mauritius or in an equivalent jurisdiction.

604. An equivalent jurisdiction is a jurisdiction which has a legislation equivalent to Mauritius as specified in Appendix B. Appendix B lists 35 countries and territories which the Bank of Mauritius considers to have legislation/status/ procedures equivalent to Mauritius. The Bank of Mauritius advised that careful consideration had gone in to concluding which countries should be included in appendix B. For example, it does not include all members of the FATF.

605. Regulation 2 of the Financial Intelligence and Anti-Money Laundering Regulations 2003 applies to institutions licensed by the FSC.

606. Paragraph 4.5 of the Codes issued by the FSC states that eligible introducers must be in Mauritius or in a jurisdiction that has in place anti-money laundering legislation that is at least equivalent to the legislation in Mauritius. Appendix II of the Codes lists 35 equivalent jurisdictions. The criteria specified in appendix II as being used by the FSC to determine whether a jurisdiction has equivalent AML legislation includes: FATF membership, EU membership, information available to the FSC about the AML/CFT laws of certain EU and FATF jurisdictions that are excluded from the list, information available to the FSC about the AML/CFT laws of certain non-EU and FATF jurisdictions that appear on the list and are deemed by the FSC to have equivalent legislation in place.

Ultimate Responsibility for CDD (c. 9.5):

607. Paragraph 6.79 of the Guidance Notes on AML/CFT issued by the Bank of Mauritius provides that although the ultimate responsibility for verifying the identity and address of customers always lies with the financial institution, it is recognized that to avoid duplication, financial institutions may rely on other eligible or group introducers to verify the identity of applicants for business.

608. Paragraph 4.5 of the FSC's Codes states that whenever financial institutions place reliance upon an eligible or group introducer, they should bear in mind that the ultimate responsibility to ensure that the CDD measures have been completed satisfactorily rests with the financial institution. Responsibility for undertaking CDD measures for applicants for business cannot be abdicated by licensees to eligible or group introducers.

609. The Bank of Mauritius and the FSC conduct on-site inspections to assess compliance with the introduced business provisions of the Guidance Notes and Codes respectively. In practice, it is banks and insurers which accept introduced business and they appear to obtain full copy documentation rather than rely on the provisions of the Guidance Notes and Codes which allow them to accept basic information from introducers provided other information is available upon request with out delay. This is because they are

unwilling to accept the risk of being ultimately responsible for customer due diligence while only receiving limited – if important – information from introducers. Introducers are very rare in the domestic insurance and investment sector. As discussed in the implementation section of Recommendation 5, one institution was not subject to a Code and another was, at the time of the evaluation, putting in place formal procedures to meet the relevant Code. Another institution would not have been able to advise the FSC on how it complied with the relevant Code.

3.3.2 Recommendations and Comments

610. The Guidance Notes on AML/CFT published by the Bank of Mauritius and the Codes issued by the FSC contain comprehensive provisions on introduced business. In practice, banks appear to obtain full copy documentation rather than rely on introducers. Introducers are very rare in the investment sector. The main issues are that the financial institution may not receive all of the information required by Recommendation 9 before accepting a business relationship and the type of person who may be considered to be an introducer is widely defined. It is recommended that:

The Guidance Notes and Codes should be amended so that financial institutions obtain all rather than some of the necessary information from third parties; the Codes should be amended to refer to the requirements of the necessary information.

The Guidance Notes and Codes should be amended so that all introducers are regulated and supervised and subject to the relevant FATF Recommendations.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	LC	Not all financial institutions are covered, some institutions regulated by FSC have not implemented the Codes fully; The Guidance Notes and Codes do not require the necessary information to be obtained by financial institutions; or that all introducers should be regulated and supervised and subject to the relevant FATF Recommendations.

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and Analysis

Inhibition of Implementation of FATF Recommendations (c. 4.1):

611. There are no secrecy laws which apply to institutions regulated by the Bank of Mauritius. Financial institutions do have a statutory duty of confidentiality. Any obligation to maintain confidentiality is contractual.

612. Section 51(1) of the Bank of Mauritius Act states that the Bank of Mauritius may require a financial institution to furnish, at such time and in such manner and form as may be approved by the bank, such information and data as the Bank may require for the proper discharge of its functions under the banking laws.

613. Section 64(1) of the Banking Act 2004 provides that every person, who by virtue of his professional relationship with a financial institution, has access to the books, records, financial statements or other documents, of a financial institution shall keep such information confidential. Section 64(2) provides that

except for the performance of his duties or the exercise of his functions under the banking laws or as directed in writing by the Bank of Mauritius, no person referred to in section 64(1) shall, during or after his relationship with the financial institution, disclose directly or indirectly to any person any information relating to the affairs of its customers including any deposits, borrowings or transactions or other personal, financial or business affairs, without the prior written consent of the customer or his personal representative. The Guidance Notes are considered by the mission to be written directions from the Bank of Mauritius.

614. Section 64(3) of the Banking Act 2004 states that the duty of confidentiality shall not apply in a range of circumstances. These circumstances include where the bank is required to make a report or provides additional information on a suspicious transaction to the Financial Intelligence Unit under the Financial Intelligence and Anti-Money Laundering Act 2002.

615. Information shall also be disclosed by a financial institution where the head office of a financial institution incorporated outside Mauritius requires information from its branch in Mauritius about any transaction of that branch, or where a head office incorporated in Mauritius requires information from its branch outside Mauritius about any transaction of that branch. In addition, where the parent financial institution of a subsidiary operating in Mauritius and subject to consolidated supervision requires information from the subsidiary about any transaction of the subsidiary, the information shall be disclosed. Where the information which is required relates to a transaction with a customer other than a financial institution, no information other than credit facilities granted to or foreign exchange transactions with the customer shall be disclosed.

616. Under section 64(8) of the Act, where an officer of a foreign financial institution or an officer of a central bank or banking regulator in a foreign country or any other entity or agency, by whatever named called, having the responsibility to supervise financial institutions or performing the functions of a central bank, proposes to conduct an inquiry, audit or inspection of a branch or a subsidiary of such financial institution in Mauritius or to conduct such other action that would involve the duty of confidentiality imposed under this section, he shall obtain the prior written authorization of the central bank and be subject to the duty of confidentiality imposed under this section and any conditions that the central bank may impose before information of a confidential nature be made available to him.

617. Section 64(9) provides that the Director-General under the Prevention of Corruption Act 2002, the Chief Executive of the Financial Services Commission established under the Financial Services Development Act 2001, the Commissioner of Police, the Director-General of the Mauritius Revenue Authority established under the Mauritius Revenue Authority Act 2004, or any other competent authority in Mauritius or outside Mauritius who requires any information from a financial institution relating to the transactions and accounts of any person, may apply to a Judge in Chambers for an order of disclosure of such transactions and accounts or such part thereof as may be necessary. The Judge in Chambers shall not make an order of disclosure unless he is satisfied that:

- (a) the applicant is acting in the discharge of his or its duties;
- (b) the information is material to any civil or criminal proceedings, whether pending or contemplated or is required for the purpose of any enquiry into or relating to the trafficking of narcotics and dangerous drugs, arms trafficking, offenses related to terrorism under the Prevention of Terrorism Act 2002 or money laundering under the Financial Intelligence and Anti-Money Laundering Act 2002; or
- (c) the disclosure is otherwise necessary, in all the circumstances.

618. Subject to the other provisions of the Act, the central bank or any person making an inspection or conducting an examination for it shall not reveal, unless required by a court so to do, to any person any information in relation to the affairs of a customer obtained in the course of an inspection made or of an examination conducted.

619. Section 64(14) of the Act states that nothing in section 64 shall preclude the disclosure of information by the central bank, under conditions of confidentiality, to a central bank or any other entity or agency, by whatever name called, which performs the functions of 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. This provision allows the Bank of Mauritius to provide information to international banking supervisors, whether or not the supervisor is a central bank.

620. Section 64(15) states that section 64 is without prejudice to the obligations of the central bank under any concordat or arrangement or under any existing or future memorandum of understanding for cooperation and exchange of information between the central bank and the Financial Services Commission established under the Financial Services Development Act 2001, or between the central bank and any other foreign regulatory agency performing functions similar to those of the central bank. Information exchanged under this provision can include information relating to money laundering and terrorist financing.

621. Section 64(16) notes that in the event of any conflict or inconsistency between any provision of section 64 and the provisions of any other enactment, other than the Bank of Mauritius Act 2004, section 45(4) of the Dangerous Drugs Act, the Financial Intelligence and Anti-Money Laundering Act 2002, section 123 of the Income Tax Act and the Mutual Assistance in Criminal and Related Matters Act 2003, the provisions of section 64 shall prevail.

622. The Bank of Mauritius has entered into a number of bilateral Memoranda of Understanding (MOUs) with supervisory bodies – see the discussion at Recommendation 40.

623. No legal provisions prevent the sharing of information between financial institutions where this is required by Recommendations 7 and 9 and by Special Recommendation VII.

624. There are no secrecy laws which apply to institutions regulated by the FSC. Financial institutions do not have a statutory duty of confidentiality. Any obligation to maintain confidentiality is contractual.

625. Section 26 of the Financial Services and Development Act 2001 provided that subject to other provisions of the section every person who carries on an activity in the financial services sector shall, when so required by the FSC, furnish all such information and produce such records or documents as may be demanded of him by the FSC in order to ensure and monitor compliance with the relevant Acts or with any regulations, directions, rules, codes or guidance notes made, or to carry out its general powers of supervision, under those Acts. These powers to obtain information were used by the FSC.

626. The members of the Board, the technical committee, the Chief Executive and staff of the FSC were bound by a statutory duty of confidentiality under section 33 of the Financial Services Development Act 2001. They were required to take an oath of confidentiality in the form set out in a schedule to the Act. They were also required to maintain the confidentiality of any matter relating to the relevant acts during and after their relationship with the FSC. However, information could be disclosed by the FSC under section 33 of the Act under condition of confidentiality. When required by the Bank of Mauritius the FSC had to furnish such information as may be required by the Bank of Mauritius for the discharge of its functions. The FSC was able

to exchange information with the FIU under section 33(7)(d) of the Financial Services Development Act. The FSC has entered into a MOU with the FIU to facilitate exchange of information.

627. The Financial Services Act came into force during the mission. This Act repealed the Financial Services Development Act. Section 42 of the new Act states that every licensee shall furnish to the FSC all such information and produce such records or documents at such time and such place as may be required of him in writing by the Chief Executive. Section 83 of the new Act requires every member of the FSC's Board, the technical committee, the Enforcement Committee, the Chief Executive, and every employee to take an oath of confidentiality before he begins to perform any duties under the regulatory legislation. Under section 87, notwithstanding section 83, the FSC may exchange information with a supervisory body relevant to the enforcement of the regulatory legislation. Any information provided may be given subject to conditions specified by the FSC including conditions restricting the use and disclosure of the information imparted.

628. The FSC has entered into a number of bilateral MOUs with supervisory bodies – see the discussion at Recommendation 40.

629. No legal provisions prevent the sharing of information between financial institutions where this is required by Recommendations 7 and 9 and by Special Recommendation VII.

630. No financial institution secrecy law inhibits the implementation of the FATF Recommendations. Both the Bank of Mauritius and the FSC have administered legislation which enables them to obtain information from institutions and also to disclose information to their foreign counterparts. These powers have been used.

3.4.2 Recommendations and Comments

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	C	This Recommendation is fully met.

3.5 Record keeping and wire transfer rules (R.10 & SR.VII)

3.5.1 Description and Analysis

Record-Keeping & Reconstruction of Transaction Records (c. 10.1 & 10.1.1):

631. Section 17(b) of the Financial Intelligence and Anti-Money Laundering Act 2002 provides that every bank, financial institution, cash dealer or member of the relevant profession or occupation shall keep such records, registers and documents as may be required under the Act or by regulations. In this respect, regulation 8 of the Financial Intelligence and Anti-Money Laundering Regulations 2003 provides that every relevant person shall keep:

- (a) records of customer identification, for not less than 5 years after the closure of the account or cessation of business relationship with the customer concerned;
- (b) records of transactions carried out for customers, for not less than 5 years after completion of the transactions concerned;

- (c) records of all reports made to and by the Money Laundering Reporting Officer, for not less than 5 years after the date on which the report is made; and
- (d) records of any money laundering training delivered to employees.

632. The regulation goes on to say that notwithstanding the foregoing, any guideline or code applicable to a relevant person may provide for a longer period for the keeping of records.

633. Section 33 of the Banking Act 2004 further requires financial institutions to maintain records for a period of 10 years. It states that every financial institution shall, for the purposes of the banking laws, keep in relation to its activities, a full and true written record of every transaction it conducts. Records include records showing, for each customer, at least on a daily basis, particulars of its transactions with or for the account of that customer, and the balance owing to or by that customer, such other records as the central bank may determine. Every record kept under section 33 must be kept for a period of at least 10 years after the completion of the transaction to which it relates. They must also be kept at the principal office of the financial institution, or at such other place, in Mauritius, as may be approved by the central bank.

634. Paragraph 7.03 of the Guidance Notes on AML/CFT issued by the Bank of Mauritius states that all documentation required by financial institutions to verify the identity of customers in accordance with the Guidance Notes must be retained for a period of not less than 10 years after the completion of the transaction to which it relates, closure of the account or cessation of the business relationship with the customer concerned. Paragraph 7.04 adds that in cases where a third party has been relied upon to undertake verification of identity procedures or to confirm identity, arrangements should be made for the records to be retained for the same period as stated in paragraph 7.03.

635. Paragraph 7.05 imposes the requirement that transaction records, in whatever form they are used, e.g. credit/debit slips, checks etc. need to be maintained for a period of not less than 10 years after the completion of the transactions concerned, in such a manner to enable investigating authorities to compile a satisfactory audit trail for suspected laundered and terrorist money and establish a financial profile of any suspect account and should include the following:

- (i) the volume of funds flowing through the account
- (ii) the source of the funds, including full remitter details
- (iii) the form in which the funds were offered or withdrawn i.e. cash, checks, etc.
- (iv) the identity of the person undertaking the transaction
- (v) counterparty details
- (vi) the destination of the funds
- (vii) the form of instruction and authority
- (viii) the date of the transaction.

636. Paragraph 7.07 provides that, where records relate to ongoing investigations, they should be retained until it is confirmed by the authorities that the case is closed. Paragraph 7.08 states that records of electronic payments and messages must be treated in the same way as any other records and kept for the period of ten years mentioned in paragraph 7.03. Paragraph 7.09 requires that a comprehensive set of identification documents in respect of each customer should be kept in an orderly manner and produced to the Bank of Mauritius on request.

637. Regulation 8 of the Regulations provides for any guideline or code to require a longer period than 5 years for the keeping of all records and Section 33(3)(b) of the Banking Act 2004 provides for records to be kept for a period of at least 10 years after the completion of the transaction.

638. The FIAMLA and underlying regulations apply to institutions regulated by the FSC. Paragraph 6 onwards of the FSC's Codes cover record keeping requirements. Paragraph 7.2 deals with transactional records. Financial institution must maintain records of all transactions undertaken during the course of a client relationship either in the form of original documents or copies of original documents. All transactional records should be retained for a period of at least 7 years after the completion of the transaction to which they relate.

639. Transactional records include records containing information on individual transactions as follows: source of funds including full remitter details; volume of funds; destination of funds; instructions; forms of authority; counterparty details; sale and purchase agreements; service agreements; date of transactions.

Record-Keeping for Identification Data (c. 10.2):

640. Criterion 10.2 requires institutions to be required to maintain records of identification data, account files and business correspondence for at least five years following the termination of an account or business relationship (or longer if requested by a competent authority in specific cases on proper authority). The Criterion is asterisked and, as a consequence, its requirements should be included in law or regulation. The contents of the FIAMLA Act, the underlying regulations, the Banking Act 2004 and the Bank of Mauritius Guidance Notes contain detailed provisions on the maintenance of identification records, albeit they do not refer to records being kept for a longer period if requested by a competent authority.

641. The contents of the FIAMLA Act, the underlying regulations and the FSC's Codes contain detailed provisions on the maintenance of identification records and requires such records to be kept for a period of at least 7 years.

Availability of Records to Competent Authorities (c. 10.3):

642. Paragraph 7.09 of the Guidance Notes on AML/CFT issued by the Bank of Mauritius provides that a comprehensive set of identification documents in respect of each customer should be kept in an orderly manner and produced to the Bank of Mauritius on request. Section 51 of the Bank of Mauritius Act states that the Bank may require any financial institution to furnish, at any such time and in such manner and form as may be approved by the Bank, such information and data as the Bank may require for the proper discharge of its functions and responsibilities under the banking laws. There is no explicit requirement in law or regulation for financial institutions themselves to ensure customer and transaction records and information are available on a timely basis. In practice, banks do provide information to the Bank of Mauritius on a timely basis. After the mission, the Bank of Mauritius provided evidence of making requests to banks for information and of receiving that information from the banks in a timely manner.

643. Financial institutions must in accordance with the provisions of section 17(c) of the FIAMLA make available transactional and verification of identity records upon a Court order.

644. Section 26(1) of the Financial Services Development Act 2001 requires any person who carries on any activity in the financial services sector, when so required by the FSC to furnish all such information and produce such records or documents in order to monitor compliance with relevant laws, guidelines and codes or to carry out its general powers of supervision. Section 42 of the new Financial Services Act provides that every licensee shall furnish to the FSC all such information and produce such records and documents at such

time and such place as may be required of him. Paragraph 7.6 of the Codes issued by the FSC states that records should be capable of being easily and quickly retrieved by licensees. Whilst the Financial Services Development Act requires records to be made available to the FSC this provision does not ensure that all customer and transaction records and information are available on a timely basis.

645. Banks were aware of the requirements to the banking legislation to maintain records for a period of 10 years and of the requirement of the Regulations to keep transaction records for at least 5 years. Banks were also aware of the requirements maintaining customer due diligence information. Procedures were in place to meet the legislation. Other institutions regulated by the Bank of Mauritius were also aware of the AML/CFT record keeping requirements and the difference between the requirements for transaction records vis-à-vis customer due diligence information. In the event of a problem, it appeared that in practice records would be available to the competent authorities in a timely manner. The Bank of Mauritius ascertains availability of records during on-site inspections.

646. The pattern of compliance by institutions regulated by the FSC is similar to other areas. Some firms across a range of sectors regulated by the FSC had high or acceptable standards and procedures were in place to meet the record keeping requirements. Other firms were generally aware of the importance of maintaining records and it appeared to the mission that records on customers and transactions would be kept and available for the required periods. Nevertheless – as described in the implementation section for Recommendation 5 – the mission noted that in these firms robust AML/CFT procedures had yet to be established.

647. For a discussion of law enforcement access to information, see paragraphs 355-364 and for FIU access to information, see paragraphs 283-285.

648. Obtain Originator Information for Wire Transfers (applying c. 5.2 & 5.3 in R.5, c.VII.1):

649. The Banking Act 2004 includes in the definition of banking business such services as are incidental and necessary to banking. The Bank of Mauritius has advised that this aspect of the definition means that persons carrying out wire transfers by way of business are covered by the Banking Act and are therefore required to be licensed under the Act and meet the obligations of the Act and the AML/CFT framework. Such persons fall under the definition of bank in the Act as a bank is defined as a company incorporated under the Companies Act 2001, or a branch of a company abroad which is licensed by the central bank to carry on banking business. The Bank of Mauritius has successfully used its interpretation of the Banking Act to license wire transfer service providers in Mauritius and conduct on-site inspections. Nevertheless, the mission has concerns that the absence of an explicit and clear provision bringing wire transfer providers into the Mauritius AML/CFT framework means that the interpretation of the banking legislation and the successful resolution of any challenge to the application of the banking legislation, the AML/CFT legislation and the Guidance Notes on AML/CFT issued by the central bank may be problematic.

650. Paragraphs 6.103 onwards of the Guidance Notes on AML/CFT issued by the Bank of Mauritius provide guidance on wire transfer transactions.

651. They state that to ensure that wire transfer systems are not used by criminals as a means to break the audit trail, where a financial institution makes a payment on behalf of its customer, accurate and meaningful originator information (name, residential address (registered office address where the originator is a company) and any account number or reference of the originator) should be included on all funds transfers and related messages and should remain with the transfer through the payment chain until it reaches its final destination. This information is particularly important for international transfers on behalf of individual customers to ensure that the source of funds can be identified in the event of an investigation in the receiving jurisdiction.

652. Where the originator is acting on behalf of others (e.g., as nominee, agent, or trustee), then it is the name, address, and account number of the nominee, agent, trustee, etc that should be included. The financial institution making the payment should have on file the name and address of underlying principals.

653. Where funds transfers are processed as an intermediary, e.g., where financial institution “B” is instructed by financial institution “A” to pay funds to an account held by a beneficiary at financial institution “C”, the originator and beneficiary data provided by financial institution “A” should be preserved and, wherever possible, included in the message generated by financial institution “B”.

654. Financial institutions should conduct enhanced scrutiny of, and monitor for suspicious activity, incoming funds transfers which do not contain complete originator information. This will involve examining the transaction in more detail in order to determine whether certain aspects related to the transaction could make it suspicious (e.g., origin in a country known to harbor terrorists or terrorist organizations).

655. Financial institutions falling under the responsibility of the Bank of Mauritius are required to abide by the above guidance irrespective of the amount involved in the wire transfer transactions.

Inclusion of Originator Information in Cross-Border Wire Transfers (c. VII.2):

656. The provisions of the Guidance Notes discussed above in Criterion VII.1 above apply to cross-border wire transfers – no distinction is made in the Guidance Notes between domestic and cross-border wire transfers. Reduced standards do not apply for transfers which are batched.

Inclusion of Originator Information in Domestic Wire Transfers (c. VII.3):

657. The provisions of the Guidance Notes discussed above in Criterion VII.1 above apply to domestic wire transfers – no distinction is made in the Guidance Notes between domestic and cross-border wire transfers.

Processing of Non-Routine Transactions (c.VII.4):

658. Paragraph 6.105 of the Bank of Mauritius Guidance Notes states that where funds transfers are processed as an intermediary, e.g. where financial institution “B” is instructed by financial institution “A” to pay funds to an account held by a beneficiary at financial institution “C”, the originator and beneficiary data provided by financial institution “A” should be preserved and, wherever possible, included in the message generated by financial institution “B”. Paragraph 6.104 states that to ensure that wire transfer systems are not used by criminals as a means to break the audit trail, where a financial institution makes a payment on behalf of its customer, accurate and meaningful originator information (name, residential address (registered office address where the originator is a company) and any account number or reference of the originator) should be included on all funds transfers and related messages and should remain with the transfer through the payment chain until it reaches its final destination. Criterion VII.4 states that each intermediary and beneficiary financial institution in the payment chain should be required to ensure that all originator information that accompanies a wire transfer is transmitted with the transfer.

659. Paragraph 7.05 of the Guidance Notes on AML/CFT issued by the Bank of Mauritius provide that transaction records, in whatever form they are used, e.g. credit/debit slips, cheques etc. need to be maintained for a period of not less than 10 years after the completion of the transactions concerned, in such a manner to enable investigating authorities to compile a satisfactory audit trail for suspected laundered and terrorist money and establish a financial profile of any suspect account and should include the following:

- (i) the volume of funds flowing through the account
- (ii) the source of the funds, including full remitter details
- (iii) the form in which the funds were offered or withdrawn i.e. cash, cheques, etc.
- (iv) the identity of the person undertaking the transaction
- (v) counterparty details
- (vi) the destination of the funds
- (vii) the form of instruction and authority
- (viii) the date of the transaction.

660. Criterion VII.4.1 provides that where technical limitations prevent the full originator information accompanying a cross-border wire transfer from being transmitted with a related domestic wire transfer, a record must be kept for five years by the receiving intermediary financial institution received by the ordering financial institution of all the information received by the ordering financial institution. The list of items in paragraph 7.05 of the Guidance Notes, does not include all the information received from the ordering institution (for example, it does not include full originator information) but the overarching requirements of the regulations on transactions will apply to such transactional information. .

Maintenance of Originator Information (c. VII.5):

661. Paragraph 6.106 of the Bank of Mauritius Guidance Notes on AML/CFT provides that financial institutions should conduct enhanced scrutiny of, and monitor for suspicious activity, incoming funds transfers which do not contain complete originator information. This will involve examining the transaction in more detail in order to determine whether certain aspects related to the transaction could make it suspicious (e.g. origin in a country known to harbor terrorists or terrorist organizations). Criterion VII.5 also requires that, in some cases, the beneficiary financial institution should consider restricting or even terminating its business relationship with financial institutions that fail to meet SR.VII standards.

Restrictions on De Minimis Threshold (c. VII.6):

662. During the course of the Bank of Mauritius's on-site inspections, adherence to the guidance provided on wire transfers is monitored through the Bank's on-site inspections. Financial institutions visited by the mission regulated and supervised by the Bank of Mauritius confirmed that inspections covered wire transfers.

Risk Based Procedures for Transfers Not Accompanied by Originator Information (c. VII.7):

663. The sanctions available in the FIAMLA, the Financial Intelligence and Anti-Money Laundering Regulations 2003, the Banking Act 2004 and the Bank of Mauritius Act as described in the discussion for Recommendation 17 are available for money service operators which are banks and cash dealers. Strong criminal and administrative powers can be used. Nevertheless, the mission has concerns that these provisions may be challenged given the lack of specificity in language regarding the provision of wire transfer services.

Monitoring of Implementation of SR VII (c. VII.8):

664. The Bank of Mauritius Guidance Notes on AML/CFT do not provide any de minimis thresholds with regard to the application of paragraph 6.103 onwards of the Notes. Paragraph 6.106 requires enhanced scrutiny of all incoming wire transfers which do not contain complete originator information. All incoming cross-border wire transfers should contain full and accurate originator information.

Sanctions (applying c. 17.1-17.4 in R.17, c. VII.9):

665. The Bank of Mauritius Guidance Notes on AML/CFT do not provide any de minimis thresholds with regard to the application of paragraph 6.103 onwards of the Notes. Paragraph 6.104 requires accurate and meaningful originator information to be included on all funds transfers.

666. Five institutions met by the mission provided wire transfer services. All five were regulated by the Bank of Mauritius and had received on-site inspections. The institutions were aware of the wire transfer provisions in the Guidance Notes on AML/CFT issued by the Bank. It appeared to the mission that persons providing wire transfer services satisfied the requirements of the Guidance Notes.

3.5.2 Recommendations and Comments

667. The record keeping requirements in the Financial Intelligence and Anti-Money Laundering Regulations 2003, combined with the contents of the Guidance Notes issued by the Bank of Mauritius and the Codes issued by the FSC are comprehensive. The regulations include the requirement for records of customer identification to be kept for not less than five years after the closure of the account or the cessation of business and for records of transactions to be kept for not less than five years after the completion of transactions. The framework does not meet the FATF record keeping requirements on points of detail. The provisions relevant to wire transfers in the Guidance Notes are also detailed and they move away from the measures in Special Recommendation VII in only one respect. The main concern of the mission is to seek to ensure clarity of the legislative language which brings wire transfer providers into the regulatory and AML/CFT framework administered by the Bank of Mauritius.

668. It is recommended that:

Law or regulations should be amended so that institutions not regulated by the Bank of Mauritius are required to maintain transaction records for longer than five years if requested by a competent authority;

Law or regulation should be amended to require the maintenance of account files and business correspondence following the termination of an account or business relationship; and to require that customer and transaction records are available on a timely basis;

The banking legislation should be amended to include explicit provisions on wire transfers providers into legislation, which allow sanctions to be beyond question;

The Guidance Notes should be amended to include a requirement that, in some cases, the beneficiary financial institution should consider restricting or terminating its business relationship with financial institutions that fail to meet SR. VII standards.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	LC	Not all financial institutions are covered, some institutions regulated by FSC

		<p>have not implemented the Codes fully.</p> <p>The provisions on record keeping in law or regulation and the Guidance Notes and Codes do not contain points of detail across a number of the Criteria. Law or regulation does not require the necessary records for institutions other than those regulated by the Bank of Mauritius to be kept by all financial institutions for longer than five years if requested by a competent authority, account files or business correspondence, are not required to be maintained; there is no requirement for the timely basis in respect of which all customer and transaction records are available.</p>
SR.VII	PC	<p>While the Bank of Mauritius has implemented the legislative framework to cover wire transfers to date, this legislative framework does not explicitly cover all non-banks or the ability to sanction. The Guidance Notes do not include a requirement that, in some cases, the beneficiary financial institution should consider restricting or terminating its business relationship with financial institutions that fail to meet SR.VII standards.</p>

Unusual and Suspicious Transactions

3.6 Monitoring of transactions and relationships (R.11 & 21)

3.6.1 Description and Analysis

Special Attention to Complex, Unusual Large Transactions (c. 11.1):

669. A suspicious transaction is defined in section 2 of the Financial Intelligence and Anti-Money Laundering Act 2002 as a transaction which, inter alia, is made in circumstances of unusual or unjustified complexity, or appears to have no economic justification or lawful objective.

670. Regulation 9 of the Financial Intelligence and Anti-Money Laundering Regulations 2003, further requires financial institutions to implement internal controls and other procedures to combat money laundering and financing of terrorism, which shall include monitoring programs in relation to complex, unusual or large transactions.

671. Paragraph 6.107 onwards of the Bank of Mauritius Guidance Notes on AML/CFT state that ongoing monitoring is an essential aspect of effective KYC procedures. The extent of the monitoring needs to be risk-sensitive. For all accounts, financial institutions should have systems in place to detect unusual or suspicious patterns of activity. Certain types of transactions should alert financial institutions to the possibility that the customer is conducting unusual or suspicious activities. They may include transactions that do not appear to make economic or commercial sense, or that involve large amounts of cash deposits that are not consistent with the normal and expected transactions of the customer. Very high account turnover, inconsistent with the size of the balance, may indicate that funds are being “washed” through the account.

672. Paragraph 6.109 adds that there should be intensified monitoring for higher risk accounts. Every financial institution should set key indicators for such accounts, taking note of the background of the customer, such as the country of origin and source of funds, the type of transactions involved, and other risk factors. For higher risk accounts financial institutions should ensure that they have adequate management information systems to provide managers and MLROs with timely information needed to identify, analyze and effectively monitor higher risk customer accounts. The types of reports that may be needed in the AML/CFT area include transactions made through an account that are unusual.

673. Paragraph 8.02 notes that where there is a business relationship, a suspicious transaction will often be one which is inconsistent with a customer's known, legitimate business or personal activities or with the normal business for that type of account. Therefore, the first key to recognition is knowing enough about the customer and the customer's business to recognize that a transaction, or series of transactions, is unusual.

674. Section 2 of the FIAMLA and regulation 9 of the Financial Intelligence and Anti-Money Laundering Regulations 2003 apply to institutions regulated by the FSC. In addition, paragraph 5.8 of the FSC's Codes requires financial institutions to scrutinize all large transactions and complex structures and pay close attention to any transactions which appear to be linked.

Examination of Complex & Unusual Transactions (c. 11.2):

675. Criterion 11.2 requires institutions to examine as far as possible the background and purpose of complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose and to set out their findings in writing. Regulation 9 of the Financial Intelligence and Anti-Money Laundering Regulations 2003 requires monitoring programs to be in place in respect of such transactions. Under paragraph 6.107 of the Guidance Notes, institutions should have systems in place to detect unusual or suspicious patterns of activity. Nevertheless, there is no requirement for institutions to set out their findings in writing.

676. Paragraph 5.8 of the FSC's Codes require financial institutions to examine the background and purpose of large transactions and complex structures and any transactions which appear to be linked and to record the findings in writing.

Record-Keeping of Findings of Examination (c. 11.3):

677. Under regulation 8 of the Financial Intelligence and Anti-Money Laundering Regulations 2003, financial institutions are required to keep records of transactions for not less than five years after the completion of the transactions concerned. Records of all reports made to and by the Money Laundering Reporting Officer must also be kept for not less than five years after the date on which the report is made. In addition, section 33 of the Banking Act 2004, requires financial institutions to maintain records of the particulars of transactions for a period of 10 years.

678. However, as there is not a requirement for institutions to examine the background and purpose of complex and unusual transactions (see paragraph 664) there is additionally no requirement for institutions to keep the findings of such examinations for at least five years.

679. Under paragraph 7.3 of the FSC's Codes all transactional records must be retained for a period of at least 7 years after the completion of the transaction to which they relate. However, there is not a requirement for institutions to keep their findings of their examination of the background and purpose of complex and unusual transactions for at least five years.

680. Of the institutions regulated by the Bank of Mauritius banks are most likely to be faced by complex, unusual large transactions or unusual patterns of transactions, not least because of increasing private wealth management – and the structures and products that are linked with private wealth management – and a great focus on international customers. The banks had systems in place to meet the requirements for the transactions covered by Recommendation 11. This also appeared to be the case for other institutions regulated by the Bank of Mauritius, although at the time of the mission the domestic business and customer profiles of these institution was such that complex, unusual transactions were less likely. With regard to institutions regulated

by the FSC, some firms, across a spread of sectors, had very good procedures in place and the representatives met by the mission had a high awareness of the importance of focusing attention on the higher risk transactions covered by Recommendation 11. Another firm was not subject to Codes; as described in the implementation section for Recommendation 5, a few firms had yet to introduce AML/CFT procedures. Following the assessment, the FSC advised that the Codes issued by the FSC apply to licensees falling within the definition of financial institutions under the FIAMLA and that where the risk was considered to be relatively high, namely with respect to investment businesses, the definition of investment businesses under the Code for Investment Businesses was extended by the FSC to capture all operators within that sector. The FSC has also advised that, with regard to other institutions licensed by the FSC and not captured by the definition of financial institution under the FIAMLA, the risk of money laundering appeared to be low and therefore no AML/CFT measures were issued by the FSC. No written assessment of risk was seen by the mission.

Special Attention to Countries Not Sufficiently Applying FATF Recommendations (c. 21.1 & 21.1.1):

681. Regulation 9 of the Financial Intelligence and Anti-Money Laundering Regulations 2003 requires financial institutions to implement internal controls and other procedures to combat money laundering and financing of terrorism, which shall include enhanced due diligence procedures with respect to persons, business relations and transactions carrying high risk and with persons established in jurisdictions that do not have adequate systems in place against money laundering and financing of terrorism.

682. In addition, paragraph 6.89 of the Guidance Notes on AML/CFT issued by the Bank of Mauritius provides that financial institutions should refuse to enter into or continue a correspondent relationship with a financial institution incorporated in a jurisdiction in which the correspondent has no physical presence and which is unaffiliated with a regulated financial group (i.e. it may involve shell financial institution). Financial institutions should pay particular attention when continuing relationships with correspondents located in jurisdictions that have poor KYC standards or have been identified as being “non-cooperative” in the fight against anti-money laundering. Financial institutions should establish that their correspondents have due diligence standards as set out in these Guidance Notes, and employ enhanced due diligence procedures with respect to transactions carried out. A list of jurisdictions that have been classified as non co-operative by the FATF is provided at Appendix E – that appendix states that, as at 13 October 2006, there were no countries and territories designated as NCCTs by the FATF.

683. The Mauritius authorities advise that the directives of the FATF with respect to non-cooperative jurisdictions are followed with due care and the Guidance Notes on AML/CFT amended from time to time. Appendix E of the Guidance Notes provides a formal avenue for alerting financial institutions to concerns about weaknesses in the AML/CFT systems of other countries. Paragraph 6.100 requires financial institutions to assess which countries with which they have financial relationships which are vulnerable to corruption.

684. Regulation 9 of the Financial Intelligence and Anti-Money Laundering Regulations 2003 also applies to financial institutions regulated by the FSC. Such institutions must implement AML/CFT internal controls and other procedures that must include enhanced due diligence measures with respect to persons and business relations and transactions with persons established in jurisdictions that do not have adequate AML/CFT systems in place.

685. Under paragraph 4.6.3 of the FSC’s Codes, when designing internal procedures, financial institutions must have regard to the need for enhanced due diligence and additional monitoring procedures for transactions and business relationships involving NCCTs and non-equivalent jurisdictions. Jurisdictions which do not appear in the list of equivalent jurisdictions in appendix II are considered by the FSC to be non-equivalent jurisdictions.

686. Transactions and business relationships in all jurisdictions in the world except the 35 equivalent jurisdictions are subject to enhanced due diligence. The Codes are also subject to change when necessary.

Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c. 21.2):

687. A suspicious transaction is defined in section 2 of the Financial Intelligence and Anti-Money Laundering Act 2002 as including a transaction which appears to have no economic justification or lawful objective. Financial institutions have a duty under section 14 of the Financial Intelligence and Anti-Money Laundering Act 2002 to report such transactions to the Financial Intelligence Unit. However, there is no requirement in the regulations or the Guidance Notes on AML/CFT issued by the Bank of Mauritius to examine as far as possible the background and purpose of transactions that have no apparent economic or visible lawful purpose and for written findings to be available to assist competent authorities and auditors.

688. A suspicious transaction is defined in section 2 of the Financial Intelligence and Anti-Money Laundering Act 2002 as including a transaction which appears to have no economic justification or lawful objective. Financial institutions have a duty under section 14 of the Financial Intelligence and Anti-Money Laundering Act 2002 to report such transactions to the Financial Intelligence Unit. However, there is no requirement in the regulations or the Codes issued by the FSC to examine as far as possible the background and purpose of transactions that have no apparent economic or visible lawful purpose and for written findings to be available to assist competent authorities and auditors.

Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 21.3):

689. Regulation 9 of the Financial Intelligence and Anti-Money Laundering Regulations 2003 provides that financial institutions shall implement internal controls and other procedures to combat money laundering and financing of terrorism, which shall include enhanced due diligence procedures with respect to persons and business relations and transactions carrying high risk and with persons established in jurisdictions that do not have adequate systems in place against money laundering and financing of terrorism. [Mauritius asked for further information]

690. Regulation 9 of the Financial Intelligence and Anti-Money Laundering Regulations 2003 provides that financial institutions shall implement internal controls and other procedures to combat money laundering and financing of terrorism, which shall include enhanced due diligence procedures with respect to persons and business relations and transactions carrying high risk and with persons established in jurisdictions that do not have adequate systems in place against money laundering and financing of terrorism. In addition, paragraph 4.6.3 of the Codes issued by the FSC provides that when designing internal procedures, institutions must have regard to the need for enhanced due diligence and additional monitoring procedures for transactions and business relationships involving NCCTs and non-equivalent jurisdictions. [Mauritius asked for further information]

691. It appeared to the mission that the requirements of the Mauritius system on Recommendation 21 were met by institutions regulated and supervised by the Bank of Mauritius and some other institutions. There was awareness of the necessity of carrying out enhanced customer due diligence measures for customers and transactions with higher risk and where jurisdictions with poor AML/CFT standards are involved. In general, customers who are not resident in Mauritius are treated as having a higher risk profile than residents and the approach to meeting Recommendation 21 tied in with the risk based approach firms had adopted for customer due diligence. As discussed in the implementation section for Recommendation 5 some firms regulated by the FSC had yet to introduce AML/CFT systems.

3.6.2 Recommendations and Comments

692. The regulations, Guidance Notes and Codes contain detailed provisions on complex, unusual large transactions and on enhanced due diligence in respect of transactions and business relationships involving jurisdictions which are considered to have AML/CFT frameworks which are not equivalent to that of Mauritius.

693. It is recommended that:

The Guidance Notes should be amended to require institutions to examine as far as possible the background and purpose of complex, unusual large transactions and to set forth their findings in writing;

The Guidance Notes and Codes should be amended to require institutions to keep their examination findings available for competent authorities and auditors for at least five years;

The Guidance Notes and Codes should be amended to require institutions to, as far as possible, examine the background and purpose of transactions that have no apparent economic or lawful purpose and keep written findings available to assist competent authorities.

3.6.3 Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	PC	Not all financial institutions are covered, some institutions regulated by FSC have not implemented the Codes fully; The regulations, Guidance Notes and Codes contain provisions on complex, unusual large transactions, but the Guidance Notes do not include the need to examine the background and purpose of such transactions, and neither the Guidance Notes nor the Codes require findings to be available for competent authorities and auditors for five years.
R.21	PC	Not all financial institutions are covered, some institutions regulated by FSC have not implemented the Codes fully; The regulations, Guidance Notes and Codes contain strong provisions on enhanced due diligence and non-equivalent jurisdictions, but there is no requirement to examine the background and purpose of transactions that have no apparent or lawful purpose, and for written findings to be available to competent authorities.

3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)

3.7.1 Description and Analysis

694. FIAMLA S14(1) requires all banks, financial institutions, cash dealers and members of relevant professions to report “forthwith” details any transaction to the FIU where they have reason to believe the transaction be suspicious. The grounds for reporting are very broad and direct, although the obligation to report does extend to the full range of financial sector institutions. Furthermore, as discussed in Recommendation 1, all the predicate offenses established in the standard are not covered by the domestic definition of “crime”.

695. In the FIAML Act, suspicious transaction means a transaction which:

“(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 organizations, whether or not the funds represent the proceeds of a 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 person with whom the transaction is made; or
- (e) gives rise to suspicion for any other reason.”

696. However, the definition of financial institutions in the Act does not cover all the categories of institutions defined in FATF, these include non-bank financial institutions such as co-operative credit unions, and factoring (see Table 3 and Table 22. They provide a fuller profile of the AML/CFT coverage for the financial sector institutions). Also, Table 5 in section 1.4 above provides a profile of how the s14(1) reporting requirements applies to the DNFBPs that operate in Mauritius.

697. After the onsite, the mission received a copy of a court ruling (CN 1011/2003) which holds that section 14 of FIAMLA does not apply to individuals but only to legal persons, even though section 19(1) does create an offence for non-reporting for the individual.

698. In Mauritius:

Bank – (a) has the same meaning as in the Banking Act 2004; and (b) includes any person licensed under the Banking Act 2004 to carry on deposit taking business.”

(Under the Banking Act 2004, “bank” means a company incorporated under the Companies Act 2001, or a branch of a company incorporated abroad which is licensed by the central bank to carry on banking business).

“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.” Section 156(2) of the Securities Act 2005 which came into force while the mission was onsite, amended the definition of financial institutions under the FIAMLA by specifying that “ financial institutions means (a) an institution or a person licensed or required to be licensed under the Insurance Act 2005 or the Securities Act 2005; and (b) a management company or registered agent licensed or required to be licensed under the Financial Services Act 2007.”

“Cash dealer” has the same meaning as in the Banking Act 2004 “

Under the Banking Act 2004, “cash dealer” means a person licensed by the central bank to carry on the business of foreign exchange dealer or money-changer.

“Member of the relevant profession or occupation means an accountant, an attorney-at-law, a barrister, a chartered secretary, a notary and includes any person carrying on the business of a casino, a bookmaker or an operator of a totalistic under the Gambling Regulatory Authority Act.”

699. For law practitioners (defined in Mauritius as a lawyer, barrister or notary) the reporting requirement does not apply when the knowledge is acquired in privileged circumstances unless it has been communicated to him with a view to a criminal or fraudulent purpose

13.2 Obligation to report includes grounds to terrorism, terrorist acts or financing.

700. The FIAMLA definition of suspicious transaction includes where there is a reasonable suspicion that: “funds linked or related to, or to be used for, terrorism or acts of terrorism or by proscribed organizations, whether or not the funds represent the proceeds of a crime”

701. Offenses relating to the financing of terrorism are described in section 4 of the Convention for the Suppression of the Financing of Terrorism Act 2003.

13.3 Attempted Transactions and Threshold

702. For the purposes of the requirement to report suspicious transactions, "transaction" is defined FIAMLA as including:

- (a) the 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

703. No threshold applies and occasional customers are also included through the definition of applicant for business in the AML regulations.

704. With regard to a legal obligation, the criterion is met

13.4 Regard to tax matters

705. Section 14 (1) of the FIAML Act, bank, financial institution, cash dealer or member of a relevant profession or occupation are required to report forthwith to the FIU any transaction which they have reason to believe may be a suspicious transaction. There is no obligation on the reporting institutions to know whether the suspicion involves tax matters, and there is no restriction placed on the obligation.

706. If the analysis conducted by the FIU reveals a tax evasion under the Income Tax Act 1995, the STR would fall outside the scope of the money laundering as define in section 3 of the FIAML Act. A report would then be forwarded to the Mauritius Revenue Authority under section 30 (2) of the FIAML Act. The report usually contains information about the entity involved, the amount of money diverted, the bank account and where the money is parked.

13.5 additional element – requirement to report if the suspected criminal activity would be a domestic predicate crime.

707. FIAMLA does not impose any burden on the reporting to conduct further test on the predicate offense. Under Part II of the FIAML, the following offenses are money laundering offenses:

“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 offense.

708. The term ‘crime’ as defined in the FIAMLA to have the same meaning as in the Criminal Code and:

(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.

Implementation of Recommendation 13

Bank of Mauritius - Application of Guidance Notes

709. Paragraph 4.03 of the Guidance Notes on AML/CFT issued by the Bank of Mauritius notes that under the FIAMLA all suspicious transactions of money laundering are required to be reported to the Financial Intelligence Unit. Paragraph 4.06 adds that the definition of suspicious transaction in the FIAMLA expressly mentions that it includes transactions related to terrorism. Paragraphs 4.07 onwards describe the Financial Intelligence Unit and its activities, and emphasizes that financial institutions are required to report suspicious transactions to the Unit. Paragraph 4.14 onwards quotes the money laundering offenses and relevant definitions in the FIAMLA. Paragraph 4.17 includes the definition of suspicious transaction in the FIAMLA. Footnote 7 to paragraph 4.17 defines transaction as including a proposed transaction, while paragraph 4.18 notes that the standard imposed on suspicion in the FIAMLA and on the money laundering offenses is the objective standard. The paragraph goes on to state that, accordingly, if the circumstances warranted the appropriate officer of a financial institution to have reasonable suspicion but he did not actually suspect, the offense may be committed. These officers should therefore be very familiar with the “Know Your Customer Principle”, which is dealt with in section 6 of the Guidance Notes.

710. Paragraph 4.24 onwards covers the reporting requirements. Every financial institution has a duty under the FIAML to forthwith make a report to the Financial Intelligence Unit of any transaction which the financial institution has reason to believe may be a suspicious transaction. Financial institutions are required to use a form which is available at the Financial Intelligence Unit to report suspicious transactions. Paragraph 4.25 provides information on the required contents of the form.

711. Paragraph 4.32 notes that any financial institution or any director or employee thereof who knowingly or without reasonable excuse fails to lodge a report of a suspicious transaction, commits an offense and shall on conviction be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding five years.

712. Paragraphs 8.01 onwards cover the practicalities of recognition and reporting of suspicious transactions. The bank of Mauritius covers the reporting of suspicious transactions in its on-site inspections to institutions.

Financial Services Commission - Application of Codes

713. Paragraph 3.1.2 of the Codes issued by the FSC advises that section 14 of the FIAMLA imposes an obligation upon licensees to report any suspicious transactions to the Financial Intelligence Unit. Institutions should note that it is an offense under the FIAMLA to fail to report a suspicious transaction. Failure to report can therefore render a person liable to prosecution for the offense of failing to report under section 19 of the FIAMLA.

714. Paragraph 5.4 includes the definition of suspicious transaction from the FIAMLA, together with the definition of transaction as encapsulating a proposed transaction. Institutions are reminded that the offense of money laundering can be committed in any circumstances where a person had reasonable grounds to suspect a transaction, even though he/she did not actually suspect it. Paragraph 5.7 adds that institutions are not under a duty to ascertain whether suspected conduct is in fact criminal conduct in the country in which it is committed. The issue for licensees is whether the conduct would be a crime if it had been committed in Mauritius. Licensees need not know the exact nature of suspected criminal activity or be certain that the particular property it is handling is the proceeds of crime. The FIAMLA simply requires a person to suspect that property may have derived from some sort of crime. The paragraph adds that in the event an activity is found to be suspicious the licensee must report it and the circumstances surrounding it to the Financial Intelligence Unit. Institutions are told to bear in mind that in the event of a suspicion of money laundering, a suspicious transaction report should be made even where there has been no transaction by or through the licensee.

715. Paragraphs 5.2 and 5.10 state that employees of institutions will discharge their legal obligations under the FIAMLA by disclosing their suspicions to the MLRO in accordance with the institution's internal procedures. Paragraph 5.1 onwards deals with internal controls and the handling of suspicious transactions.

716. The FIU's 2003 Guidance on Suspicious Transactions was provided for the benefit of all relevant parties in the financial sector. Taken together with the FIU mandated STR reporting form (and the new electronic on-line reporting system) the guidance provides supports and clarifies the STR reporting obligation for all parties in the reporting sector. The guidance is lacking in certain areas, for example, in allowing too long a timeframe for reports to be filed (30 days). Fuller discussion on the FIU Guidance is included at 2.5.1 Rec 26.1.

717. The overall low level of reporting and the frequent delays in sending such reports suggests that, although FIAMLA establishes a comprehensive framework and basis for the identifying and reporting STRS to the FIU, shortcomings exist and the regime is not fully effective.

R.14

14.1 Protection for Reporting Staff when reports made in good faith

718. Section 16(2) and (3) of the FIAMLA provides the following protection:

- (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;

719. Further, in accordance with the provisions of section 64(3)(j) of the Banking Act 2004, the duty of confidentiality imposed on banks does not apply where the bank is required to make a report or provides additional information on a suspicious transaction to the Financial Intelligence Unit under the Financial Intelligence and Anti-Money Laundering Act 2002.

14.2 Prohibited from tipping off

720. Directors, employees, agents or other legal representatives who is involved in the reporting of a suspicious transaction are not allowed under section 16 (1) of the FIAML Act to disclose to any third party the fact that they have reported a transaction to the FIU. It is also an offense under section 19 (1) (c) for any bank, financial institution, cash dealer or any director or employee thereof or member of a relevant profession or occupation to warn or inform the owner of any funds that report has been made to the FIU.

14.3 Additional Elements: Laws and measures to ensure to confidentiality of personal details

721. There is no specific provision in the FIAML Act which ensures the confidentiality of the name and personal details of the staff of any reporting institution who has filed an STR. But, the FIU takes all the necessary precautions to protect the identity of the reporting institution and the Money Laundering Reporting Officer (MLRO) by disclosing the information to law enforcement or other competent authorities for intelligence purposes only. The FIU ensures that the information remains confidential as per section 30 (2) of the FIAML Act, although FIAMLA s30(2) provides a level of controlled discretion to the Director and persons appointed by him.

Section 30(2) states that:

(1) The Director, every officer of the FIU, and the Chairperson and members of the Board 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 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 offense and, on conviction, shall be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 3 years.

Implementation:

Bank of Mauritius - Application of Guidance Notes

722. Paragraphs 4.28 and 4.29 of the Guidance Notes on AML/CFT issued by the Bank of Mauritius cover customer confidentiality. They state that legislation protects those reporting or receiving reports of suspicious transactions of money laundering or additional information thereon from claims in respect of any breach of client confidentiality or for disclosure of confidential information. The Guidance Notes also state that the legislation also provides immunity from suit for reports made in good faith even though the suspicion ultimately proves not to be well founded.

723. Paragraphs 4.30 and 4.31 deal with tipping off. They note that the FIAMLA expressly prohibits a person who is directly or indirectly involved in the reporting of a suspicious transaction from divulging to any person involved in the transaction or to any unauthorized third party with the exception of the Bank of Mauritius that the transaction has been reported. In the event that a person is found guilty of tipping off he may, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 5 years.

724. The Guidance Notes go on to state that, in practice, preliminary enquiries in respect of an applicant for business, either to obtain additional information to confirm true identity, or to ascertain the source of funds or the precise nature of the transaction being undertaken, will not trigger a tipping off offense. Great care should, however, be taken where a suspicious transaction has already been reported and it becomes necessary to make further enquiries, to ensure that customers do not become aware that their names have been brought to the attention of the FIU.

Financial Services Commission - Application of Codes

725. Paragraph 5.10 of the Codes issued by the FSC states that licensees must ensure that any disclosure is made in good faith. An absence of good faith on the part of the institution renders the institution liable to be sued for breach of client confidentiality. Where a disclosure is made in good faith but proves to be groundless, the person disclosing may claim immunity from both civil and criminal action. Paragraph 3.1.2 notes that section 16 of the FIAMLA affords a person protection against liability resulting from making a suspicious transaction report, and that this protection is against both civil and criminal proceedings.

726. Paragraph 3.1.2 notes that section 19(1) of the FIAMLA provides for an offense of tipping off and that this offense is committed when a person warns the owner of any funds of a report or any action that is to be taken in respect of any transaction concerning such funds.

The STR Filing System:

727. It seems in practice that the names of persons who are filing STRs are capable of being listed in court documents that are accessible to the public. The mission was given a copy of a judgment from the intermediate court in a money laundering case where the name of the staff member of the financial institution who initiated the STR was listed in the judgment. This does not protect the confidentiality of persons filing STRs and may dissuade persons from filing in the future.

SRIV

SRIV Reporting suspicious transactions related to terrorism (applying IV.1 and IV.2)

728. The FIAMLA definition of suspicious transaction includes, where there is a reasonable suspicion that: “funds linked or related to, or to be used for, terrorism or acts of terrorism or by proscribed organizations, whether or not the funds represent the proceeds of a crime”

729. Offenses relating to the financing of terrorism are described in section 4 of the Convention for the Suppression of the Financing of Terrorism Act 2003.

730. The obligation to report is a direct one. The obligation to report applies regardless if the transactions are completed or attempted, are of any amount or involve tax matters.

Bank of Mauritius- Application of Guidance Notes

731. The Guidance Notes issued by the Bank of Mauritius clearly cover the combating of terrorist financing. Paragraph 4.06 of the Guidance Notes advises that the definition of suspicious transaction in the FIAMLA expressly mentions that it includes transactions related to terrorism. Paragraph 4.17 quotes the definition of suspicious transaction in the FIAMLA. Generally, outside the introductory sections, the Guidance Notes refer to the reporting of suspicious transactions (i.e. transactions that may involve the laundering of money or the proceeds of crime, or funds linked or related to, or to be used for, terrorism or acts of terrorism or by proscribed organizations, whether or not the funds represent the proceeds of crime.

Financial Services Commission – Application of Codes

732. The Codes issued by the FSC clearly cover the requirements for combating of terrorist financing. References in the Codes to the reporting of suspicious transaction cover money laundering and terrorist financing. The FSC Guidance does not include examples of indicators of terrorist financing, for scenarios where money laundering typologies are not relevant.

FIU Guidance

733. The FIU’s 2003 Guide for STRs lacks any specific guidance in the area of terrorist financing or terrorism. The FIU has received no STRs relating to terrorism or terrorist financing. Fuller discussion on issues on the scope of the FIU Guidance is included at R.26.2.

Consideration of Reporting of Currency Transactions Above a Threshold (c. 19.1):

734. It is an offense under section 5 of the FIAMLA to undertake a cash transaction of more than 500,000 rupees. The Bank of Mauritius requires licensed institutions to provide it with information on currency transactions above US\$5,000 on a monthly basis. The monthly return provided by institutions provides information on a deposit and withdrawal basis on the total value of such transactions, the individual number of transactions over US\$5,000, the amount of the transactions and the number of accounts affected. The information is put on spreadsheets and used by the Bank of Mauritius to review trends at individual institution and sector level. Subject to the conclusions of this trend analysis, on-site inspections are undertaken as necessary.

Additional Element - Computerized Database for Currency Transactions Above a Threshold and Access by Competent Authorities (c. 19.2):

735. The reports provided by institutions are maintained on spreadsheets which facilitate trend analysis over time. The reports are available to the other competent authorities.

Additional Element - Proper Use of Reports of Currency Transactions Above a Threshold (c. 19.3):

736. Access to the information on currency transactions is limited to staff in the Bank of Mauritius's Banking Supervision Department. The Bank of Mauritius confirmed that the information is subject to strict safeguards to ensure its proper use and appropriate access to it.

Guidelines for Financial Institutions with respect to STR and other reporting (c. 25.1) [Note: guidelines with respect other aspects of compliance are analyzed in Section 3.10]:

Feedback to Financial Institutions with respect to STR and other reporting (c. 25.2):

737. FIAMLA does not place any specific feedback function on the FIU but it does provide a level of specific and general feedback to the reporting sector. The FIU is active in attempting to work with the necessary AML/CFT constituency in law enforcement, the regulatory bodies, the professional associations, and the reporting sector. It has conducted a range of seminars and outreach sessions over the past number of years.

738. The FIU provides a receipt to reporting entities for all STRs it receives. However, the FIU generally does not provide feedback to reporting institutions on the outcomes or value of those specific reports. Some industry representatives expressed a concern on the lack of feedback, especially in those cases where there was concern about the reputation implication in proceeding with the business relationship. The FIU does not have a 'consent to proceed' power.

739. The FIU is limited in its ability to provide such feedback, firstly because of its wish to maintain the overall protection of information, and the integrity of any investigations or regulatory action that may be underway. Secondly, the FIU itself receives little to no feedback on its disseminations from the investigatory authorities, and thus considers itself limited in its capacity to provide any meaningful feedback to the original reporting institution. (Fuller analysis of the lack of feedback to the FIU is included at Section rec 26.3). A particular concern is the current lack of any feedback from ICAC which is the largest receiver of FIU disseminations.

740. Whilst this lack of feedback represents a challenge to the FIU's ability to feedback, the assessors consider that the FIU should strive, where possible, to enhance feedback on specific STRs.

741. In terms of more general feedback, the FIU uses its Annual Report to publish statistics on the number of disclosures received, with appropriate breakdown of the disclosures according to the types and categories of reporting institutions. The FIU also provides a breakdown of the number of disseminations made to the supervisory and investigatory authorities and identifies trends in the reports it receives.

742. The FIU conducts annual seminars to disseminate strategic intelligence and provide other information to reporting institutions. The annual reports are also available to the public through the FIU website. As part of its research function, the FIU also conducted a national survey of reporting institutions and the general public on the “Risks, Extent and Trend of Money Laundering and Financing of Terrorism in Mauritius” and published the results in May 2006.

743. The FIU’s 2003 Guidance on STR reporting requirements also provides reporting institutions with various indicators of money laundering, although the range and specificity of the indicators need considerable updating. Further, it would benefit from the inclusion of sanitized cases, including the full typology of known ML and TF cases.

3.7.2 Recommendations and Comments

Comments:

744. The Guidance Notes on AML/CFT issued by the Bank of Mauritius and the Codes issued by the FSC provide substantial backing to the legislation with regard to the reporting of suspicion, the protection afforded when making a suspicious transaction report and the tipping off offense.

745. The Bank of Mauritius obtains information on currency transactions and conducts trend analysis to make the best use possible of the information.

Recommendations:

The STR reporting obligation should apply to all categories of businesses that currently undertake financial activity, consistent with FATF definition of financial institution;

At a minimum, seek legal or legislative remedy to remove any discretion where STRs are to be evidenced in Court proceedings, the names and identification details of staff members of reporting institutions are excluded. Given industry concerns, consider total exemption of STRs from court proceedings

Revise FIAMLA section 14(1) to include reference to individuals in their role of acting as director(s), agent, employee or other legal representative of any bank, financial institution, cash dealer or member of a relevant profession or occupation (for avoidance of doubt)

The AML/CFT Committee should consider ways to improve the overall framework to enable the FIU to receive timely knowledge on the overall value of its disseminations.

The FIU’s Guidance Notes should be updated to include: reference to a more immediate timeframe for reporting of STRs and a more contemporary and wider range of indicators and typologies. In the current absence of meaningful local cases, the FIU could reference available material from publications such as the various FATF and FSRB typology reports.

The FIU should seek to improve the quality of STR reporting by engaging more with the professional associations and the gambling industry. A standing forum involving the FIU and representatives from the various sector supervisory bodies should be considered as one means of improving the flow and sharing of information.

3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
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R.13	PC	Not all categories of FI are subject to STR reporting obligation: Concerns regarding the low level of reporting and delays in reporting to the FIU; Unclear that the FIMALA reporting obligation extends to individuals, in their capacity of director, employee, agent or other legal representatives of a reporting institution
R.14	C	This Recommendation is fully met.
R.19	C	This Recommendation is fully met.
R.25	LC	Financial Sector supervisors-specific rating would be: <u>C</u> FIU specific rating would be PC: The FIU 's provides limited, value added feedback to the reporting sectors on the STRs it receives, in part because of the limited feedback it receives from the investigatory authorities, in particular ICAC which considers itself constrained by the confidentiality provisions of POCA.
SR.IV	PC	Not all categories of FI are subject to STR reporting obligation Unclear that the FIMALA reporting obligation extends to individuals, in their capacity of director, employee, agent or other legal representatives of a reporting institution.

Internal controls and other measures

3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)

3.8.1 Description and Analysis

Establish and Maintain Internal Controls to Prevent ML and TF (c. 15.1, 15.1.1 & 15.1.2):

746. Regulation 9 of the Financial Intelligence and Anti-Money Laundering Act 2002 requires financial institutions falling under the purview of the Bank to implement internal controls and other procedures to combat money laundering and financing of terrorism, which include:

- (a) programs for assessing risk relating to money laundering and financing of terrorism;
- (b) the formulation of a control policy that will cover issues of timing, degree of control, areas to be controlled, responsibilities and follow-up;
- (c) monitoring programs in relation to complex, unusual or large transactions;
- (d) enhanced due diligence procedures with respect to persons and business relations and transactions carrying high risk and with persons established in jurisdictions that do not have adequate systems in place against money laundering and financing of terrorism;
- (e) providing employees, including the Money Laundering Reporting Officer, from time to time with training in the recognition and handling of suspicious transactions; and
- (f) making employees aware of the procedures under these regulations, the Act, Codes and Guidelines and any other relevant policies that are adopted by the relevant person;
- (g) establishing and maintaining a manual of compliance procedures in relation to anti-money laundering.

747. Paragraphs 5.01 onwards of the Guidance Notes on AML/CFT issued by the Bank of Mauritius deal with internal controls, policies and procedures.

748. Financial institutions are required to have in place adequate policies, procedures and internal controls that promote high ethical and professional standards and prevent their institutions from being used, intentionally or unintentionally, by criminal elements. They must therefore establish clear responsibilities to ensure that policies, procedures and internal controls are introduced and maintained which deter criminals from using their facilities for money laundering and terrorist financing, thus ensuring that they comply with their obligations under the law. The Guidance Notes add that under section 3(2) of the FIAMLA, financial institutions are required to take such measures as are reasonably necessary to ensure that neither they nor any service offered by them, is capable of being used by a person to commit or to facilitate the commission of a money laundering offense. Any financial institution which fails to take such measures shall commit an offense. The Guidance Notes also advise that under regulation 9 of the Financial Intelligence and Anti-Money Laundering Regulations 2003, financial institutions are also required to implement internal controls and other procedures to combat money laundering and the financing of terrorism which among other things include establishing and maintaining a manual of compliance procedures in relation to money laundering and programs for assessing risks relating to money laundering and the financing of terrorism.

749. Financial institutions are advised that it is therefore of utmost importance for financial institutions to have in place a sound 'Know Your Customer' (KYC) procedure and policy in place. KYC is most closely associated with the fight against money laundering and the financing of terrorism.

750. It is imperative that every financial institution appoints an appropriate person who may be among the existing employees of the financial institution as Money Laundering Reporting Officer (MLRO) and to whom all internal suspicious transaction reports will be made. (Paragraphs 8.08 to 8.12 of the Guidance Notes cover the role of a MLRO). The MLRO must be of sufficiently senior status and not below the rank of Manager. In branches of financial institutions, there should be a responsible officer on whom responsibility for AML/CFT matters would devolve. It is incumbent on the MLRO, on behalf of the financial institution, to make suspicious transaction reports to the FIU.

751. All financial institutions operating within Mauritius should:

- (a) have procedures for the prompt validation of suspicions and subsequent reporting by the internal employees to the MLRO.
- (b) provide the MLRO with necessary access to systems and records to enable him to investigate and validate internal suspicions reports which have been reported to him.
- (c) inform all employees of the identity of the MLRO and in his absence, the person designated to replace him.

752. Financial institutions are also required to appoint a Compliance Officer at management level who will bear the responsibility to verify, on a regular basis, compliance with policies, procedures and controls relating to money laundering and the financing of terrorism activities. Institutions are advised that it is important that the procedures and responsibilities for monitoring compliance with, and effectiveness of, anti-money laundering and financing of terrorism policies and procedures are clearly laid down by all financial institutions. Although it is advisable for the Compliance Officer and the MLRO to be two distinct persons, it is left to individual financial institutions to decide whether the Compliance Officer may also take on the functions of the MLRO.

753. Paragraph 6.01 onwards covers the customer due diligence standards to be adopted by institutions. Paragraph 7.01 onwards covers record keeping. Paragraph 8.01 onwards covers the recognition and reporting of suspicious transactions. Regulation 9 of the Financial Intelligence and Anti-Money Laundering Regulations 2003 covers unusual transactions.

754. In February 2004, a Committee comprising representatives of the Bank of Mauritius and the Compliance Officers of banks was set up to serve as a platform for interaction on AML/CFT issues and other aspects of compliance. Representatives of banks met by the mission advised that this committee is very useful.

755. Regulation 9 of the Financial Intelligence and Anti-Money Laundering Regulations 2003 also applies to institutions regulated by the FSC.

756. Paragraph 5.1 onwards of the FSC's Codes deal with internal controls and the handling of suspicious transactions. Under the Codes institutions should have a system of internal controls to manage their AML/CFT risks and to provide a systematic and disciplined approach to assuring compliance with AML/CFT laws, codes and standards of good practice. The board of an institution should approve the institution's AML/CFT policy and must establish procedures and allocate responsibilities to ensure the AML/CFT policy and procedures are managed effectively and are in line with applicable laws, codes and standards of good practice.

757. Institutions must implement adequate internal procedures to facilitate reporting of all suspicious transactions by employees. Institutions must appoint a Money Laundering Reporting Officer to whom all suspicious transaction reports are made. Adequate procedures should be implemented by institutions to ensure that MLROs have access to all relevant business information and CDD documentation in order to properly evaluate suspicious transaction reports. The Money Laundering Reporting Officer is also responsible for implementing and monitoring the day-to-day operation of the financial institution's AML/CFT policy and procedures.

758. The internal AML/CFT policies and procedures of a financial institution must at least cover customer due diligence (paragraph 4 onwards), the recognition and reporting of suspicions (paragraph 5.1 onwards), training and culture (paragraph 6 onwards) and record keeping (paragraph 7 onwards).

759. With regard to implementation, one institution visited by the mission did not have a Money Laundering Reporting Officer.

Independent Audit of Internal Controls to Prevent ML and TF (c. 15.2):

760. Paragraphs 6.111 and 6.112 of the Bank of Mauritius Guidance Notes on AML/CFT deal with internal audit. Financial institutions' internal audit and compliance functions have important responsibilities in evaluating and ensuring adherence to KYC policies and procedures. As a general rule, the compliance function should, through the Compliance Officer, provide an independent evaluation of the financial institution's own policies and procedures, including legal and regulatory requirements. Its responsibilities should include ongoing monitoring of staff performance through sample testing of compliance and review of exception reports to alert senior management or the Board of Directors if it believes management is failing to address KYC procedures in a responsible manner. Internal audit plays an important role in independently evaluating the risk management and controls, discharging its responsibility to the Audit Committee of the Board of Directors or a similar oversight body through periodic evaluations of the effectiveness of compliance with KYC policies and procedures, including related staff training. Management should ensure that internal audit functions are staffed adequately with individuals who are well versed in such policies and procedures. In addition, internal auditors

should be proactive in following-up their findings and criticisms. At one financial institution visited by the mission a single individual occupied the roles of compliance officer and internal audit officer.

761. Under paragraph 5.3 of the Codes issued by the FSC, the MLRO must report to the board of directors of the financial institution or a committee of the board on any material breaches of the internal AML/CFT policy and procedures and of the AML/CFT laws, codes and standards of good practice. The MLRO must also make annual reports and such other periodic reports as he/she deems necessary to the board of the financial institution or a committee of the board on the adequacy/shortcomings of internal controls and other procedures implemented to combat money laundering and financing of terrorism, the number of internal reports made by staff and the number of reports made to the FIU. The report must recommend any necessary action to remedy deficiencies identified by the MLRO. The board of the financial institution must take all necessary action to remedy deficiencies identified by the MLRO in the report. The Codes do not refer to the maintenance of an internal audit function to test compliance (including sample testing).

Ongoing Employee Training on AML/CFT Matters (c. 15.3):

762. Regulation 9(e) of the Financial Intelligence and Anti-Money Laundering Regulations 2003 provides that every relevant person shall implement internal controls and other procedures to combat money laundering and financing of terrorism, which shall include providing employees, including the Money Laundering Reporting Officer, from time to time with training in the recognition and handling of suspicious transactions. Regulation 9(f) requires that employees should be made aware of the procedures under the regulations, the Act, Codes and Guidelines and any other relevant policies that are adopted by the relevant person.

763. Paragraph 9.01 onwards of the Guidance Notes on AML/CFT issued by the Bank of Mauritius covers training. Every financial institution must, in order to combat money laundering and the financing of terrorism, implement an ongoing training program for its employees in order to discharge part of its statutory duty to take reasonable measures in that regard. Financial institutions must take appropriate measures to make employees aware of:

- (i) policies and procedures put in place to prevent money laundering and the financing of terrorism including those for identification, record-keeping, the recognition and handling of suspicious transactions and internal reporting.
- (ii) the legal requirements contained in the Financial Intelligence and Anti-Money Laundering Act 2002, the Prevention of Corruption Act 2002 in so far as it is applicable to money laundering, the Prevention of Terrorism Act 2002 with regard to the financing of terrorism and the Convention for the Suppression of the Financing of Terrorism Act 2003 and Regulations applicable to them.
- (iii) their own personal statutory obligations, and the fact that they can personally be liable for failure to report information in accordance with internal procedures.

764. The Guidance Notes provide that persons undertaking different functions or with different experience (front line staff, new employees, supervisors and managers, and MLROs and Compliance Officers) should receive different training. The Notes go on to say that it will be necessary to make arrangements for refresher training at regular intervals to ensure that staff do not forget their responsibilities.

765. The Guidance Notes do not refer to training on money laundering and terrorist financing techniques, methods and trends.

766. Regulation 9(e) of the Financial Intelligence and Anti-Money Laundering Regulations 2003 also applies to institutions regulated by the FSC. Regulation 9(f) requires that employees should be made aware of the procedures under the regulations, the Act, Codes and Guidelines and any other relevant policies that are adopted by the relevant person. Under paragraph 6 onwards of the FSC's Codes institutions must implement appropriate and ongoing AML/CFT training for staff in general and for the MLRO in particular. Training should cover the recognition and handling of suspicious transactions and additional measures to maintain a high level of aware and vigilance between training sessions. Training must be relevant both to the role and the seniority of the employee and should take account of relevant financial services and products. All employees of financial institutions must receive refresher AML/CFT training on an annual basis. The training should include legal obligations, the money laundering/terrorist financing vulnerabilities of relevant services and products, internal controls and CDD measures, and recognition and handling of suspicious transactions. The Codes do not refer to training on money laundering and terrorist financing techniques, methods and trends.

767. Further, as MLROs and Deputy MLROs have significant responsibility for the receipt, evaluation and where appropriate external reporting of suspicious transactions to the FIU, MLROs and Deputy MLROs should be given additional training in the recognition and handling of suspicious transactions.

Employee Screening Procedures (c. 15.4):

768. Section 46 of the Banking Act 2004 provides that no person shall be appointed or reappointed as director of a financial institution unless the appointment or reappointment takes into account the guidelines issued by the central bank relating to fit and proper persons.

769. The section further provides that no financial institution shall appoint or reappoint any person as senior officer in Mauritius unless:

- (a) prior notice to the central bank is given by the financial institution at least 20 days before the date of the proposed appointment or re-appointment;
- (b) the notice under paragraph (a) is accompanied by a certificate of good conduct acceptable to the central bank, or a certificate of morality dating back to not more than 3 months, or an affidavit duly sworn stating any convictions for crimes and any past or present involvement in a managerial function in a body corporate subject to insolvency proceedings or having declared personal bankruptcy duly executed by the person concerned; and
- (c) the central bank is satisfied that the person to be appointed or re-appointed is a fit and proper person.

770. The Bank of Mauritius has issued Guideline on Fit and Proper Person Criteria which financial institutions are bound to follow with respect to senior officers, directors and shareholders who exercise significant influence on financial institutions.

771. The FSC has advised that, according to its licensing conditions, a financial institution must ensure that any director, manager and senior officer appointed must be fit and proper.

Additional Element – Independence of Compliance Officer (c. 15.5):

772. Regulations 6 and 7 of the Financial Intelligence and Anti-Money Laundering Regulations 2003 are pertinent to Criterion 15.5. Under these regulations, every financial institution must appoint a Money Laundering Reporting Officer (MLRO) who is of sufficiently senior status and have relevant and necessary competence, authority and independence. The MLRO is required to report forthwith to the Financial

Intelligence Unit, in such form as may be prescribed, any transaction that he has reason to believe is a suspicious transaction. These regulations and the statutory duties they require provide the MLRO with independence. Paragraph 8.09 of the Guidance Notes on AML/CFT issued by the Bank of Mauritius states that the MLRO must be independent. There is no provision in the Codes that the MLRO must be able to report to more senior management or the board. There is also no requirement for the compliance officer to be independent.

773. Regulations 6 and 7 of the Regulations also apply to institutions regulated by the FSC. Under paragraph 5.2 of the Codes issued by the FSC the MLRO must be of sufficiently senior status and must have relevant and necessary competence, authority and independence to be able to discharge the reporting obligation effectively and autonomously. Paragraph 5.3 states that the MLRO shall report to the board of directors or a committee of the board on any material breaches of the internal AML/CFT policy and procedures and of the AML/CFT laws, codes and standards of good practice. In addition, the MLRO must make annual reports and such other periodic reports as he/she deems necessary to the board or a committee of the board on the adequacy/shortcomings of internal controls and other procedures implemented to combat money laundering and financing of terrorism, the number of internal reports made to the Financial Intelligence Unit.

774. Banks regulated and supervised by the Bank of Mauritius appeared to have strong internal controls in place of AML/CFT. They had procedures manuals. Money laundering reporting officers had been appointed, who had access to customer records. Internal audit checked compliance with procedures – in one bank a single individual occupied the roles of compliance officer and internal audit officer. Staff had received training. The other institutions regulated by the Bank of Mauritius also appeared to have good procedures. Some institutions, across a variety of sectors, regulated by the FSC had strong internal controls. One firm had external consultants and was well aware of the importance of robust control systems and monitoring the efficiency of those systems. However, on other cases, AML/CFT controls were not yet in place. One institution had yet to appoint a Money Laundering Reporting Officer notwithstanding on-site inspections over two or three years by the FSC and a recommendation by the FSC that such an officer should be appointed. At the time of the mission, that institution was in the process of establishing formal procedures to comply with the relevant Code. Another firm requested by the mission to explain how it would advise the FSC on how it complied with the relevant Code found it difficult to do so. Another firm was not subject to a Code.

Application of AML/CFT Measures to Foreign Branches & Subsidiaries (c. 22.1, 22.1.1 & 22.1.2):

775. Section 42 of the Banking Act provides that the central bank shall conduct regular examinations of the operations and affairs of every financial institution at least once every two years. Where the central bank specifies the examination includes affiliates and overseas branches and affiliates of the financial institution. The examinations may be of such scope as the Bank of Mauritius deems necessary to assess that the financial institution is duly observing the provisions of the banking laws, guidelines, and instructions issued by the central bank and is in sound financial condition. The Guidance Notes on AML/CFT issued by the Bank of Mauritius do not contain provisions on the application of AML/CFT standards applicable to financial institutions in Mauritius to their foreign branches and subsidiaries. The Bank of Mauritius has advised that foreign branches and subsidiaries have in place operational guidelines and policies and procedures prepared by the parent banks and which is in line with the requirements of the home regulator in Mauritius. Regular reporting is carried out by those branches and subsidiaries to their Head Office in Mauritius in respect of compliance with AML/CFT. The Bank of Mauritius has also advised that compliance officers from the Group in Mauritius pay regular visits to the branches or subsidiaries of local banks to ensure compliance with policies and procedures issued by the Head Office.

776. The Bank of Mauritius has also confirmed that the operational guidelines of the branches and subsidiaries of Mauritius banks contain a requirement to apply the higher standard where the minimum standards of Mauritius and the host jurisdiction of a branch or subsidiary differ.

777. In addition, Bank of Mauritius executives have undertaken on-site inspections to branches and subsidiaries of Mauritius banks and have assessed that the AML/CFT standards of these foreign operations meet Mauritius AML/CFT standards. It was apparent to the mission that the Bank of Mauritius took the consolidated supervision responsibilities required by the Core Principles of the Basel Committee on Banking Supervision extremely seriously.

778. It was clear to the mission that the Bank of Mauritius did require the application of AML/CFT measures to foreign branches and subsidiaries – this was borne out by meetings with banks. There is no law, regulation or other enforceable means within the meaning of the Methodology which requires financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations. .

779. The FSC has advised that institutions subject to their supervision have few foreign branches and subsidiaries. Nevertheless, the Codes are silent on the application of AML/CFT standards to foreign branches and subsidiaries.

Requirement to Inform Home Country Supervisor if Foreign Branches & Subsidiaries are Unable Implement AML/CFT Measures (c. 22.2):

780. The Bank of Mauritius has advised that during its on-site inspections it verifies that financial institutions would inform the Bank if a foreign branch or subsidiary is unable to observe appropriate AML/CFT standards because to do so is prohibited by local laws, regulations or other measures. This is verified during the course of on-site inspections in those jurisdictions. This is a very positive approach by the Bank of Mauritius to consolidated supervision.

781. The requirements of Criterion 22.2 are not contained in the FSC's Codes on the basis that the non-bank sector has few foreign branches and subsidiaries.

Additional Element – Consistency of CDD Measures at Group Level (c. 22.3):

782. The Bank of Mauritius has advised that the operational guidelines of Mauritius banks contain a requirement for financial institutions subject to the Core Principles to apply consistent CDD measures at the group level.

783. On the basis that few nonbanks have foreign branches and subsidiaries, the Codes issued by the FSC do not cover whether financial institutions subject to the Core Principles are required to apply consistent group measures at the group level, taking into account the activity of the customer with the various branches and majority owned subsidiaries worldwide.

784. The Bank of Mauritius treats its consolidated supervisory responsibilities seriously, visiting overseas branches and subsidiaries of the banks to seek to ensure, inter alia, that adequate AML/CFT measures are in place. Bankers met by the mission were aware of the importance of cascading AML/CFT policies and procedures down to their branches and subsidiaries and appeared to the mission to so do. It appeared to the mission that foreign banks are required to meet home country requirements. On the basis that the nonbank sector has few foreign branches and subsidiaries, the FSC Codes are silent on the application of AML/CFT standards to such branches and subsidiaries—hence, those few branches/subsidiaries are not covered by the Mauritius home country requirements. Following the assessment, Following the assessment, the FSC advised

the mission that it would regulate these foreign branches and subsidiaries when licensed by the FSC and that, should that not be the case, the branch or subsidiary will be subject to the provisions of the law of the jurisdiction from which it is operating. As indicated in the implementation section for Recommendation 5, not all institutions regulated by the FSC have established AML/CFT measures in any case.

3.8.2 Recommendations and Comments

785. The Guidance Notes on AML/CFT issued by the central bank and the Codes issued by the FSC provide strong guidance on internal controls. Law, regulation, or other enforceable means do not cover the requirements of Recommendation 22, although the strong policy and activity by the Bank of Mauritius on verifying home country AML/CFT requirements are met in practice by foreign bank branches and subsidiaries was noted by the mission.

786. It is recommended that:

The Codes should be amended to provide that institutions should be required to maintain an adequately resourced audit function;

In addition to the existing provisions on training, the Guidance Notes and Codes should be amended to require institutions to provide ongoing employee training on ML and FT techniques, methods, and trends;

The Guidance Notes and Codes should be amended to require institutions to put in place screening procedures to ensure high standards when hiring employees;

The Codes should be amended to include provisions on the application of AML/CFT measures to branches and subsidiaries of Mauritius financial institutions in accordance with Recommendation 22.

3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	PC	Not all financial institutions are covered, some institutions regulated by FSC have not implemented the Codes fully; The Guidance Notes and Codes provide strong elements on internal control; The Guidance Notes and Codes do not contain requirements on ongoing training on ML/FT techniques, methods and trends or on screening procedures when hiring new employees; The Codes do not require an adequately resourced audit function.
R.22	NC	Not all financial institutions are covered. The Codes contain no provisions on the application of AML/CFT standards to branches and subsidiaries of Mauritius institutions; Despite a very positive approach to consolidated supervision by the Bank of Mauritius, the requirements of Recommendation are not met by law, regulation, or other enforceable means.

3.9 Shell banks (R.18)

3.9.1 Description and Analysis

Prohibition of Establishment Shell Banks (c. 18.1):

787. Under Section 5 of the Banking Act 2004, the Bank has such functions as are necessary to achieve the attainment of its objects and, in particular, it shall, inter alia, regulate and supervise financial institutions carrying on activities in, or from within, Mauritius.

788. For the purposes of Section 4(2) of the Act, the Bank of Mauritius shall:

- (a) ascertain and promote the soundness of financial institutions and their compliance with governing laws, rules and regulations;
- (b) ensure the adoption by financial institutions of policies and procedures designed to control and manage risks effectively;
- (c) adopt policies to safeguard the rights and interests of depositors and creditors of financial institutions, having due regard to the need for financial institutions to compete effectively in the market and take reasonable risks;
- (d) monitor system-wide factors that might have or potentially have a negative impact on the financial condition of financial institutions.

789. No person may engage in banking business in Mauritius without a banking license issued by the central bank. Every application for a banking license shall be made in such medium and in such form as the central bank may determine and shall be accompanied by a copy of the certificate of incorporation of the applicant; in the case of a foreign company registered in Mauritius, a copy of the certificate of registration and a written confirmation from the banking supervisory authority in the applicant's country of incorporation that the supervisory authority has no objection to the applicant's proposal to carry on banking business in Mauritius; a copy of the constitution of the applicant; a certified list of the full names and address as of the directors, beneficial owners, chief executive officer and managers of the applicant and a list of its shareholders owning 10 percent or more of its shares; a copy of the financial statements of the applicant; a business plan giving the nature of the planned business, organizational structure and internal control, projected financial statements including cash flow statements for each of the next three financial years; in respect of the directors, chief executive officer, managers and shareholders holding a significant interest, of the applicant, an identification and a certificate of good conduct, in such form as may be specified by the central bank, from a competent authority or an affidavit duly sworn stating any convictions for crimes and any past or present involvement in a managerial function in a body corporate subject to insolvency proceedings or having declared personal bankruptcy; and such other information or document as the central bank may specify in the application form.

790. Under section 7 of the Banking Act, no banking license shall be granted by the central bank unless it is satisfied:

- (a) that the applicant has:
 - (i) demonstrated that the directors or senior officers of the applicant have technical knowledge, experience in banking or finance and are fit and proper persons to carry on the proposed banking business;
 - (ii) sufficient financial resources and an adequate capital structure to serve as a continuing source of financial support for the proposed bank;

(iii) demonstrated the soundness and feasibility of the applicant's plans for the future conduct and development of the business of the proposed bank, including accounting and internal control systems;

(iv) the ability and willingness to comply with such other conditions as the central bank may impose under the banking laws;

(b) as to the history and character of the business and management of the applicant;

(c) as to the convenience and needs of the community or market to be served; and

(d) as to the fitness and suitability of the applicant's shareholders, particularly shareholders holding a significant interest.

791. In light of the statutory provisions under which the Bank of Mauritius operates, shell banks cannot be established in Mauritius.

Prohibition of Correspondent Banking with Shell Banks (c. 18.2):

792. Paragraphs 6.87 onwards of the Bank of Mauritius Guidance Notes on AML/CFT provide guidance on correspondence services. Particular care should be taken where correspondent services involve jurisdictions where the correspondent financial institutions have no physical presence. Financial institutions should only establish correspondent relationships with foreign financial institutions that are effectively supervised by the relevant authorities and have effective customer acceptance and KYC policies. In particular, financial institutions should refuse to enter into or continue in a correspondent relationship with a financial institution incorporated in a jurisdiction in which the correspondent has no physical presence and which is unaffiliated with a regulated financial group (i.e., it may involve a shell financial institution). The Bank of Mauritius evaluates compliance with the provisions on correspondent banking during its on-site inspections.

Requirement to Satisfy Respondent Financial Institutions Prohibit of Use of Accounts by Shell Banks (c. 18.3):

793. The Guidance Notes on AML/CFT issued by the Bank of Mauritius specify that financial institutions should gather sufficient information about their correspondents to understand fully the nature of the correspondent's business. Factors to consider include: information about the correspondent's management, major business activities, where they are located and its money-laundering prevention and detection efforts; the identity of any third party entities that use the correspondent services; and the condition of the financial institution regulation and supervision in the correspondent's country. Financial institutions should only establish correspondent relationships with foreign financial institutions that are effectively supervised by the relevant authorities and have effective customer acceptance and KYC policies.

794. Financial institutions should refuse to enter into or continue a correspondent relationship with a financial institution incorporated in a jurisdiction in which the correspondent has no physical presence and which is unaffiliated with a regulated financial group. Financial institutions should pay particular attention when continuing relationships with correspondents located in jurisdictions that have poor KYC standards or have been identified as being "non-cooperative" in the fight against anti-money laundering. Financial institutions should establish that their correspondents have due diligence standards as set out in the Mauritius Guidance Notes, and employ enhanced due diligence procedures with respect to transactions carried out.

795. The Bank of Mauritius monitors compliance with the provisions of the Guidance Notes on correspondent banking during its on-site inspections.

3.9.2 Recommendations and Comments

796. There are no shell banks in Mauritius and the legislation under which the Bank of Mauritius operates prevents the establishment of shell banks in the future. The Guidance Notes on AML/CFT issued by the Bank of Mauritius contain detailed provisions on correspondent banking. The mission considers Recommendation 18 to be fully implemented.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	C	This Recommendation is fully met.

Regulation, supervision, guidance, monitoring and sanctions

3.10 The supervisory and oversight system—competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R. 17, 23, 25 & 29)

3.10.1 Description and Analysis:

Regulation and Supervision of Financial Institutions (c. 23.1):

797. Section 18 of the FIAMLA states that 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. The section goes on to provide that the Bank of Mauritius shall supervise and enforce compliance by banks and cash dealers with the requirements imposed by the Act, regulations made under the Act and such guidelines as it may issue. On-site inspections by the Bank are covered in Criterion 29.1. Sanctions are covered in Recommendation 17.

798. As discussed in these other Recommendations and, the introduction to section three of this report, before the mission statutory on-site powers were limited and, in addition, powers of sanction AML/CFT breaches were limited, difficult to apply and not applied.

Designation of Competent Authority (c. 23.2):

799. As discussed above, Section 18 of the Financial Intelligence and Anti-Money Laundering Act 2002 provides authority for the Bank of Mauritius to issue Guidance Notes and to supervise and enforce compliance by banks and cash dealers with the requirements imposed by the Financial Intelligence and Anti-Money Laundering Act 2002, regulations made under the Act and such guidelines as it may issue.

800. As discussed above, Section 18 of the Financial Intelligence and Anti-Money Laundering Act 2002 provides authority for the FSC to issue Codes and to supervise and enforce compliance by financial institutions with the requirements imposed by the Financial Intelligence and Anti-Money Laundering Act 2002, regulations made under the Act, and such guidelines as it may issue.

Fit and Proper criteria and Prevention of Criminals from Controlling Institutions (c. 23.3 & 23.3.1):

801. Sections 5 to 7 of the Banking Act 2004 deal with applications for banking licenses. No person shall engage in banking business in Mauritius without a banking license issued by the central bank. Subject to section 12 of the Act, no person, other than a bank licensed by the central bank, shall engage in receiving deposits from the public.

802. Every application for a banking license shall be made in such medium and in such form as the central bank may determine and shall be accompanied, among other material, by:

- (a) a copy of the certificate of incorporation of the applicant;
- (b) in the case of a foreign company registered in Mauritius, a copy of the certificate of registration and a written confirmation from the banking supervisory authority in the applicant's country of incorporation that the supervisory authority has no objection to the applicant's proposal to carry on banking business in Mauritius;
- (c) a copy of the constitution of the applicant;
- (d) a certified list of the full names and addresses of the directors, beneficial owners, chief executive officer, and managers of the applicant and a list of its shareholders owning 10 percent or more of its shares;
- (e) in respect of the directors, chief executive officer, managers, and shareholders holding a significant interest, of the applicant, an identification and a certificate of good conduct, in such form as may be specified by the central bank, from a competent authority or an affidavit duly sworn stating any convictions for crimes and any past or present involvement in a managerial function in a body corporate subject to insolvency proceedings or having declared personal bankruptcy;

803. No banking license shall be granted by the central bank unless it is satisfied, inter alia, that the applicant has demonstrated that the directors or senior officers of the applicant have technical knowledge, experience in banking or finance and are fit and proper persons to carry on the proposed banking business. The Bank of Mauritius must also be satisfied as to the history and character of the business and management of the applicant, and the fitness and suitability of the applicant's shareholders, particularly shareholders holding a significant interest.

804. Where the applicant is the branch incorporated abroad and is making an application either singly or in joint venture with a bank incorporated in Mauritius, the central bank must satisfy itself that the bank incorporated abroad is a reputable international bank, having operated as a bank in the jurisdiction of its head office for at least five years, and is subject to consolidated supervision by competent foreign regulatory authorities.

805. With regard to branches of institutions which are licensed to operate as banks, their ratings and rankings are obtained from international credit rating agencies. The Bank of Mauritius also obtains information from the parent supervisory authority on applicants for licenses and will grant a license if it is satisfied that supervision will be conducted on a consolidated basis by the parent supervisory authority in accordance with the Basel Committee's 25 Core Principles for Effective Banking Supervision.

806. In summary, under Section 7 of the Banking Act 2004, no banking license shall be granted by the central bank unless it is satisfied (a) that the applicant has demonstrated that the directors or senior officers of

the applicant have technical knowledge, experience in banking or finance, and are fit and proper persons to carry on the proposed banking business; and (b) as to the fitness and suitability of the applicant's shareholders, particularly shareholders holding a significant interest.

807. Section 46 of the Banking Act states that no person shall be appointed or reappointed as director of a financial institution unless the appointment or reappointment takes into account the guidelines issued by the central bank relating to fit and proper persons. In addition, no financial institution shall appoint or reappoint any person as senior officer in Mauritius unless:

- (a) prior notice to the central bank is given by the financial institution at least 20 days before the date of the proposed appointment or re-appointment;
- (b) the notice under paragraph (a) is accompanied by a certificate of good conduct acceptable to the central bank, or a certificate of morality dating back to not more than three months, or an affidavit duly sworn stating any convictions for crimes and any past or present involvement in a managerial function in a body corporate subject to insolvency proceedings or having declared personal bankruptcy duly executed by the person concerned; and
- (c) the central bank is satisfied that the person to be appointed or re-appointed is a fit and proper person.

808. Section 46 also specifies the factors to which the Bank of Mauritius must have regard when determining whether a person is fit and proper. These factors include probity, integrity, diligence, competence, and business experience; previous conduct and activities in business; and whether or not a person has been subject to any conviction of an offense involving fraud or other dishonesty. The Bank of Mauritius has also issued a guideline on fit and proper criteria.

809. Any person who attempts to assume any office over the objection of the central bank is subject to a suspension order by the central bank.

810. Section 46 of the law goes on to provide that where the central bank has reason to believe that any person is, by virtue of its shareholding in the financial institution or otherwise, in a position to influence any person specified above, and is exercising its influence in a manner which is likely to be detrimental to the interests of depositors, the central bank may request that the shareholder holding a significant interest and the financial institution to remedy the situation. Where a shareholder holding a significant interest or a financial institution fails to give satisfaction to the central bank following such a request, the central bank may take action against him.

811. Under Section 14(1) of the Financial Services Development Act, no person can conduct any business activity in the financial services sector without a license issued by the FSC. Until the mission, the FSC could issue a license only where it was satisfied that the requirements for the registration of any person or the granting of a certificate, license, or authorization to any person were fulfilled under the relevant Acts and that the person was a fit and proper person. The FSC has used this provision to ascertain the fitness and propriety of shareholders, directors, and senior staff. Section 15 of the Insurance Act 1987 provided that the FSC must not register an applicant for an insurance license if it appeared that any director or manager was not fit and proper. In addition, Section 56 of that Act stated that the FSC must refuse to register an applicant to be an insurance agent or insurance broker unless it was satisfied as to their fitness and propriety.

812. In addition, licensing conditions issued by the FSC in January 2005 apply to institutions licensed under the FSD Act, rather than the relevant Acts include a licensing condition which reads as follows:

- a) The Company shall ensure that any director, manager and senior officer appointed are fit and proper and that the Commission is notified forthwith of such appointments;
- b) Where, in the usual course of business, a director or manager or senior officer is asked to resign or is removed, the Licensee shall forthwith inform the Financial Services Commission of the resignation/removal and shall include a description of the circumstances surrounding such request for resignation and removal;
- c) The Company shall, at the request of the Commission, remove a director or a manager or senior officer from office if those persons are not, in the opinion of the Commission, fit and proper.

813. In 2003, the FSC issued a Guide to Fit and Proper. The elements which comprise being fit and proper as explained in the Guide are integrity, solvency, and competence. This Guide was followed in 2006 by the issue of a Personal Questionnaire (PQ) to assist the FSC to be able to establish fitness and propriety. The personal questionnaire is used for, among others, beneficial owners, directors (executive and non-executive), principal officers, and controlling shareholders of applicants for business conducting financial services or providing a service by way of business, and for those promoting or managing collective investment schemes. An explanatory note was issued in June 2006 in connection with the PQ. It stated that the PQ is intended for beneficial owners, directors, principal officers, and controlling shareholders of applicants. The FSC may require other applicants for a license or any officer, shareholder or beneficial owner of an applicant or licensee to complete a PQ where it is deemed necessary. Licensees are required under procedures to inform the FSC of any material change in information submitted at the time of application. Changes in beneficial owners, directors, principal officers, and controlling shareholders should therefore, be notified to the FSC.

814. The Insurance Act 2005 and the Securities Act 2005 were brought into force during the evaluation and replaced the Insurance Act 1987, the Stock Exchange Act 1988, and the Unit Trust Act 1989.

815. Under Section 36 of the new Securities Act, the FSC may only grant a license if the applicant has staff with the appropriate competence, experience, and proficiency. The FSC must also be satisfied that the applicant's officers are fit and proper persons to carry out the business for which a license is sought or, where the applicant is an individual, that the individual is fit and proper. Section 37 states that in considering fitness and propriety, the FSC may have regard to relevant education, qualifications, and experience; ability to perform the relevant functions properly, efficiently, honestly and fairly; and reputation, character, financial integrity, and reliability. In addition, the FSC may have regard to any substantial shareholder of the corporation, the related corporations of the corporation, and the officers of those related corporations.

816. Under Section 11 of the new Insurance Act, the FSC must not license an insurer unless it is satisfied that the applicant, substantial shareholders, and officers are fit and proper to ensure the sound and prudent management of the insurance business. Under Section 27, no person shall, without the approval of the FSC, acquire or hold such number of shares so as to make that person a significant shareholder. Approval will not be granted where the FSC is not persuaded that the applicant or significant shareholder is fit and proper. Under Section 36, insurers must demonstrate to the FSC that their officers are fit and proper. Section 70 of the Act covers the fitness and propriety for insurance managers, insurance agents and insurance brokers in language identical to Section 11.

817. Under Section 16 of the Financial Services Act which came into force during the mission, an application for a license must be accompanied by particulars of promoters, beneficial owners, controllers, and proposed directors in such form as may be specified in FSC rules. Under Section 18, the FSC may not grant an application unless the criteria set out in the applicable relevant act are met. The applicant must also have, inter alia, staff with appropriate competence, experience, and proficiency. In addition, the applicant and each of its controllers and beneficial owners must be fit and proper persons. Section 20 specifies that in considering whether a person (including the officers and beneficial owners of a corporation) is fit and proper, the FSC must have regard to relevant education, qualifications, and experience; ability to perform the relevant functions properly, efficiently, honestly, and fairly; and reputation, character, financial integrity and reliability. Section 23 provides that no shares, or any legal or beneficial interest, in a licensee shall be issued or transferred except with the approval of the FSC. If the FSC is not satisfied that a controller or beneficial owner is not a fit and proper person, that person can be required to dispose of their shareholding.

818. The following table demonstrates how the legislative provisions on fit and proper persons operated in respect of the legislation in place before the mission and during the mission for institutions for which the FSC is responsible:

Table 23. Fitness and Properness

Financial Institutions	Fitness and Properness ¹									
	Senior Officer at application		Director at Application		Significant Shareholder and beneficial owner at application		Controller at application		Changes after licensing	
	FSD ²	FSA ³	FSD	FSA	FSD	FSA	FSD	FSA	FSD	FSA
Lending										
Consumer credit										
(Hire purchase)	Y	Y	Y	Y	Y	Y	X	Y	Y	Y
Credit finance										
companies	Y	Y	Y	Y	Y	Y	X	Y	Y	Y
Mortgage credit	Y	N/A	Y	N/A	Y	N/A	X	N/A	Y	N/A
Factoring	Y	Y	Y	Y	Y	Y	X	Y	Y	Y
Financial Leasing										
Leasing companies	Y	Y	Y	Y	Y	Y	X	Y	Y	Y
Trading in										
Transferable	FSD/SEA ⁴	FSA/SA ⁵	FSD/SEA	FSA/SA	FSD/SEA	FSA/SA	FSD/SEA	FSA/SA	FSD/SEA	FSA/SA

¹ To be read in conjunction with explanatory note to PQ

² FSD-Financial Services Development Act 2001

³ FSA-Financial Services Act 2001

⁴ SEA-Stock Exchange Act 1988

⁵ SA-Securities Act 2005

Trading in										
Transferable										
securities	FSD/SEA1	FSA/SA2	FSD/SEA	FSA/SA	FSD/SEA	FSA/SA	FSD/SEA	FSA/SA	FSD/SEA	FSA/SA
Commodity futures										
trading										
Stockbroking ³										
company	Y	Y	Y	Y	X	Y	X	Y	Y	Y
Investment dealer	N/A	Y	N/A	Y	N/A	Y	N/A	Y	N/A	Y
Participating in										
securities issues										
and the provision										
of financial services						FSA/SA				
related to such										
issues										
Investment dealer	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Individual and	FSD	FSA	FSD	FSA	FSD	FSA	FSD	FSA	FSD	FSA

1 SEA-Stock Exchange Act 1988

2 SA-Securities Act 2005

3 Transitional provisions under the Securities Act 2005 apply

Individual and										
collective portfolio	FSD	FSA	FSD	FSA	FSD	FSA	FSD	FSA	FSD	FSA
management										
Investment										
1 Adviser/Investment										
Managers/Portfolio	Y	Y	Y	Y	Y	Y	X	Y	Y	Y
Managers										
Asset Managers	N/A	Y	N/A	Y	N/A	Y	N/A	Y	N/A	Y
(non-securities)										
Licensed under FSA										
under new regime										
Investment Adviser ²	N/A	Y	N/A	Y	N/A	Y	N/A	Y	N/A	Y
Licensed under										
SA/FSA under new										
regime										
CIS Manager	N/A	Y	N/A	Y	N/A	Y	N/A	Y	N/A	Y

1 Licensed under section 14 of the FSD Act

2 To be licensed under the Securities Act 2005

CIS Manager	N/A	Y	N/A	Y	N/A	Y	N/A	Y	N/A	Y
Licensed under										
FSA/SA under new										
regime										
Safekeeping and										
administering or										
managing funds or										
money on behalf										
of other persons										
Custodian of	Y		Y		Y		X		Y	
securities (licensed										
under FSD)										
Custodians (CIS)	Y		Y		Y		Y		Y	
Licensed under										
FSA/SA										
Custodians (Non-	Y		Y		Y		Y		Y	
CIS) Licensed										
under FSA/SA										
Pension fund	FSD	FSA	FSD	FSA	FSD	FSA	FSD	FSA	FSD	FSA
administrators	Y	Y	Y	Y	Y	Y	X	Y	Y	Y
Underwriting and	IA871/FSD	IA05	IA87/FSD	IA05	IA87/FSD	IA052	IA87/FSD	IA05	IA87/FSD	IA05
placement of life										
insurance and										
other investment										
related insurance										
Insurance	Y	Y	Y	Y	Y	Y	X	Y	Y	Y
Companies										
Insurance Brokers	Y	Y	Y	Y	Y	Y	X	Y	Y	Y
Insurance Managers	Y	Y	Y	Y	Y	Y	X	Y	Y	Y

1 IA87-Insurance Act 1987

2 IA05-Insurance Act 2005

819. Section 18(2)(e) of FSA 07 together with section 11(3)(a) of the Insurance Act 2005 provide for controllers, beneficial owners, substantial shareholders and other officers to be fit and proper persons to carry out the business for which a license is sought. Section 26 of the Insurance Act 2005 requires an insurer to demonstrate at the time of an application that the person is fit and proper to be appointed as an officer.

Application of Prudential Regulations to AML/CFT (c. 23.4):

820. As implied by the discussion in Criteria 23.1 to 23.3.1, the Criteria for Recommendation 17, and the Criteria for Recommendation 29, it appeared to the mission that for financial institutions that are subject to the Core Principles the regulatory and supervisory measures that apply for prudential purposes and which are relevant to money laundering, apply in a similar manner for AML/CFT purposes.

821. Mauritius is a member of the IAIS and the IOSCO.

822. The Insurance Act 2005 came into force during the evaluation. The aim of the legislation is to enhance the regulatory and supervisory framework for the insurance industry and provide greater protection to policyholders and other beneficiaries. The Act has been drafted to implement the International Association of Insurance Supervisors' (IAIS) Standards and Core Principles and focuses on specific regulatory issues relating to capital adequacy, solvency, corporate governance, early warning systems, and the protection of policyholders. The Insurance Act 2005 applies to Global Insurance Companies.

823. The Securities Act 2005 aims to enhance the regulation and supervision of securities markets and is based on the standards of the International Organization of Securities Commissions (IOSCO). The aim of the legislation is to establish a framework for the regulation of securities markets, market participants, self-regulatory organizations, the offering and trading of securities to ensure fair, efficient, and transparent securities market. The Mauritius authorities advise that it aims to strike an appropriate balance between the protection of investors and the interests of market makers and market participants. The Securities Act 2005 applies to investment businesses operating in the global business sector.

824. It appeared to the assessment team that for financial institutions that are subject to the Core Principles, the regulatory and supervisory measures that apply for prudential purposes and which are also relevant to money laundering, could not apply in a similar manner for AML/CFT purposes for the reasons specified in the introduction to section three of this report.

Licensing or Registration of Value Transfer/Exchange Services (c. 23.5):

825. Under Section 13 of the Banking Act 2004, no person shall, subject to subsection (2), engage in the business of cash dealer in Mauritius without an appropriate license granted by the central bank. The definitions section of the Act specifies that a cash dealer is a person licensed by the central bank to carry on the business of foreign exchange dealer or money changer. Subsection 18(2) of the Act provides that only companies may be granted a license. Subsection (3) states that no person, other than a bank, shall engage in foreign exchange business in Mauritius without a foreign exchange dealer license issued by the central bank or in money changer business in Mauritius without a money changer license issued by the central bank. The discussion at Special Recommendations VI and VII cover the application of the AML/CFT framework to money or value transfer services and money or currency changing services.

826. The Banking Act 2004 includes in the definition of banking business such services as are incidental and necessary to banking. The Bank of Mauritius has advised that this aspect of the definition means that persons carrying out a money transfer service by way of business is covered by the Banking Act and is, therefore, required to be licensed under the Act and meet the obligations of the Act and the AML/CFT framework. Such persons fall under the definition of bank in the Act as a bank is defined as a company

incorporated under the Companies Act 2001, or a branch of a company abroad which is licensed by the central bank to carry on banking business. The Bank of Mauritius has successfully used its interpretation of the Banking Act to license money transfer service providers in Mauritius and conduct on-site inspections. Nevertheless, the mission has concerns that the absence of an explicit and clear provision bringing money transfer service providers into the Mauritius AML/CFT framework means that the interpretation of the banking legislation and the successful resolution of any challenge to the application of the banking legislation, the AML/CFT legislation, and the Guidance Notes on AML/CFT issued by the central bank may be problematic. The same issues in respect of the banking legislation apply in respect of value transfer service providers. No value transfer service provider is licensed by the Bank of Mauritius. During the assessment, the mission came across anecdotal evidence from more than one source that there are persons providing informal value transfer services in Mauritius.

Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6):

827. Section 18 of the FIAMLA states that the supervisory authorities may issue such codes and guidelines as they consider appropriate to combat money laundering activities and terrorism financing to cash dealers subject to their supervision. The section goes on to provide that the Bank of Mauritius shall supervise and enforce compliance by cash dealers with the requirements imposed by the Act, regulations made under the Act and such guidelines as it may issue. The Guidance Notes on AML/CFT issued by the Bank of Mauritius apply to banks and cash dealers. On-site inspections by the Bank are covered in Criterion 29.1. All banks and cash dealers have been subject to an on-site inspection which has covered money transfer services and money or currency changing services undertaken by those institutions.

Licensing and AML/CFT Supervision of other Financial Institutions (c. 23.7):

828. One of the main functions of the Bank of Mauritius under section 5 of the Bank of Mauritius Act 2004 is to regulate and supervise banks, nonbank deposit-taking institutions and cash dealers carrying on activities in, or from within, Mauritius.

829. Section 18(1)(b) of the Financial Intelligence and Anti-Money Laundering Act 2002 imposes a duty on the Bank of Mauritius to supervise and enforce compliance by banks and cash dealers with the requirements imposed by the Financial Intelligence and Anti-Money Laundering Act 2002, regulations made under the Act and such guidelines as it may issue. The supervision and oversight of institutions regulated by the Bank of Mauritius is covered above and in the discussion of the Criteria in Recommendation 29.

830. The Financial Services Development Act was replaced by the Financial Services Act 2007 during the evaluation. Section 14 of the new Act provides that no person shall carry out, or hold himself as carrying out, in Mauritius any financial services without a license issued by the FSC. Under section 14(1) of the Financial Services Development Act 2001 no person was able to conduct any business activity in the financial services sector without a license issued by the FSC. The financial services falling under the supervision of the FSC include insurance, asset management, collective investment schemes, custodial services, factoring business, investment advisory services, leasing business, mortgage finance, retirement benefit schemes, stock brokering companies, and fund managers. The definition of ‘financial institution’ under the FIAMLA does not capture all of these financial services. The definition in FIAMLA 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. The Financial Intelligence and Anti-Money Laundering Regulations 2003 cover relevant persons; the definition of relevant person is a bank, financial institution or cash dealer. This means that the FIAMLA and underlying regulations do not cover all of the types of financial institution, as defined by the FATF. For example, financial

leasing and not all lending business are covered by the AML/CFT legal framework in Mauritius. In addition, as indicated in the introduction to section 3 of this report, not all types of financial institutions are covered by the AML/CFT legal framework.

831. The FSC imposes licensing conditions on each nonbank financial institution it licenses which is considered to be vulnerable to potential risks of ML and FT. Such institutions are required to adopt, enforce, and reassess on an annual basis, their anti-money laundering and combating the financing of terrorism framework.

Guidelines for Financial Institutions (c. 25.1):

832. The Bank of Mauritius first issued Guidance Notes on anti-money laundering and combating the financing of terrorism (AML/CFT) to the banking industry in 2001. An updated version of the Guidance Notes was issued to the industry in December 2003. The revised Guidance Notes discussed in this report were issued to the industry in June 2005—these are the Guidance Notes discussed in this report. The Bank has sought to include in its Guidance Notes the Recommendations and Special Recommendations issued by the FATF and the Customer Due Diligence Paper issued by the Basel Committee on Banking Supervision.

833. The Guidance Notes make provisions for, inter alia, the following:

The Legislative Framework of Mauritius

Internal controls, policies and procedures

Identification procedures

Record-keeping

Recognition and reporting of suspicious transactions

Education and Training

834. Part 1 of the Guidance Notes provides information on money laundering and terrorist financing, while several pages of examples of suspicious money laundering and terrorist financing transactions are provided in appendices F and G.

835. The Guidance Notes were issued to financial institutions by the Bank of Mauritius by virtue of powers conferred upon it by section 50(2) of the Bank of Mauritius Act 2004, Section 100 of the Banking Act 2004, and Section 18(1)(a) of the Financial Intelligence and Anti-Money Laundering Act 2002.

Financial Services Commission

836. With regard to financial institutions, in 2005 the FSC has issued two Codes on the Prevention of Money Laundering and Terrorist Financing intended for Investment Businesses and Insurance Entities under its functions and powers under Sections 6(d) and 7(1)(a) of the Financial Services Development Act and Section 18(1)(a) of the FIAMLA. The Codes are intended to assist licensees to comply with the obligations contained within the FIAMLA.

837. Under the Codes, the Board of a licensee must adopt internal AML/CFT policies and must establish internal procedures and allocate responsibilities to ensure that AML/CFT policies and procedures that meet

AML/CFT legal obligations are introduced and maintained. A licensee's internal AML/CFT policies and procedures must, inter alia, cover the following core principles:

Licenses must, when establishing a business relationship with an applicant for business apply appropriate customer due diligence measures, including identifying and verifying the identity of the applicant for business;

Licenses must implement effective ongoing customer due diligence measures and risk profiling procedures.

838. Noncompliance with a Code exposes a licensee to regulatory action which may include a direction under Section 7(1)(d) of the FSD Act to observe the Code. Failure to comply with the direction may lead to criminal sanction or revocation of a license.

839. Part 2 of the Codes provides information on money laundering and terrorist financing, while appendix VI to the Codes provides indicators of potentially suspicious activity. Paragraph 6.4 of the Codes requires the MLRO and Deputy MLRO to familiarize themselves with the annual FATF Typology Reports and the trends they contain.

Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1):

840. Section 18(1)(b) of the FIAMLA requires the Bank of Mauritius to supervise and enforce compliance by banks, nonbank deposit-taking institutions and cash dealers with the requirements imposed by the Act, regulations made under the Act, and such guidelines as it may issue. The Bank of Mauritius has legislative authority to conduct on-site inspections—see Criterion 29.2—The Guidance Notes issued by the Bank of Mauritius are enforceable.

841. Section 18(1)(c) of the FIAMLA requires the FSC to supervise and enforce compliance by financial institutions with the requirements imposed by the Act, regulations made under the Act, and such guidelines as it may issue. Although section 43 of the new Financial Services Act provides specific on-site inspection powers, the FSC had limited legislative authority to conduct on-site inspections prior to the mission—see Criterion 29.2—although in practice the FSC has managed to inspect some institutions (not including insurance intermediaries) notwithstanding its limited authority to do so).

842. Until the introduction of the new Securities Act 2005, which came into force during the mission, the Stock Exchange of Mauritius had passed two cases of market manipulation/insider dealing to the FSC for investigation. These cases were investigated and the FSC concluded that no offense had been committed.

843. One of the cases led to a modification of the Exchange's listing rules. Under the new Act, from January 2008, the Exchange will be required to undertake more active investigations of potential insider dealing/market manipulation prior to passing the case to the FSC. In order to ensure that it meets this obligation and to reflect potential growth, the exchange proposes to recruit additional staff. As the finance center in Mauritius continues to grow, it will be important for the Exchange to be able to demonstrate that it can establish and maintain fair markets.

Authority to conduct AML/CFT Inspections by Supervisors (c. 29.2):

844. Section 42 of the Banking Act 2004 contains provisions on regular examinations by the Bank of Mauritius. The central bank must conduct regular examinations of the operations and affairs of every financial institution at least once every two years, including, where the central bank so specifies, of affiliates and overseas branches and affiliates of the financial institution. These examinations may be made by its officers or such other duly qualified person as it may appoint. The examinations may be of such scope as the central bank

deems necessary to assess that the financial institution is duly observing the provisions of the banking laws, guidelines, and instructions issued by the central bank and is in a sound financial condition.

845. Section 43 of the Act contains provisions for special examinations. Where, in relation to any financial institution, a special examination appears to be necessary or expedient in order to determine whether the financial institution is in sound financial condition and whether the banking laws or any enactment relating to anti-money laundering or prevention of terrorism or guidelines and instructions issued by the central bank, as the case may be, are being complied with, the central bank may appoint one or more of its officers or such other duly qualified person to conduct a special examination in respect of the affairs of the financial institution and of any affiliates and overseas branches and affiliates.

846. Section 44 of the Act specifies the powers of examiners. Any such officer or person appointed under Sections 42 and 43 has the power to examine all books, minutes, accounts, records, cash, securities, vouchers, and any other document in the possession or custody of the financial institution or of its affiliates in Mauritius or its branches and affiliates outside Mauritius. In addition, the appointed officer or person can require, within such time as may be specified, such information and copies of all relevant documents, that he may reasonably require concerning the institution's business, or that of its affiliates in Mauritius, or that of its branches and affiliates outside Mauritius, if any, as appear necessary.

847. The Bank of Mauritius has produced an AML/CFT examination manual. The Bank of Mauritius assesses compliance with the banking laws, the FIAMLA, the regulations made under the Act, and the Guidance Notes on AML/CFT during the course of on-site inspections. The examination manual covers anti-money laundering policies (including whether high-risk activities, businesses, and foreign countries are identified), compliance program and culture, internal audit, external audit, training, Know Your Customer policies and procedures (including account opening policies for personal accounts, business accounts, trusts, clubs, societies, charities, electronic banking and intermediary accounts), suspicious transaction monitoring, suspicious transaction reporting, fund transfers, personal banking and record keeping. Sample files are reviewed during the on-site inspection. Inspections take approximately one month and cover all aspects of banking supervision. All institutions licensed by the Bank of Mauritius have received an on-site inspection since 2005. Institutions interviewed by the mission confirmed that the inspections undertaken by the Bank of Mauritius were thorough. This was also the impression of the mission as a result of interviews with representatives of the Bank.

848. Under Section 27 of the Financial Services Development Act, which was in force until during the mission, on receipt of a complaint by the Chief Executive of the FSC or where he had a reasonable suspicion that a licensee had committed, or was likely to commit, a breach of any condition of his license or any direction issued by the FSC or where he has reasonable suspicion that a licensee has carried on, is carrying on or is likely to carry out any activity which may cause serious prejudice to the soundness and stability of the financial system of Mauritius or to the reputation of Mauritius or which may threaten the integrity of the system, the Chief Executive could make an enquiry into the business or any part of the business. For the purposes of his inquiries, the Chief Executive could by notice request the production of any documents, books or records to be inspected at all such reasonable time and place including on the premises of the licensee. He could also take copies of extract from any documents, books, or records that have been produced and seize any document or material which may be relevant to the inquiry.

849. Also under Section 27 of the Financial Services Development Act, the Commission was able to cause to be carried out, on the business premises of a management company, an inspection or audit as and when necessary to ensure compliance with the law, the conditions of its license, and with any directions given, rules made, standards set, and guidelines provided by the FSC.

850. In 2003, the FSC issued a Guide to Compliance, which sets out the approach of the FSC to on-site inspections to management companies. The guide includes reference to sample testing, KYC procedures (including beneficial owners of companies), compliance culture and AML measures (including the appointment of a compliance officer, customer acceptance, and monitoring of transactions through client bank accounts).

851. The initial written response by the FSC to the mission questionnaire indicated that the FSC had no express powers to conduct on site compliance visits on the business premises of insurance entities and investment businesses. Nonetheless, with the agreement of licensees, the FSC has undertaken on site inspections on the business premises of insurance companies and stockbrokers. During the mission, the FSC advised that on-site inspections to insurance companies have been carried out under the powers to obtain information under Section 8 of the Insurance Act 1987. Under this section, the FSC was able to require a relevant person to produce specified books and papers at such time as the FSC specified. In addition, under section 8, the FSC was able to authorize any person to require a licensee to produce specified books and papers at a specified time and place. To date, the FSC has concentrated its on-site inspections to those areas where risk was considered to be highest, namely, the life sector. Insurance intermediaries have not yet been subject to on-site inspections but there are plans to undertake such inspections from 2008.

852. Section 43 of the new Financial Services Act 2007, which came into force during the mission contains explicit on-site inspection powers. The FSC may, at any time, cause to be carried on the business premises of a licensee an inspection and an audit of its books and records to check whether the licensee is complying or has complied with the requirements of any applicable enactment, guidelines, or the conditions of its license, authorization, or registration. For these purposes, the Chief Executive may direct the licensee or any other person the Chief Executive reasonably has possession or control of a document or thing relevant to the inspection to produce it. The Act goes on to state that the licensee, its officers and employees shall give the Chief Executive full and free access to records and other documents as may reasonably be required for the inspection. The implementation of these on-site inspection powers could not be demonstrated at the time of the evaluation as the law was introduced during the evaluation.

853. With the enactment of the Insurance Act 2005 and Securities Act 2005 during the evaluation, the FSC now has express powers to undertake on-site inspections under the insurance and securities regulatory legislation. Section 123 of the Securities Act and Section 95 of the Insurance Act 2005 refer.

854. The insurance team at the FSC has undertaken on-site inspections on insurer compliance generally (including AML/CFT) to 16 insurers. The first round of inspections to insurance companies is expected to be completed by the end of 2007. On-site inspections are carried out by the FSC with the objectives to a) ascertain compliance with relevant standards, laws and regulations; b) check adherence to anti-money laundering laws, regulations and codes; c) determine whether dealings with policyholders and public are fair and transparent; d) provide assurance that corporate governance is sound; and e) evaluate financial solvency and performance. Follow-up inspections are triggered by inter alia poor records, weak internal controls, and market conduct. The Commission has advised that it has different ladders of intervention. "This depends on the extent of noncompliance and the effect these noncompliance have on the overall business of the financial institutions. The Commission cannot revoke a license as soon as it finds weaknesses in the AML/CFT regime of a financial institution. The latter is given the opportunity to make good such deficiency and a direction under the law may be given. If the licensee fails to abide by the said direction, then the revocation sanction-under the law applies. So far, all directions to strengthen or improve AML/CFT which have been given, have been complied with. Weaknesses in the implementation of AML/CFT standards have been highlighted and directions to strengthen/improve AML/CFT have been given to insurance companies. In some instances, progress reports were also requested. Outside the AML/CFT area, one insurer has received two follow-up inspections because

of general record-keeping deficiencies. An inspector was appointed by the FSC to resolve outstanding issues at one firm although this was not in relation to AML/CFT issues. Following an on-site inspection, various regulatory weaknesses were identified at one company – an external inspector was appointed by the FSC to investigate the affairs of the firm. Directions were then issued, the license subsequently suspended and an administrator appointed. Directions were issued to another insurer after on-site inspections by the FSC. Approximately one week is spent at smaller insurers. Sample files are reviewed. The FSC has advised that all of its recommendations arising from on-site inspections on AML/CFT were being satisfactorily resolved by insurers—the mission noted that one institution had yet to appoint a Money Laundering Reporting Officer notwithstanding on-site inspections over two or three years by the FSC and a recommendation by the FSC that such an officer should be appointed. At the time of the mission, that institution was in the process of establishing formal procedures to comply with the relevant Code.

855. The capital markets team at the FSC has completed the first full round of on-site inspections to the investment sector. Two members of the team are involved with inspections. The team commenced in 2004 and has undertaken thirty-eight inspections. The evaluation team was advised that the locus for inspections was Section 27 of the Financial Services Development Act. Inspections usually take 2–3 days although some inspections take longer. Only one firm has introduced business. The FSC has advised that its inspection report aims at ensuring that licensees are complying with the requirements of the FIAMLA, the FIAML regulations and the Codes. Sample files are reviewed. The FSC advised that all of its recommendations arising from on-site inspections on AML/CFT were satisfactorily resolved by firms.

856. Qualified Global Business, as defined under Section 19 of the FSDA and specified under the Second Schedule of the FSDA, fell under the purview of the Global Business Team. The list of Global Business activities provided under the Second Schedule included inter-alia insurance, funds management, and asset management. Wherever a Global Business Company is engaged in insurance or acts as a CIS or as a functionary of a CIS, the Global Business team works jointly with the Insurance and Securities Clusters of the FSC respectively for surveillance purposes. Six members of the team are involved with on-site inspections. Inspections take between 2 and 5 days and appear to cover the Code for Management Companies. The FSC advised the assessment team that all its recommendations arising from on-site inspections on AML/CFT were satisfactorily resolved by firms.

857. For the period prior to the mission, the FSC had limited powers to conduct on-site inspections. The new Financial Services Act contains provisions on on-site inspections, although the timing of its introduction means that the assessment team could not ascertain implementation with the provisions.

Power for Supervisors to Compel Production of Records (c. 29.3 & 29.3.1):

858. Section 51 of the Bank of Mauritius Act 2004 provides that the bank may require any financial institution to furnish, at such time and in such manner and form as may be approved by the Bank, such information and data as the Bank may require for the proper discharge of its functions and responsibilities under the banking laws. In this regard, the Bank of Mauritius Guidance Notes on AML/CFT are issued by virtue of powers conferred to the Bank of Mauritius by Section 50(2) of the Bank of Mauritius Act 2004, Section 100 of the Banking Act 2004, and Section 18(1)(c) of the FIAMLA.

859. Section 42 of the Banking Act 2004 contains provisions on regular examinations by the Bank of Mauritius. The examinations may be of such scope as the central bank deems necessary to assess that the financial institution is duly observing the provisions of the banking laws, guidelines, and instructions issued by the central bank and is in a sound financial condition. In addition, Section 51 of the Bank of Mauritius Act 2004 specifies that the Bank may require any institution to furnish, at such time and in such manner and form as may be approved by the Bank, such information and data as the Bank may require for the proper discharge

of its functions and responsibilities under the banking laws. The section goes on to say that the Bank of Mauritius may examine records and other documents to verify an institution's compliance with any requirement under the banking laws.

860. No court order is required for the Bank of Mauritius to obtain information.

861. Section 26 of the Financial Services Development Act required that every person who carries on an activity in the financial services sector must, when so required by the FSC, furnish all such information and produce such records or documents as may be demanded of him by the FSC in order to ensure and monitor compliance with the relevant Acts (laws administered by the FSC - these include the insurance and securities legislation) or with any regulations, directions, rules, codes, or guidance notes made or to carry out its general statutory powers of supervision. The FSC has advised that the Codes on AML/CFT fell under Section 26. This power has been used by the FSC to obtain information relating to AML/CFT for management companies. The Financial Services Act 2007, which was introduced during the mission, contains powers to obtain information in Section 42. Under this section, every licensee shall furnish to the FSC all such information and produce such records at such time and such place as may be required of him by the Chief Executive.

862. The FSC's powers to compel production of or to obtain access for supervisory purposes are not predicated on the need to require a court order.

Powers of Enforcement & Sanction (c. 29.4):

863. The powers of enforcement and sanction available to the Bank of Mauritius are discussed in Criterion 17.1. In summary, the sanctions available for breaches of the Guidance Notes are criminal penalties, and the ability of the Bank of Mauritius to issue conditions on licenses, to revoke licenses, to issue cease and desist orders, and to suspend licensee officers of all levels from office.

864. The Bank of Mauritius has issued sanctions during the last three years, at least in part for poor AML/CFT measures. Sections 11(e) and 16 of the Banking Act have been used to revoke a cash dealer's license. Section 10(1) of the Act has been used to apply a condition suspending the license of a cash dealer. Section 45(2) has been used to require a managing director of a bank to leave his post.

865. The powers of enforcement and sanction available to the FSC are discussed in Criterion 17.1. In summary, until the enactment of the new Financial Services Act during the evaluation, the FSC had a limited range of sanctions in respect of AML/CFT. Sanctions were principally limited to the issue of directions and the revocation of licenses under the Financial Services Development Act 2001 to deal with natural or legal persons covered by the FATF Recommendations that fail to comply with national AML/CFT requirements.

Availability of Effective, Proportionate & Dissuasive Sanctions (c. 17.1):

866. Under section 11 of the Financial Intelligence and Anti-Money Laundering Regulations 2003, any person who contravenes the regulations commits an offense and on conviction is liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding two years.

867. The Guidance Notes on AML/CFT have been issued to financial institutions by the Bank of Mauritius by virtue of powers conferred upon it by Section 50(2) of the Bank of Mauritius Act 2004, Section 100 of the Banking Act 2004, and Section 18(1)(a) of the Financial Intelligence and Anti-Money Laundering Act 2002.

868. Under Section 100(4) of the Banking Act, a person in breach of the Guidance Notes issued by the Central bank of Mauritius shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding two years. Under Section 50(5) of the Bank of Mauritius Act 2004, a

person in breach of the Guidance Notes shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding five years. Under Section 44 of the Interpretation and General Clauses Act, where an offense is committed by a body corporate, every person who, at the time of the commission of the offense, was concerned in the management of the body corporate or was purporting to act in that capacity, also commits the like offense unless he proves that the offense was committed without his knowledge or consent and that he took all reasonable steps to prevent the commission of the offense.

869. Under Section 18(2) of the FIAMLA, where it appears to the Bank of Mauritius that any financial institution subject to its supervision has failed to comply with any requirement imposed by the Act or any regulations applicable to that financial institution 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 proceed against regulated institutions. In the case of a bank, the Bank may take action against it under Sections 11 and 17 of the Banking Act 2004 on the ground that it is carrying on business in a manner which is contrary to the interest of the public. In the case of a cash dealer or a person licensed to carry on deposit-taking business, the Bank may proceed against it under sections 16 and 17 of the Banking Act 2004 on the ground that he is carrying on business in a manner which is contrary to the interest of the public.

870. Section 11 of the Banking Act allows the Bank of Mauritius to revoke a banking license where any provision of the banking laws has been contravened. Section 11 also makes provision for the central bank to revoke a banking license where a bank has been convicted by a court in Mauritius, a court of the Commonwealth or a court of such other countries as may be prescribed, of an offense under any enactment relating to anti-money laundering or prevention of terrorism or the use, laundering in any manner, of proceeds or funding of terrorist activities or other illegal activities or is the affiliate or subsidiary or parent company of a financial institution which has so been convicted, provided the conviction is a final conviction.

871. Section 17 allows the Bank of Mauritius in cases of urgency and in the public interest to amend, vary, or revoke any condition attached to a license or impose a condition on a license, or revoke a license. Section 16 allows the Bank of Mauritius to apply section 11 to cash dealers with such modifications and adaptation as may be necessary in respect of cash dealers.

872. Section 10 of the Banking Act provides the Bank of Mauritius with the ability to impose new conditions on a bank license or to amend, vary, or cancel any condition.

873. Section 45(2) of the Act states that where an examination or special recommendation or other information at its disposal shows that the financial institution concerned, or any of its directors or senior officers or employees or agents, have engaged in unsafe or unsound practices in conducting business of the institution in a manner detrimental to the interests of the depositors, or have knowingly or negligently permitted any of its directors or senior officers or employees or agents to violate any provisions of the banking laws or any enactment relating to anti-money laundering or prevention of terrorism and the regulations made, or guidelines or instructions issued by the central bank to which the institution is subject, or the central bank has reasonable cause to believe that such violations are about to occur, the central bank may take specified action. It may issue a cease and desist order that requires the financial institution and its directors, senior officers and employees or shareholders holding a significant interest to cease and desist from the actions and violations specified. The central bank may also require affirmative action to correct the conditions resulting from any such actions and violations. In addition, the Bank of Mauritius may issue an order to the financial institution to suspend from office any director or senior officer or employee who has engaged in, or who is otherwise responsible for, the actions and violations.

874. Section 45(1)(e) (ii) allows the central bank to “require a financial institution forthwith to take such steps as may appear to the central bank to remedy the situation.” In addition, the central bank may use Section 45 to impose or vary conditions attaching to a financial institution’s license or to appoint a person to advise the financial institution in the proper conduct of its business.

875. In summary, the sanctions available for breaches of the Guidance Notes are criminal penalties, and the ability of the Bank of Mauritius to issue and vary conditions on licenses, to revoke licenses, to issue cease and desist orders, to suspend licensee officers of all levels from office, to require an institution to take the necessary steps to remedy a situation, and to appoint an advisor at the cost of the institution. Certain conditions and the appointment of advisors at the cost of the institution can have the effect of fines.

876. The Bank of Mauritius has issued sanctions during the last three years, at least in part, for poor AML/CFT measures. Sections 11(e) and 16 of the Banking Act have been used to revoke a cash dealer’s license. Section 10(1) of the Act has been used to apply a condition suspending the license of a cash dealer. Section 45(2) has been used to require a managing director of a bank to leave his post.

877. The creation of offenses in the Bank of Mauritius Act 2004 and the Banking Act 2004 in respect of a failure by any person to comply with the AML/CFT Guidance Notes issued by the Bank of Mauritius is a very strong power. The Bank of Mauritius would be required to refer such matters to the police. As a whole, the administrative powers available for sanctions appeared to the mission to be effective, proportionate and dissuasive.

878. The criminal penalties in the Financial Intelligence and Anti-Money Laundering Regulations 2003 also apply to institutions licensed by the FSC.

879. Under Section 18(3) of the FIAMLA where it appears to the FSC that a financial institution has refrained from or negligently failed to comply with any requirement of FIAMLA or the underlying regulations, the FSC may proceed against the institution under Section 7 of the Financial Services Development Act 2001 (replaced by the Financial Services Act during the evaluation).

880. Under Section 7 of the Financial Services Development Act 2001, which was repealed by the Financial Services Act 2007, the FSC had the ability to provide guidelines and give directions to a licensee to observe any guideline or code of practice. Section 15 allowed the FSC to give such directions as were necessary for administrative matters relating to the conduct of business in the financial services sector and required any person to whom a direction had been given to comply with the direction. The section also allowed the FSC to issue codes for the proper guidance of service providers in the financial services sector and required any person to whom a code had been issued to comply with the code. Section 43 of the Financial Services Development Act provides that it is an offense for any licensee, or present or former director of a licensee, any shareholder who holds more than 50 percent of the voting rights in a licensee or any employee of a licensee who fails to comply with any requirement imposed by or under the Act, or a direction, or requirement issued under the Act. On conviction, a person is liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding five years. Section 7 of the Act also contained a power to revoke a license where the FSC was satisfied that a licensee was carrying out its business in a manner which threatened the integrity of the financial system of Mauritius or was contrary or detrimental to the interest of the public.

881. Under Section 7 of the Financial Services Act 2007, which came into force during the mission, the FSC may give directions to ensure compliance with a relevant Act or guideline (guidelines include Codes). In order to enable it to effectively discharge its functions, the FSC may also impose a private warning, a public censure, disqualify a licensee from holding a license or a license of a specified kind for a specified period; in

the case of an officer of a licensee, disqualify the officer from a specified office or position in a licensee for a specified period; impose an administrative penalty; or revoke a license.

882. The Securities Act 2005 and the Insurance Act 2005 also came into force during the evaluation. Under Section 38 of the Securities Act, the FSC may issue a license subject to such terms and conditions as it deems fit (although there seems to be no power to issue a condition after a license has been issued). Section 43 permits the Chief Executive to revoke a license where a licensee is not complying or is likely not to comply with the conditions on its license. Section 44 permits the FSC to suspend licenses where the Chief Executive is satisfied on reasonable grounds that it is necessary and urgent to do so to prevent or mitigate damage to the integrity of the securities market or clients of licensees. Section 46 requires the FSC to make suspensions public. Under section 12 of the Insurance Act, the FSC may issue such conditions, restrictions, and limitations as it deems fit and vary any conditions it has issued. Section 112 provides that, where it appears to the Chief Executive of the FSC that any condition has been contravened, or that the licensee or any of its directors or officers responsible for its management has been convicted relating to financial crime under any enactment in Mauritius or elsewhere, the license may be revoked. The Insurance Act 1987, which has been replaced by the Insurance Act 2005, allowed the registration of an insurer to be cancelled if any director or manager was not a fit and proper person to hold the position in question.

883. The Financial Services Development Act 2001 contained limited powers of sanction for poor AML/CFT standards, namely, the power to issue directions and the power to revoke a license. After the evaluation, the FSC provided the mission with examples of directions it had issued to insurance companies in respect of poor AML/CFT standards. Measures attracting directions included:

No replacement of MLRO;

Unawareness of the existence and duties of the MLRO by staff;

No proper training given to staff on AML/CFT;

No proper keeping of transactional records;

No proper customer due diligence procedure; and

No internal reporting procedures to facilitate reporting of suspicious transactions.

884. The capital markets cluster of the FSC has not issued directions for AML/CFT breaches but has issued one direction in connection with the nonfiling of a register of interests of a relevant person working in a stockbroking company. The FSC has advised that licensees to whom directions have been issued responded promptly to the FSC's concerns by taking remedial action. The FSC has also advised that it takes a risk-based approach in selecting which breach to pursue and carefully consider what course of action would be appropriate. The FSC considers the impact that the revocation of a license may have on a licensee's business, its customers and the entire financial sector.

885. Directions have been issued in respect of AML/CFT breaches. Outside the area of AML/CFT, following an on-site inspection, various regulatory weaknesses were identified in one insurer. An external inspector was appointed by the FSC to investigate the affairs of that firm. Directions were then issued to the firm. The license was subsequently suspended and an administrator appointed. In relation to another firm, the FSC undertook subsequent on-site inspections and directions were issued. It was apparent to the mission from discussions with FSC executives at the time of the evaluation that some executives of the FSC felt that they would have had difficulties in applying sanctions for breaches of the Codes due to a possible lack of legal

authority. Therefore, there was a reluctance to apply sanctions except where there had been a court determination of a case or the licensee in question approached the FSC with a concern about their own operations. During the evaluation, the mission noted that one institution had yet to appoint a Money Laundering Reporting Officer notwithstanding on-site inspections over two or three years by the FSC and a recommendation by the FSC that such an officer should be appointed. At the time of the mission, that same firm was in the process of establishing formal procedures to comply with the relevant Code. Another institution requested by the mission to explain how it would advise the FSC how it complied with the relevant Code found it difficult to do so. These implementation issues are perhaps other situations where sanctions could have been used and suggest that as a whole, the sanctions framework of the FSC at the time of the mission was not strong, proportionate, and dissuasive. In March 2008, the FSC's Chief Executive indicated to the mission that he was of the view that the FSC had the regulatory powers at the time of the onsite mission to impose sanctions.

886. The effectiveness of the greater sanctions available in the Financial Services Act 2007, while proportionate and dissuasive, could not be ascertained at the time of the evaluation.

Designation of Authority to Impose Sanctions (c. 17.2):

887. Under Section 18 of the FIAMLA, the Bank of Mauritius is responsible for issuing guidance to the financial institutions subject to its supervision. The Bank of Mauritius is also responsible for supervising and enforcing compliance by regulated institutions with the Guidance Notes it has issued. As outlined above, the central bank has powers of sanction in respect of noncompliance with the Guidance Notes. Section 18 of the FIAMLA also provides that the Bank of Mauritius can use the powers of Sections 11 and 17 of the Banking Act 2004 in respect of banks and Sections 16 and 17 of that Act in respect of cash dealers who fail to comply with FIAMLA or the underlying regulations.

888. Under Section 18 of the FIAMLA the FSC is responsible for issuing guidance to the financial institutions subject to its supervision. The FSC is also responsible for supervising and enforcing compliance by regulated institutions with the Codes it has issued. Section 18 of the FIAMLA also provides that the FSC can use the powers of Section 7 of the Financial Services Act and, prior to the evaluation, Section 7 of the Financial Services Development Act 2001 in respect of financial institutions who fail to comply with FIAMLA or the underlying regulations.

Ability to Sanction Directors and Senior Management of Financial Institutions (c. 17.3):

889. Under section 44 of the Interpretation and General Clauses Act, where an offense is committed by a body corporate, every person who, at the time of the commission of the offense, was concerned in the management of the body corporate or was purporting to act in that capacity, also commits the like offense unless he proves that the offense was committed without his knowledge or consent and that he took all reasonable steps to prevent the commission of the offense.

890. With regard to administrative penalties, the main penalties available to the Bank of Mauritius are conditions in respect of individuals which can be applied to the licenses of regulated institutions under Section 10(1) of the Banking Act 2004, such steps as the Bank of Mauritius may require an institution to take under Section 45(2) of the Act if any director, senior officer or employee is found to be not a fit and proper person, the power under Section 45(2) of the Act to issue an order to an institution to suspend from office any director, senior officer, or employee who has engaged in, or been responsible for, specified actions or violations and the power under Section 45(1)(e)(ii) to require a financial institution forthwith to take such steps as may appear to the Bank of Mauritius to be necessary to remedy a situation. The suspension power can be used where an examination or special recommendation or other information at the disposal of the Bank of Mauritius shows that any of the directors or senior officers or employees or agents of an institution have engaged in unsafe or unsound practices in conducting business of the institution in a manner detrimental to the interests of the

depositors, or have knowingly or negligently permitted any of its directors or senior officers or employees or agents to violate any provisions of the banking laws or any enactment relating to anti-money laundering or prevention of terrorism and the regulations made, or guidelines or instructions issued by the central bank to which the institution is subject, or the central bank has reasonable cause to believe that such violations are about to occur. These are strong powers—some of which are also indirect.

891. Section 44 of the Interpretation and General Clauses Act also applies to criminal offenses committed by individuals employed by financial institutions regulated by the FSC. Pursuant to its disciplinary powers under Section 7 of the Financial Services Development Act 2001, up to the time of the mission the FSC had the ability to issue directions requiring individuals to observe the Codes— failure to meet a direction by a licensee, or a director or employee of a licensee, is an offense under Section 43 of the Act. The maximum penalty on conviction is a fine not exceeding 500,000 rupees and imprisonment of up to five years. The Financial Services Act 2007, which replaced the Financial Services Development Act, contains a broad range of sanctions in respect of individuals. With respect to any person who is a present or past officer, partner, shareholder, or controller of a licensee, the FSC may issue a private warning, issue a public censure, disqualify an officer from a specified office or position in a licensee for a specified period or impose an administrative penalty.

Range of Sanctions – Scope and Proportionality (c. 17.4):

892. The range of criminal and administrative sanctions is described above. The mission considers that the range of sanctions is relatively broad. Direct financial sanctions are not available but the imposition of conditions and the ability to appoint advisors at the cost of firms can have the effect of imposing financial sanctions. Financial sanctions, are therefore, available. It appeared to the mission that the Bank of Mauritius had some doubt as to whether the palette of available sanctions as a whole was sufficiently broad for all of the different parts of the financial system in Mauritius under its regulatory responsibility.

893. The range of criminal and administrative sanctions is described above. The powers of the FSC, until the introduction of new legislation during the evaluation, were limited to narrow powers. The assessment team considers that the range of sanctions was not broad and proportionate to the severity of a situation. This has now been remedied by the introduction of the Financial Services Act during the mission.

Adequacy of Resources for Competent Authorities (c. 30.1):

894. The Bank of Mauritius was established in 1967 under the Bank of Mauritius Act 1966. The Bank now operates under the Bank of Mauritius Act 2004 and the Banking Act 2004. The basic objectives of the Banking Act 2004 are to maintain a sound banking system in Mauritius and to protect the interests of depositors. The Bank of Mauritius regulates banks, nonbank deposit-taking institutions and cash dealers under the Act. The Bank comprises 249 staff, including the governor and two deputy governors. The Bank has embarked on a revision to its organizational structure and is recruiting 10 additional staff members for the Banking Supervision Department in order to replace staff who have left over time. The Banking Supervision Department, which is responsible for supervising financial institutions falling under the Bank's regulatory responsibilities, employs 31 full-time members of staff. The Bank will shortly be moving to new premises. Information technology appeared to be satisfactory. Fees are received from licensees. Under Section 10 of the Bank of Mauritius Act 2004, the stated capital of the Bank must be one billion rupees. Section 3(3) of the Bank of Mauritius Act 2004 provides that the Bank shall, in the pursuit of its objects, perform its functions independently. Staff are required to take an oath of confidentiality under Section 26 of the Bank of Mauritius Act 2004. It is an offense to breach the oath.

895. The FSC was set up under the Financial Services Development Act 2001 and is administered and managed by a board. The chairperson is appointed by the Prime Minister while the vice-chairperson and other members are appointed by the Ministry of Finance. The new Financial Services act seeks to enhance statutory

independence—Section 3 provides that subject to the Act, the FSC shall, in the pursuit of its objects, perform its functions independently. The Board members must be suitably qualified and experienced in the field of business, finance, or law. Every member is appointed for a period of three years and is eligible for reappointment (Section 4 of the Financial Services Development Act and Section 4 of the new Financial Services Act refer). The Commission is headed by a Chief Executive and supported by a Deputy Chief Executive. There are 4 directorates, namely, Licensing, Surveillance, Policy and Research, and Corporate Services. Each directorate is organized sector-wise and in clusters (teams). The licensing Directorate is headed by a Director. Each cluster (team) is headed by a Coordinator, who is of senior management level. There are 133 staff in all. The insurance team has thirteen staff, including two examiners who have recently been recruited. In addition, a high-profile adviser on insurance matters joined the FSC in September 2007. A chief examiner is joining the insurance team in October 2007. The investment team has seven staff and is recruiting an examiner with expertise in mutual funds. AML/CFT responsibilities are assumed both at licensing (Licensing Directorate) and post-licensing stages (Surveillance Directorate). The global business team consists of 31 staff (out of which 18 in Licensing Directorate and 13 in Surveillance Directorate) and is responsible for management companies, and global insurance and global investment institutions. Each of the teams confirmed that they have sufficient staff to undertake their AML/CFT responsibilities. Premises and information technology appeared to be adequate. The main sources of revenue are derived from processing annual licenses, registrations, and brokerage fees (a small percentage of each stock broker's commission for transactions is paid to the FSC. At the time of joining the FSC, staff have been required under Section 33 of the Financial Services Development Act to swear an oath of confidentiality at the Supreme Court of Mauritius.

Integrity of Competent Authorities (c. 30.2):

896. Staff integrity is covered by the terms and conditions of service existing at the Bank of Mauritius. Staff are generally experienced and possess professional qualifications. Training is provided routinely to seek to ensure that staff skills are enhanced. The mission concluded that the executives responsible for banking supervision were particularly organized, thorough, and professional.

897. Staff must comply with a Code of Conduct. The Code of Conduct requires every employee to uphold the core values of the FSC by demonstrating high ethical standards and maintaining a highly-professional attitude and conduct when carrying out his/her duties and responsibilities. They are also required to sign a declaration of interests. Training is routinely provided to seek to ensure that staff skills are enhanced.

Training for Competent Authorities (c. 30.3):

898. All the staff of the Banking Supervision Department have received training on AML/CFT. All staff are required to undertake the Financial Stability Institute's computer based training. External agencies such as the FIU and ICAC have also provided training. An average of six persons are provided with training on AML/CFT annually at external events.

899. Since the autumn of 2002, 22 staff of the FSC have attended courses on AML/CFT all over the world. These courses have included FATF meetings and seminars hosted by the Financial Stability Institute and the International Association of Insurance Supervisors. On two occasions, representatives have made presentations (an IAIS/FSI seminar in 2005 and a South Africa Institute for Security Studies seminar in 2005). A member of the FSC's legal department has also trained FSC staff on the AML/CFT Codes.

Statistics (applying R.32):

900. Criterion 32(d) requires statistics on matters relevant to be maintained by supervisors on matters relevant to the effectiveness and efficiency of systems for combating money laundering on a relevant basis. The statistics to be maintained include on-site examinations conducted by supervisors relating to or including

AML/CFT and any sanctions applied. They should also include formal requests for assistance made or received by supervisors relating to or including AML/CFT, including whether the request was granted or refused.

901. Since 2005, the Bank of Mauritius has carried out 18 on-site inspections to banks, 2 on-site inspections to money changers, and 5 on-site inspections to foreign exchange dealers. [The Bank is to revert on leasing companies.] The Bank of Mauritius has applied three sanctions, at least in part, based on poor AML/CFT standards—these sanctions were applied in 2005 (two cases) and 2006 (one case). No formal requests for assistance received or made by the Bank of Mauritius related to or included AML/CFT.

902. The FSC has carried out the following number of on-site inspections:

Table 24. Number of licensees as of September 28, 2007

• Category	• Licensed Population	• Inspections conducted	• Remarks
• Insurers	• 23	• 16	• Population includes 18 active insurers, 3 in process of liquidation, 1 as runoff and 1 foreign underwriter
• Insurance brokers	• 19	•	•
• Insurance Agents	• 140	•	•
• Insurance Salesman	• 1767	•	•
• Stockbroking companies	• 13	• 15	• 4 on a second cycle of inspection. The first cycle of inspection started in July 2004
• Stockbrokers	• 24	•	•
• Dealer's representative	• 1	•	•
• Credit finance	• 2	•	•
• Custodial services	• 4	• 1	•
• Asset/Fund Managers	• 11	• 15	•
• Distributors of financial products	• 7	• 3	•
• Investment advisers	• 5	• 1	•
• Administrator & Registrar Agent	• 3	• 1	•
• Factoring	• 4	• 1	•
• Treasury management	• 5	• 1	•
• Leasing	• 10	•	•

companies			
• Hire purchase	• 1	•	•
• Global Insurance	• 34	•	•

903. No sanctions in respect of AML/CFT measures have not been applied by the FSC. Since August, 2004 the FSC has received 137 requests for information from overseas agencies in all, of which some were to do with AML/CFT. Requested information was not provided in 12 cases for reasons which appeared satisfactory to the mission. For example, the request should have been directed instead to the criminal justice authorities in Mauritius. In the same period, there were 149 local requests for assistance from other competent authorities, in respect of which information could not be provided in 17 cases. The reasons for this appeared to be satisfactory. Fifty-four requests for information have been made overseas by the FSC since August 2004, with 22 agencies not responding. Eighty-seven requests for information were made locally, with responses at this time not being received on 15 occasions.

3.10.2 Recommendations and Comments

904. The Bank of Mauritius and the FSC have been designated as supervisory authorities responsible for supervising and ensuring compliance by financial institutions with the FIAMLA, the underlying regulations, and the Guidance Notes/Codes they have issued.

905. Powers of sanction are available to the Bank of Mauritius and to the FSC. Powers of sanction have been exercised by the Bank of Mauritius against licensees, at least in part because of poor AML/CFT standards. It is apparent from the strong criminal and administrative sanctions available for noncompliance with the AML/CFT Guidance Notes issued by the Bank of Mauritius that the Bank considers that strong measures should be available to deal with poor AML/CFT measures by institutions and individuals. The administrative sanctions available as a whole are strong, proportionate and dissuasive. In addition, the criminalization of breaches of the Guidance Notes means that even comparatively minor breaches should be reported to the law enforcement authorities for consideration. The FSC's powers of sanction were considerably enhanced during the evaluation. However, the implementation of these new powers could not be assessed as part of the assessment. Until the enactment of the new Financial Services Act during the evaluation, the FSC had a limited range of sanctions in respect of AML/CFT, namely, directions and the revocation of licenses. It was apparent to the mission from discussions with FSC executives that during the evaluation the executives felt it would have had difficulties in applying sanctions for breaches of the Codes in terms of legal locus. After the evaluation, information on directions which had been applied by the FSC was provided to the mission. In March 2008, the FSC's Chief Executive indicated to the mission that he was of the view that the FSC had the regulatory powers at the time of the onsite mission to impose sanctions. The mission found that some institutions subject to supervision by the FSC had sound AML/CFT measures in place. However, in other cases such measures were not in place. This, and the narrow range of sanctions powers, suggest that it was not until the mission itself and the new Financial Services Act came into force that the sanctions powers could be considered to be strong, effective, and proportionate.

906. On-site inspections have been carried out by both the Bank of Mauritius and the FSC. The Bank of Mauritius has inspected all of the institutions for which it is responsible, while the FSC has inspected a significant number of the institutions for which it is responsible. The inspections undertaken by the Bank of Mauritius appear to be comprehensive—a detailed guide helps to structure the inspections.

907. The FIAMLA framework, the banking legislation administered by the Bank of Mauritius, and the Bank's Guidance Notes on AML/CFT apply to persons providing a money transfer service and a money or

currency changing service. Such persons are subject to on-site inspections and sanctions have been applied to such businesses. However, the mission considers that the legislation should explicitly cover persons providing a money or value transfer service.

908. In addition to the foregoing, the reach of the Mauritius AML/CFT framework even with the enhanced new legislation brought into force during the mission covers most but not all financial institutions defined by the FATF. Also, the FSC should be able to object to controllers, shareholders, directors, and senior management before they occupy such positions rather than having to react after the event.

909. It is recommended that:

The FSC should maintain awareness of the legal locus for sanctions and the wider powers of sanction available to the FSC under the new Financial Services Act should be used to demonstrate the enforceability of the Codes and that the powers are strong, proportionate, and effective;

The Bank of Mauritius should consider whether its range of sanctions is sufficiently broad and, if necessary, add to them or change existing sanctions, in order to complete its array of sanctions in the context of the local business environment;

The FSC should enforce the new Financial Services Act and the insurance and securities legislation, in particular, the enhanced provisions on fitness and propriety and be able to object to controllers, shareholders, directors, and senior managers before rather than after the event;

Persons providing value transfer services should be licensed or registered and subject to effective systems for monitoring and ensuring compliance with the national requirements to combat ML and FT;

The types of financial institution in the FATF definition not covered by the FIAMLA, underlying regulations and Codes, such as lenders and financial leasing institutions, should be brought into the framework and subject to law, regulation, and other enforceable means as appropriate;

The FSC should continue with its on-site inspection program, using the improved provisions for inspections in the new Financial Services Act;

The FSC should use more detailed inspection guides/questionnaires in order to help structure the inspections and to comprehensively implement the framework it administers;

The Bank of Mauritius should continue with its plans to recruit more staff and the FSC should consider whether more staff and additional training are necessary in order to administer the Financial Services Act appropriately;

The Stock Exchange of Mauritius should continue with its plans to continue investigatory capacity and the FSC should seek to ensure that this capacity is in place during its monitoring of the exchange; and.

The two supervisory bodies should maintain statistics routinely on on-site inspections, sanctions and formal requests for assistance.

3.10.3 Compliance with Recommendations 17, 23, 25 & 29

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
R.17	LC	Breaches of the FSC's Codes have been subject, until mid way through the assessment, to a narrow range of sanctions (directions and revocations). There were some implementation issues at financial

		institutions visited by the mission. Until mid way through the mission, the whole the sanctions framework in respect of the Codes is not effective, proportionate and dissuasive, and they are not broad and proportionate to the severity of a situation; the new framework which came into effect mid way through the mission, could not be judged for effectiveness.
R.23	PC	Insurance intermediaries have not been subject to on-site inspections sanction available to the FSC and the lack of application of these powers means that the nonbanking/cash dealer framework is not effectively implemented; Providers of money transfer services and money or currency changing services are licensed and subject to on-site inspections but the provisions are not explicit and the legal framework does not include providers of value transfer services; Some types of financial activity covered in the FATF definition, such as lending and financial leasing business, are not covered in the AML/CFT framework by law, regulation or other enforceable means, while other institutions are not subject to either AML/CFT or regulatory oversight (such as credit cooperatives).
R.25	LC	Section-specific rating would be: C
R.29	PC	The Bank of Mauritius has powers to monitor and ensure compliance but the on-site inspection and sanctions powers available to the FSC were narrow until part way through the onsite visit; The FSC did not have adequate powers of enforcement and sanction until part way through the onsite visit; the new framework which came into effect mid way through the mission, could not be judged for effectiveness. Not all financial institutions are regulated for AML/CFT purposes and subject to onsite inspections
R.30	LC	Once the Bank of Mauritius has completed its current restructuring, its staff complement will be complete.

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and Analysis (summary)

Designation of Registration or Licensing Authority (c. VI.1):

910. The Banking Act 2004 provides the Bank of Mauritius with regulatory powers in respect of financial institutions, the definition of which includes any bank, non-deposit taking institution or cash dealer licensed by the central bank. The definition of banking business in the Banking Act means:

- (i) the business of accepting sums of money, in the form of deposits or other funds, whether or not such deposits or funds involve the issue of securities or other obligations howsoever described, withdrawable or repayable on demand or after a fixed period or after notice;
- (ii) the use of such deposits or funds, either in whole or in part, for loans, advances or investments, on the own account and at the risk of the person carrying on such business; and
- (iii) includes such services as are incidental and necessary to banking.

911. Cash dealer means any institution licensed by the central bank to carry on the business of foreign exchange dealer or money changer.

912. Special Recommendation VI applies to natural and legal persons that perform money or value services (MVT service operators). The FATF definition of money or value transfer service refers to a financial service that accepts cash, other monetary instruments, or other stores of value in one location and pays a corresponding sum in cash or other form to a beneficiary in another location by means of a communication, message transfer, or through a clearing network to which the money/transfer service belongs. The FATF definition adds that such services may be provided by persons formally through the regulated financial system or informally through nonbank financial institutions or other business entities or any mechanism either through the regulated financial system or through a network outside the regulated system. The Mauritius authorities consider that all of the services covered by Special Recommendation VI are covered by the definition of banking business as the transfer of money or value is encapsulated in banking business. The Bank of Mauritius has successfully used its interpretation of the Banking Act to license wire transfer service providers in Mauritius and to conduct on-site inspections. Nevertheless, the mission has concerns that the absence of an explicit and clear provision bringing wire transfer providers into the Mauritius AML/CFT framework means that the interpretation of the banking legislation and the successful resolution of any challenge to the application of the banking legislation, the AML/CFT legislation, and the Guidance Notes on AML/CFT issued by the central bank may be problematic.

913. The mission also has concerns that the Banking Act does not cover all of the money and value transfer services referred to in the Special Recommendation (particularly value transfer service providers). During the assessment, the mission was provided with anecdotal evidence that informal operators were in business.

Application of FATF Recommendations (applying R.4-11, 13-15 & 21-23, & SRI-IX)(c. VI.2):

914. The Guidance Notes on AML/CFT issued by the Bank of Mauritius cover all licensed MVT service operators included in the banking and cash dealer sectors. Criterion VI.2 requires countries to ensure that all MVT service operators are subject to the applicable FATF Forty Recommendations (in particular Recommendations 4-11, 13-15, and 21-23) and Special Recommendations (in particular SR.VII). In this regard, the comments at Criteria VI.1 are relevant; also not all of the applicable FATF Recommendations are wholly satisfied. In addition, as outlined above, the mission is concerned that the application of the banking legislation and the Guidance Notes to money service providers will not satisfy a challenge against that application.

Monitoring of Value Transfer Service Operators (c. VI.3):

915. MVT service operators which are banks are subject to the on-site inspection powers of the Bank of Mauritius under Sections 42 and 43 of the Banking Act 2004. Under these Sections the Bank of Mauritius is required to perform regular examinations of the operations and affairs of every financial institution at least once every two years. Special examinations can be undertaken where the Bank of Mauritius considers it necessary or expedient in order to determine whether the banking laws or any enactment relating to anti-money laundering or prevention of terrorism or guidelines or instructions issued by the central bank are complied with. The Bank of Mauritius has undertaken AML/CFT on-site inspections in respect of the MVT service operator activities of all of the banks and cash dealers it operates.

List of Agents (c. VI.4):

916. All agents of banks and cash dealers carrying out activities in Mauritius covered by the Banking Act 2004 require a license from the Bank of Mauritius under the Act. All persons based outside Mauritius providing wire transfer services in Mauritius are required to provide the Bank of Mauritius with a copy of its agreement with the local service provider(s) who are its agents. The agreement is reviewed by the Bank. To this extent, licensed MVT service operators maintain a list of agents which must be made available to the Bank of Mauritius. There is no requirement on the agent to maintain a list of its subagents.

Sanctions (applying c. 17.1-17.4 in R.17)(c. VI.5):

917. The sanctions available in the FIAMLA, the Financial Intelligence and Anti-Money Laundering Regulations 2003, the Banking Act 2004, and the Bank of Mauritius Act as described in the discussion for Recommendation 17 are available for money service operators which are banks and cash dealers. Strong criminal and administrative powers can be used, although as indicated above, the mission has concerns about the ability to successfully meet any challenge to the application of the banking legislation to MVT service operators.

Additional Element – Applying Best Practices Paper for SR VI (c. VI.6):

918. The best practices paper can be met once value transfer service providers are explicitly brought into the banking legislation.

3.11.2 Recommendations and Comments

919. Banks and cash dealers which carry out money transfer services are regulated by the Bank of Mauritius and have been subject to on-site inspections. The framework for such institutions appears to be implemented by these institutions, although the legislation is open to challenge. There is anecdotal evidence that value transfer services are available in Mauritius. The banking legislation administered by the Bank of Mauritius does not cover such services. It is recommended that:

The banking legislation should be amended to include money and value service providers;

MVT service operators should be required by enforceable means to maintain a list of agents;

The Guidance Notes on AML/CFT issued by the Bank of Mauritius should be enhanced in the manner suggested in section 3 of this report;

The recommendation on the sanctions framework recommended in respect of Recommendation 17 should be undertaken.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	NC	<p>Banks and cash dealers are regulated by the Bank of Mauritius and subject to on-site inspections but the legal provisions covering money transfer services are not explicit and the legislation does not cover value transfer service providers:</p> <p>The Bank of Mauritius Guidance Notes require some enhancements;</p> <p>The sanctions framework needs to unambiguously apply to MVT service operators.</p>

4 PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS**4.1 Customer due diligence and record-keeping (R.12)**
(applying R.5, 6, and 8 to 11)**4.1.1 Description and Analysis:****Legal Framework:**

Coverage of DNFBPs

920. FIAMLA S3(2) places a broad obligation on members of a “bank, financial institution, cash dealer or relevant profession or occupation.”²³ A business in these categories commits an offense if it:

“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 to commit or facilitate the commission of a money laundering offense”

921. FIAMLA S5 prohibits payments in cash above 500,000 rupees (about US\$16,666). Mauritian dealers in precious metals and stones (primarily jewelers), therefore, are not required to undertake CDD or STR reporting requirements as a result of the large cash transactions restriction. Accordingly, Rec 12 does not apply to these dealers.

922. Mauritian businesses that provide corporate formation, representation, management or corporate trustee (TCSP) services for global businesses are included in the FIAMLA definition of “financial institution” because they are a Management Company (MC) or Registered Agent licensed under the Financial Services Act 2007.²⁴ Only MCs, Qualified Trustees (which includes Corporate trustees)²⁵ and FSC approved individuals are licensed to provide TCSP services to the licensed global business sector. Although rare, “approved individuals” fall outside the scope of the FIAMLA definition of “financial institution” because they are not required to hold a management license.²⁶ Only MCs or Qualified Trustees can act as registered agents for GBLs. The Trust Act S28(1) requires that all Trusts in Mauritius settled by residents or non-residents must have at least one Qualified Trustee. Qualified Trustees and Management companies must be located in Mauritius.

923. Individuals may establish their own domestic companies in accordance with the Companies Act 2001. The FSC regulated management companies must perform this function for the businesses seeking global business licensees. Public companies or private companies with a turnover in excess of 30 million rupee must have a qualified chartered (corporate) secretary.

924. The FIAMLA definition for “member of relevant profession or occupation” covers the domestic Company Service providers (CSPs) provided by law practitioners (notaries, lawyers, barristers), accountants, and chartered secretaries.²⁷ Unlike their Management Company counterpart in the global sector, domestic

²³ FIAMLA S(2) defines a member of a relevant profession or occupation to be accountants, lawyers, notaries, chartered secretaries and includes any person carrying on a business of a casino, bookmaker, or totalisator under the Gaming Regulatory Authority (GRA) Act. The GRA was placed into effect during the on-site mission.

²⁴ The FSA was proclaimed during the on-site mission and replaced the previous FSD Act.

²⁵ Qualified Trustees must hold a FSC management license and by definition in the FS Act must be a Management Company.

²⁶ The assessors were advised that instances of the approval for individuals are extremely rare (2) and have in the past only been provided in circumstances considered to be low risk. An example was provided of licensing an individual to manage an occupational pension fund requiring periodic deductions.

²⁷ The assessors were unable to confirm the size of the domestic CSP business undertaken by these professions, or whether non-professionals currently provide such a service.

CSPs are only subject to STR obligations, not the wider CDD provisions prescribed in the AML Regulations. Professional trustees for domestic trusts, however, are subject to the full scope of measures set out in FIAMLA as well as being regulated as financial institutions by the FSC.²⁸ Table 5 in Section 1 summarizes the assessors' understanding of the DNFBP situation in Mauritius at the time of the assessment:

CDD and Record Keeping Requirements

925. S17(a) requires all the categories of business defined in s3 including: TCSPs, accountants, lawyers, notaries, chartered secretaries, casinos, bookmakers, and totalisators to verify the true identity of all clients and other persons with whom they conduct transactions, in a “manner as may be prescribed.” However, with the exception of the TCSP sector supervised by the FSC, the AML Regulations do not provide any prescription. Furthermore, Section 17(b) indicates these businesses must keep such records and documents as may be required under FIAMLA or by regulations. Again no such provision exists.

926. FIAMLA S19(a) provides an offense for failure to comply with the general verification and record-keeping requirements of S17; however, the lack of any prescription by regulation or regulatory guidance, other than for TCSPs, places doubt on the practical effect of the FIAMLA requirements for the wider DNFBP sector.

927. In Mauritius, TCSPs are considered as financial institutions and are supervised by the FSC. Accordingly, TCSPs are subject to the full requirements of FIAMLA S17 (a) and (b) and also the FIAMLA Regulations which provide for specific measures for: CDD, introducers/intermediaries, attention to enhanced risks including those potentially associated with non-face-to-face transactions and new technologies and record keeping and monitoring of complex, large or unusual transactions. The regulations only apply to the institutions supervised by the BOM or FSC. Hence, these requirements only apply to the TCSP category of the DNFBPs that service the global business sector under license from the FSC (that is management companies and qualified trustees) and qualified trustees that service the domestic sector. A fuller description and analysis of the effectiveness of the implementation of the FIAMLA and regulations that apply to financial institutions is provided in Section 3.

928. FIAMLA S18(1) designates the BOM and FSC to issue “such codes and guidelines as they consider appropriate to combat ML/TF” to institutions they supervise. For DNFBPs, only the TCSP sector is subject to such supervision, and the FSC has issued comprehensive AML/CFT Codes to the management companies that constitute the TCSP sector. During the mission, the GRA Act was placed into effect to provide the new Gambling Regulatory Authority as the designated supervisory authority with powers to issue Codes or Guidelines on AML/CFT. At the time of the mission, the GRA’s Board was yet to be established; consequently, AML/CFT Codes or Guidelines had not been issued.

929. The FSC’s Codes are comprehensive and provide detailed instruction and requirements on CDD, PEPS, introducers/intermediaries, attention to enhanced risks potentially associated with non-face-to-face transactions and new technologies and record keeping and monitoring of complex, large or unusual transactions. Similarly, to the AML regulations, the Codes are only prescribed to the institutions supervised by the FSC. Hence, these requirements only apply to the TCSP category of the DNFBPs that service the global business sector under license from the FSC (that is management companies and qualified trustees) and qualified trustees that service the domestic sector. Areas that require strengthening in the FSC’s Codes for AML/CFT are addressed in the analysis of the Financial Sector (part 3 of this report).

²⁸ In the Trust Act 2001 Qualified trustee means management company or such person resident in Mauritius authorized by the FSC.

930. The FSC has the powers to both request information on beneficiary owners of TCSPs and their global clients. Its inspections include an evaluation of controls including sampling of client accounts to establish that TCSPs are, inter alia, providing proof of ultimate beneficiary ownership and control of their global business clients. Similarly, the FSC's overall Guide to Compliance and Personal Questionnaire (required to be filled out for clients) also applies to the TCSP licensed businesses.

931. When incorporated businesses or professions are also subject to the record keeping requirements of the Companies Act, however, the requirements do not adequately reach the CDD requirements of the AML/CFT standard.

Other sector specific information on CDD is as follows:

TCSPs:

932. The CDD and record-keeping measures prescribed in the AML Regulations mirror the measures that apply to the financial institution sector. The CDD and record-keeping requirements contained in the FSC's AMLCFT Codes for Management Companies servicing the global business sector are consistent with the full provisions of FIAMLA and the AML regulations and mirror the CDD obligations that the FSC places through its AMLCFT Codes for the Insurance and Securities sectors. The shortcomings identified in the CDD requirements placed on the FSC's licensees in the Insurance and Securities sectors equally apply to Management Companies and Qualified Trustees. For more details, see Recommendations 5, 6, and 8-11 in Section 3.

933. In terms of implementation for the global TCSP sector, most management companies have undergone FSC inspections of their CDD related policy and practice, and have satisfied the FSC as to their level of compliance. With respect to PEPs, the assessors noted that standard filtering software such as World Check is not always in use.

934. The FIAMLA CDD and AML Regulations on CDD do not extend to local Company Service Provider business, even when conducted by the law practitioners, accountants or chartered secretaries.

Other Categories of DNFBPs:

935. For the other categories of DNFBP, a common risk mitigation ploy used by DNFBPs is to require clients to provide funds through established bank accounts thus subjecting them to the CDD requirements of the financial sector. This practice does not replace the CDD requirements that should exist for DNFBPs. Furthermore, there is no effective monitoring process in place to assess whether the various professions and casinos are undertaking any kind of customer due diligence.

Lawyers:

936. No other act, rules or code of conduct require any lawyer to identify or verify his or her clients or to keep records. In practice, law practitioners, and barristers do not identify or verify their clients' identities nor do they keep client records.

Notaries:

937. The Notaries Act is quite comprehensive as to the general procedure, including record keeping. Records to be kept include notarial deeds of transactions. The S32 requirements include: the full names, status registration of birth certificate, occupation and postal address of every party and witness to the deed and the

subject matter of every transaction in that deed. Notaries are required to certify parties not personally known to them through access to valid passport or official document.

938. For legal persons, the notarial practice is to conduct searches of the companies registry, primarily to ensure the authorizations of agents. If authorization is not provided, a notary abstains but would not consider an STR to be relevant. While most clients, are already known to the notary, for new client reliance is placed on a known Mauritian counterparty's introduction and references. This situation is becoming more frequent with increasing exemptions being made available to the general prohibition that prohibits foreigners from owning Mauritian land, for example, the large real estate developments and sales now possible under the Integrated Resort Scheme (IRS). In such cases involving the IRS, notaries rely on the development approval of the BOI and PMO's involvement, as part of satisfying their customer identification requirements.

939. Notarial deeds and summaries must be kept for 60 years. For real estate transactions, these include the price of the property, which is used by the Registrar General to review for 'fairness of price' and Duty considerations. The emphasis on these reviews is to identify possible understatement for the purposes of avoiding duty, rather than overstatement which may signify suspiciously high purchase prices.

940. No Guidance or Rules have been issued by the Chamber and the Act does not provide for this. The Chamber does not have a role or power to monitor specific record keeping or general practice, although such powers will be necessary if the Chamber is to be successful in its current application for membership to the International Association of Notaries.²⁹

941. The Registrar Generals' review process affords the notary profession with a good level of oversight for record-keeping purposes; however, the due diligence practice and obligations for notaries falls short of the standard.

942. Where domestic company service business is undertaken by Notaries the specific customer identification and verification requirements conducted for the purposes of the notarial deed process apply; however, these fall short of the FATF standards, with respect of most requirements, other than record- keeping.

Chartered secretaries, accountants and auditors:

943. Professional practice and Codes of Ethics provide for a minimal level of customer verification to be conducted. The requirements are usually for reasons other than AMLCFT purposes, and are not prescriptive, detailed and mandatory in law or enforceable means to the standard envisaged by the standards.

944. A level of CDD is currently performed, especially for foreign clients wishing to incorporate domestic companies. The process is a discretionary one, primarily for the purpose of professional reputation risk mitigation. The industry representatives described a process involving review of company records, details of name, address, curriculum vitae, and certification of "consent to act" for a third party. There is a heavy reliance on bank references and the CDD measures provided by the banks.

Casinos:

945. Regulatory requirements for customer identification or verification do not exist for casinos. In practice, only basic level (credit related checks) are undertaken when patrons apply for a check cashing facility. In terms

²⁹ A bill to upgrade the existing Notaries Act has been drafted. The assessors are not aware of its status.

of record-keeping, the previous recording-keeping requirements prescribed in s 40 of the Gaming Act 1973 apply until the relevant part of the new GRA Act is placed into effect. S40 requires records to be kept for five-years, although there is no specific direction as to whether customer-based records are required to be kept. At the time of mission, the Board for the new Gambling Regulatory Authority had not formed. The GRA Act provides for the authority to issue guidelines on AML/CFT and created an offence for failure to comply with such guidelines. The potential will exist for the new authority to tie licensing conditions to compliance with such guidelines. The assessors were not advised that AML/CFT guidelines have been issued subsequent to the on-site mission.

Dealers in Precious Metals and Stones

946. FIAMLA does not oblige dealers in precious metals or stones to conduct CDD, record-keeping, or make reports to the FIU. The prohibition on cash payments above 500,000 rupee effectively places them outside the FATF definition of a DNFBP, for the purposes of Recommendation 12.

947. For licensing and quality control purposes, dealers are required to keep comprehensive records, including date, customer name and address and financial details of the transaction of all jewelry-related purchase or sale for at least five years after the completion of a transaction. The Controller of Assay's Office conducts inspections of dealer records in accordance with the Controller's duties for assaying, verification and grading of jewelry and precious stones.

Real Estate Agents

948. There are no specific customer identification or record-keeping requirements for real estate-agent license holders, although corporate agents are subject to the general record-keeping provisions of the Companies Act.

949. The real estate market (not including the IRS scheme which is run through a separate and controlled process) is not regulated. The IRS process, on the other hand, makes it mandatory for all promoters (developers/real estate sellers) to establish bank accounts in Mauritius and for all buyers payments to be placed in the promoter's bank accounts and to be subject to a separate KYC authentication from the promoter's bank. This provides some mitigation of the inherent AML/CFT risks but it does not necessarily address any concerns over source of wealth. It would also not address, for example, buyer-initiated quick resales of properties based on uneconomic grounds.

4.1.2 Recommendations and Comments

Undertake a coordinated and inclusive risk assessment to identify and agree on the ML/TF risks and vulnerabilities that Mauritius faces and, as a result of this, consider qualifying the activities that are to be subject to the standard;

CDD and record-keeping provisions of the current AML/CFT regulations be extended to all the DNFBP categories currently defined in the FIAMLA definition of "member of the relevant profession or occupation;"

Real estate agents should be included in the FIAMLA definition;

The risks associated with IRS related resales need to be addressed, possibly through inclusion of IRS developers/sales agents in the FIAMLA;

Shortcomings identified in the CDD provisions that apply to financial institutions (Recs 5, 6, 8 -11 in Section 3) should be considered and remedied, where relevant to the TCSP business regulated by the TCSP;

Grandfathered casino licensees should be provided with the necessary AML/CFT directions and conditions placed on licenses re: possible revocation or suspension for non compliance; and

Appropriate and timely outreach educational programs be conducted should the recommended enhancements be made to CDD measures placed on the sectors not supervised by the FSC.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	NC	<p>Unlike the situation with banks and financial institutions (which include FSC supervised TCSPs), FIAMLA's general measures to prevent ML or FT , customer identification and record keeping have not been given any specificity and hence lack practical effect in the FIAMLA Regulations or other regulatory requirements;</p> <p>Prescribed obligations for CDD, PEPs, non-face-to-face transactions, risks associated with new technology, use of intermediaries/introducers, documentation of review of complex or unusual transactions, and record-keeping obligations in FIAMLA do not extend beyond the management companies and qualified trustees licensed and supervised by the FSC;</p> <p>The shortcomings identified in the legal CDD requirements placed on the FSC's licensees in the Insurance and Securities sectors equally apply to Management Companies and Qualified Trustees (refer recs 5,6, 8-11 in Section 3);</p> <p>Local real estate agents, including IRS developers selling high-value property to overseas purchasers, are not subject to sufficient legal obligation to undertake appropriate CDD or record-keeping requirements;</p> <p>Casinos' record-keeping provisions do not meet the standard as they do not enable individual customer transactions to be recreated or held for a five-year period;</p> <p>The GRA has yet to issue any Regulatory Guidance on AML/CFT obligations, pursuant to its rule making powers;</p>

4.2 Suspicious transaction reporting (R.16)

(applying R.13 to 15 & 21)

Description and Analysis

Obligation to Report

950. FIAMLA s14(1) and 15 place the same STR reporting obligation on banks, nonbank financial institutions, cash dealers, or “member of a relevant profession or occupation”. For the purposes of Recommendation 16, the FIAMLA definition for legal practitioners (that is barristers, lawyers, and notaries), accountants and chartered secretaries (considered herewith to be other legal professionals) goes beyond the FATF requirements. The FIAMLA definition does not qualify the reporting obligation through reference to any particular activity or financial transaction. Furthermore, the Mauritian principle of privilege appears in practice to be an obstacle to the reporting of suspicious transactions by attorneys and barristers.

951. Unlike the situation with CDD and record-keeping obligations, the statutory obligation to report suspicious transactions to the FIU does extend to all the categories of DNFBPs recognized by the FIAMLA definition: namely accountants, attorneys, barristers, chartered secretaries, notaries, and casinos. The STR

obligations also apply to certain categories of persons not included in the standards, namely, non-casino gambling activities provided by bookmakers or totalisators. The lack of prescription on CDD for the non-TCSP categories of the DNFBP sector lessens the ability of such businesses and professions to systematically identify potentially suspicious transactions.

952. FIAMLA s5 prohibits payments in cash above 500,000 rupees (about US\$16,666). Mauritian dealers in precious metals and stones (primarily jewelers) are therefore not subject to STR reporting requirements as a result of this large cash transactions restriction. Accordingly, Rec 16 does not apply to these dealers.

953. The definition of suspicious transaction in FIAMLA is a broad requirement and inter alia includes reference to the laundering of proceeds of any crime and funds linked to financing of terrorism. A fuller analysis of the reporting obligation is provided at Recommendations 13 and SR IV. Despite this requirement, the number of reports provided to the FIU from the DNFBP sector appears extremely low (see Recommendation 26). An interesting trend is that the level of STR from the management companies shows a marked downward trend, despite the rapid expansion in the global client basis being management.

Legal Privilege:

954. FIAMLA s14(2) does provide a qualification to the overall reporting requirement where the reason for suspicion:

“was acquired in privileged circumstances unless it (the transaction in question) has been communicated to him (the lawyer) with a view to the furtherance of a criminal or fraudulent purpose.”

955. Legal privilege in Mauritius is same legal privilege as established in England. Attorneys and barristers would have a duty to keep information learned from their client privileged where they have learned that information though advising or defending their clients. If a law practitioner felt that they were possibly being involved in a criminal offense as an accomplice, they would file an STR as any possible collusion in a criminal offense if their client falls outside the ambit of legal privilege.

956. The bar council indicated that there has been no local case law on this matter and that this could be a tricky area for barristers and law practitioners to navigate. Certainly in discussions with a number of lawyers, the mission was advised of several different views on whether STRs would ever be filed. In some cases, lawyers indicated that they would only file a STR when they had documentary evidence of possible money laundering. Conversely, others indicated that they would report if a client asked them to structure a transaction which they suspected would be for money laundering purposes. Still others indicated that they would not report in this case but would stop acting for the client and may indicate to the client the reasons why they were ceasing to act (and hence tipping off the client).

Tipping Off:

957. In terms of tipping off, all the Mauritian categories of financial institution (including banks) and DNFBPs are subject to Section 16(1) of FIAMLA which provides that no person shall inform any person involved in the transaction or any third party that the transaction has been reported or that information has been supplied to the FIU. See also discussion of tipping off in Section 3 of the report which also applies equally to DNFBPs.

958. All DNFBPs are similarly protected from proceedings for filing STRs by Section 16(2) of FIAMLA. Concern was expressed from industry representatives that the current FIAMLA obligation to report places auditors in an “impossible position”. The assessors were advised that professional ethics require an auditor to

abstain from continuing an audit should a suspicious transaction be detected and a STR would be disclosed to the FIU. This action was seen to possibly breach the tipping off provisions of FIAMLA. Under the Companies Act, there is a requirement for the auditors to advise shareholders of a company of the reasons for discontinuing an audit. The assessors were unable to verify the veracity of this argument as it came late in the on-site, assessment however, this potential conflict should be considered and the perceptions addressed.

Requirement for Internal Controls

959. FIAMLA s3(2) provides a broad level of direction to underpin the need for all defined categories of financial institutions and DNFBPs in Mauritius to “take such measures as are reasonably necessary to ensure that the business in question is capable of being used for ML” but there is no mention of FT.

960. Consistent with the CDD obligation, although comprehensive prescription is provided in the AML Regulations (regs 6 and 9) for internal controls, appointment and practice for Money Laundering Reporting Officer and staff training, this regulatory prescription has not been extended to the DNFBPs, beyond the FSC supervised TCSP sector. The FSC’s AMLCFT Codes for the TCSP sector provide strong guidance for Internal Controls. Section 3.8.2 provides fuller detail on shortcomings identified with the FSC’s AML/CFT Codes – in the area of MLRO access to information, audit function, ongoing training on ML and FT techniques and screening of staff.

961. For the high risk TCSP global sector, the FSC’s Codes for AMLCFT for management companies provide a comprehensive regulatory standard. The FSC’s supervisory program for TCSPs and on-site inspections place a premium on evaluating the internal control systems of its licensees.³⁰

962. No guidance as to the appropriate internal controls to mitigate the risk of being associated or used for money laundering or terrorist financing has been issued in other DNFBP sectors. The FIU’s power to issue guidance on AML/CFT matters is restricted to the manner and form of reporting. The lack of involvement of the FIU and current lack of AML/CFT effective monitoring or supervision of the non-FSC regulated sector (see Rec. 24) is an issue.

963. The practice, standards, and codes followed by the professional accounting/auditing firms include the need for effective risk management controls systems to be in place. Similarly, the Mauritian Code of Corporate Governance requires company directors and management to have appropriate risk management controls in place to cover key areas of risk, including reputation and financial. The Code also requires an effective internal audit function to assess the effectiveness of these controls and the overall management of risk. These requirements form a good framework but would not provide a basis to address specific AML/CFT risks.

964. The casinos have controls in place in order to prevent fraud, cheating and gambling irregularities and to satisfy turnover tax obligations. Electronic surveillance and patron monitoring exist. The enhanced requirement provided by the new GRA requirement to ensure “fit and proper” persons in management roles, as well as license applicant and shareholders were not able to be assessed as to implementation due to recent and partial proclamation of the GRAA. No specific AML/CFT controls exist.

Special attention to transactions from certain countries

³⁰ At the time of assessment, 73 of the management companies had been inspected and any remedial action required had been taken in the time frame acceptable to the FSC.

965. Other than TCSPs, which are subject to the FSC's AML/CFT Codes, there is no mandatory obligation for the DNFBP sector to consider or give special attention to transactions involving customers from certain high-risk countries. In practice, the assessors gained an impression that most of the professional sectors and casinos would pay added attention to customers from outside Mauritius, or unknown to them but this is not a requirement. In the case of notaries and the casino, the practice is to seek reference or introduction from known locals.

966. The FIU received legal advice that its previously held power to issue guidelines on "Equivalent jurisdictions" for the purpose of AMLCFT monitoring was outside the scope of the FIU's powers provided in FIAMLA. Accordingly, this role has been taken up by the BOM and FSC for their respective licensees in the financial sector. There is, however, no apparent authority to maintain and disseminate such information to the other DNFBP categories.

Implementation:

967. In the last five years, 126 STRs have been filed by management companies, 1 has been filed by a corporate trustee and nine have been filed by all other DNFBPs combined.

Recommendations and Comments

968. Recommendations:

The categories of DNFBP sector not supervised by the FSC should have rules laid down covering elements of training, policy and procedures, recruitment, and internal controls. The level and degree of internal controls need to be appropriate to the resources and risk level;

Prescribe specific CDD requirements for the non-TCSP categories of the DNFBP sector to reinforce the capacity for such businesses to identify potential suspicious transactions;

Amend FIAMLA s3 to include reference to FT;

Clarify, define, and educate relevant professional categories as to the application of legal privilege as it applies to the obligation to provide STRs to the FIU;

Review and address the situation raised by the auditing sector regarding the potential tipping-off implications following removal from audit following reporting of an STR;

Address the shortcomings in the FSC Codes identified in Section 3;

Extend the STR reporting obligation to the real estate sector;

Designate a competent authority(s) to provide guidance on internal controls to the non-TCSP and casino sectors;

Designate an authority to have responsibility for maintaining and distributing the list of equivalent jurisdictions to the DNFBPs not supervised by the FSC;

Seek common understanding on the possible gaps in reporting levels and the delay in the timing of disclosures to the FIU with private sector representatives and authorities represented on the AML/CFT Committee;

Institute appropriate mechanisms so that the FIU may share information regarding reporting performance with the various professional bodies. The FIU should provide designated sector supervisory authorities and relevant industry associations or professional bodies with a more contemporary and wider range of indicators and typologies. In the current absence of meaningful local cases, the FIU could reference available material from publications such as the various FATF and FSRB typology reports;

Disciplinary authorities referenced in FIAMLA s18(4) should be expanded to cover the DNFBP sector and then develop an appropriate outreach program for each category of DNFBP;

The GRA should issue directions to its licensees regarding AMLCFT relevant controls, audit and staff training and screening requirements, and

The downward trend in the reporting levels from MCs should be reviewed as part of the future FSC risk-based supervision program.

Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	PC	<p>The reporting obligation does not extend to real estate agents, including promoters involved in development and selling of high-value properties to foreign buyers;</p> <p>The shortcomings for the Codes for the Insurance and Securities sectors — requirements for ongoing training, recruitment, and audit equally apply to the FSC's codes for management companies (Section 3.8.3 refers)</p> <p>Shortcomings in the CDD requirements for non FSC supervised DNFBPs weaken the capacity of such businesses /professions to identify potentially suspicious transactions;</p> <p>The FIU's statistics indicate a possible level of under-reporting of STRs;</p> <p>Unclear that the FIAMLA reporting obligation extends to individuals, in their capacity of director, employee, agent, or other legal representatives of a reporting institution;</p> <p>Except for the FSC's Codes that apply to the TCSPs sector, no AML/CFT Guidance has been issued to assist the remaining DNFBP categories of the requirements for internal controls, audit or staff screening and training;</p> <p>Except for the FSC's role with TCSPS, there is no designated authority or mechanism to advise DNFBPS of high risk jurisdictions.</p> <p>Auditing profession concerns regarding tipping off</p>

4.3 Regulation, supervision and monitoring (R.24-25)

4.3.1 Description and Analysis

TCSPs:

969. For AML/CFT purposes, the FSC regulates the management companies and corporate trustees that it licenses to service the high risk global business sector, in the same manner that it uses for the insurance and securities sectors. Appropriate licensing conditions and vetting of applicants for such licenses is undertaken, published enforceable regulatory codes for the sector exists, and a comprehensive and integrated on and off-site supervisory and inspection program is in place. The FSC has inspected the 76 out of 79 licensees. The FSC has shown its ability to regulate to improve compliance and the new FS Act, proclaimed while the mission was onsite, provides a firmer basis for applying a range of proportional sanctions.

970. For fuller discussion on the FSC's overall regulatory approach, see Rec 23 in section 3 of the report.

Lawyers:

971. Both attorneys and barristers are subject to professional rules located in the Law Practitioners Act 1984, the Mauritius Law Society Act 2005, and the Mauritius Bar Association Act (1957), respectively. Both attorneys and barristers are subject to Codes of Conduct which have been issued by their respective professional bodies.

972. Each professional body can receive complaints from the public and process those complaints. Where possible, matters will be worked out amicably between the lawyer and the professional body and to the satisfaction of the client. Where the matter cannot be worked out, the professional body may sanction the member with either a suspension or removal from membership. In such cases though, the matter would be first referred to the Attorney-General as a serious breach. The Attorney-General would prosecute the matter before the Supreme Court. The Supreme Court may also recommend suspension or removal from the rolls along with any other penalty allowed by law for the criminal offense with which the member may also have been charged.

973. There have been cases in Mauritius of lawyers, mostly barristers, being disbarred. Relevant cases include, lawyers being convicted of holding proceeds of fraud, possession of stolen money, and holding proceeds of crime from drug smuggling.

974. Neither professional body monitors or ensures compliance with the requirements under FIAMLA for lawyers to file STRs. As there are no CDD or record-keeping requirements for lawyers, there is no monitoring or supervision for these matters by either the Law Society or the Bar Association.

Notaries:

975. Disciplinary action for unprofessional conduct is now catered for by the same provisions in the Law Practitioners Act that apply to attorneys. The Chamber of Notaries can censure members and give recommendation to the Attorney-General who has the power to conduct an enquiry and refer the appropriate action to the Chief Justice.

Accountants and Auditors:

976. In 2004, the Financial Reporting Act (FRA) was passed. This Act provides for the setting up of the Mauritius Institution of Professional Accountants (MIPA) and the Financial Reporting Council (FRC). MIPA is responsible for the regulation and supervision of professional accountants. MIPA has hopes to issue a Code of Conduct and Ethics for professional accountants. The FRC is responsible for the licensing and monitoring of the professional conduct of auditors in preparing audit opinion on financial statements for companies required to submit annual returns to the Companies Registrar. The FRC requires licensed auditors to comply with the International auditing standards and with the IFAC Code of Ethics for Professional Accountants. Section 210.1 and 210.2 of the IFAC Code makes mention of the need for accountants to consider the money laundering risks involved in accepting new clients. Standard audit and professional accounting practice requires a good level of understanding the client and the client's business and ownership.

977. Under Section 33 of the FRA, a licensed auditor should hold a practicing certificate issued by MIPA. Various unlicensed persons offer accountancy services. In contrast, only FRC--licensed auditors can provide audit opinions on financial statements which includes providing opinions on compliance with the Mauritian Code of Corporate Governance.

978. Both MIPA (member funded) and the FRC (publicly funded) are still developing their capacity and strategy to fulfill their designated oversight functions on the professions. The FRC is empowered to appoint inspectors to monitor the integrity of the work being done by licensed auditors, including compliance with the Code of Ethics published by the International Federation of Accountants (IFAC) and the Mauritian Code of Corporate Governance. The Code contains reference to having appropriate risk management and internal control systems in place. The FRC has powers to impose disciplinary sanctions in order to improve the highest standards. It also has the power to issue rules, codes, guidelines, and standards relating to financial reporting, accounting and auditing, and a Code of Professional Conduct and Ethics.

979. In the interim, the FRC expects auditors to act in keeping with the International Code of Ethics for professional accountants. MIPA has a similar role, functions, and type of professional conduct sanction, but with respect to professional accountants. However, the likelihood of such rules and monitoring being implemented soon is considered unlikely given the level of resources available to MIPA, and the current status of the FRC's implementation.

980. Accountants are subject to membership standards and requirements of the relevant professional accounting bodies, such as ACAA.

Chartered Secretaries:

981. For Chartered secretaries the standard setting body is the Institute of Chartered Secretaries (based in London). All members of the local professional association (the Mauritian Association of Chartered Secretaries and Administrators) are required to adhere to the Institute's professional code of ethics. The codes address professional responsibilities which includes adherence to all relevant statutory and regulatory requirements. No specific guidance on AMLCFT matters have been issued. Professional misconduct can lead to the local association recommending exclusion of the member to the privileges afforded through membership to the international association. Such exclusion would prevent the Companies Registrar accepting the person as being able to act as a company secretary. The FRC also has an oversight role with respect to company secretaries in monitoring adherence to the Mauritian Code of Corporate Governance.

982. The local Association has internal disciplinary arrangements for professional misconduct and sanctions which include making recommendations to the international body to "exclude" a member. To date, no such exclusions have been made.

Regulation and Supervision of Casinos (c. 24.1, 24.1.1, 24.1.2 & 24.1.3):

983. A new regulatory framework for the gaming and gambling business licensees is contained in the new Gambling Regulatory Authority Act (GRAA) gazetted, September 10, 2007. The Gambling Regulatory Authority (GRA) replaces the Gaming Board and the Horse Racing Control Board, which were the previous authorities responsible for regulating the casinos, gaming houses (Gaming Board) and totalisators and bookmakers (Horse Racing Control Board). The GRA's Board is now provided with specific powers to issue enforceable directions on AML/CFT under the GRAA. At the time of mission no guidance had been issued for purposes of AMLCFT, and the assessors were not made aware of any guidance issued subsequent to the on-site visit.

984. The existing casino licenses will be automatically reissued under grandfathering provisions in the GRA. The new Act does provide for internet casino licenses to be issued with access restricted to nonresidents, and provide for "mind and management " and server-based records of the licensee to reside in Mauritius. An internet casino license is not expected in the near future as the Authority needs to first develop its

organizational capacity. The assessors were advised that the inaugural Board meeting of the GRA will occur “within the week” with the priorities to appoint a CEO and agree on a constitution. The CEO of the GRA will be a member of the AML/CFT Committee.

985. When constituted, the GRB, will have powers under section 7 (1) (d) to issue AML/CFT guidelines to casino licensees. S139 (c) also creates an offense for failing to comply with directions issued by the Board and provides for enhanced powers of inspection and a full time inspectorate staff. A separate unit of the Police (“Police des Jeux”) will also continue to have the power to conduct inspections for actions that may be considered in contravention of “any enactment,” including the FIAMLA. The Deputy Police commissioner will sit on the GRA’s Board.

986. Under the previous Gaming Act 1973, the Gaming Board did not have the power to issue guidance or direction (enforceable or otherwise) and no conditions were placed on the issued licenses. The FIU has never received a STR from a casino. Discussions with industry representatives revealed that a level of internal control currently does exist, although it is primarily for fraud prevention, to monitor for turnover tax purposes, and gambling irregularities (cheating). Adequate controls exist with respect to chip cashing and winning check and payments.

987. The previous Casino Licensing authority the Gaming Board conducted “fit and proper tests” on licensing applicants and these included requisite Police checks and certificates of morality from the DPP. Changes in shareholdings were and will continue to be, required by the new Authority. The new Act strengthens the previous licensing regime as the fit and proper test will now extend to key casino management as well as shareholders.

Real Estate:

988. The Real Estate sector is unregulated, although the local association has developed a code of ethics on its members. The membership currently accounts for about 20 to 25 percent of the industry.

Jewelers:

989. For licensing and quality control purposes, dealers are required to keep comprehensive records, including date, customer name and address, and financial details of the transaction of all jewelry-related purchase or sale for at least five years after the completion of a transaction. The Controller of Assay’s Office conducts inspections of dealer records in accordance with the Controller’s duties for assaying, verification, and grading of jewelry and precious stones.

990. Licensed jewelers are subject to inspection of transaction based, record keeping requirements for VAT and Customs purposes, as well as for on-site quality checks by the Assay Office.

Guidelines for DNFBPs (applying c. 25.1):

991. The FSC Codes for AML/CFT for Management Companies provide a good level of guidance on the CDD, record keeping and reporting obligations for the TCSPs dealing with the GBL sector. However, the FSC Codes do not include indicators of terrorist financing. Furthermore, the ML indicators provided are reasonably generic and could be enhanced with reference to specific types of transactions, products, or customer types that would be familiar to persons in the global sector.

992. Other than the FSC’s Codes and the FIU’s 2003 Guidance which is restricted to the manner and form of reporting STRs, the assessors were not made aware of AML/CFT guidance provided to the DNFBP sectors.

993. The FIU's 2003 Guidance on Suspicious Transactions was provided for the benefit of all relevant parties in the financial sector and DNFBPs. Taken together with the FIU mandated STR reporting form (and the new electronic on-line reporting system), the guidance provides support and clarifies the STR reporting obligation for all parties in the reporting sector. The guidance is lacking in certain areas and allows too long a timeframe for reports to be filed (30 days). Fuller discussion on the FIU Guidance is included at 2.5.1 Rec 26.1. No other guidance has been issued to the DNFBP sectors, other than those supervised by the FSC (the TCSP sector).

4.3.2 Recommendations and Comments

Supervision and Monitoring (R.24)

Clarify the role of the various professional bodies with respect to FIAMLA s18(4) and consider how such bodies can monitor and supervise their respective members' adherence to the AML/CFT requirements;

Ensure that all persons conducting activities to be caught by the standard are properly licensed (for example, real estate agents and persons performing accounting services);

Designate an authority or body to oversee AML/CFT matters with respect to the other categories of DNFBPs, namely, real estate agents and dealers in precious metal and stones (jewelers). Determination of the appropriate body and the level of oversight or monitoring that should follow an assessment of the relative risks of ML/TF in the business practice, transactions, and customer profile of the respective underlying activities and the extent to which such risks are already mitigated through other means;

Consider expanding the role of the FIU with respect to any DNFBP sector where an existing body is not willing or resourced to perform such a monitoring or oversight role;

The GRA Board, when constituted, should give priority to integrating specific AML/CFT requirements into its licenses and fully staff its inspectorate function;

The GRA should review, as a matter of priority, the "fit and proper" status of all relevant senior managers in all casinos.

Guidance (R. 25):

Designate an appropriate authorities to develop and provide guidance on AML/CFT requirements to the DNFBP sectors not regulated by the FSC;

Consider expanding the function of the FIU to enable it to either undertake issuing guidance for all DNFBP sectors or in conjunction with designated professional bodies;

Enhance Appendix VI of the FSC's Codes for Management Companies to include: indicators of terrorist financing and indicators that take account of the sector's context and jargon: products, processes, and customer profile;

Consider providing a level of administrative sanction power to the disciplinary authorities described in FIAMLA s18(4) for failure to comply with any guidance issued by the appropriate authorities designated to issue such guidance;

The GRA should give priority to issuing appropriate AML/CFT guidance under its new powers, including the development of industry-specific indicators (the FIU should be consulted in this process)

4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	NC	Lack of designated supervisory or monitoring authority for AML/CFT purposes for the non FSC and GRA supervised sectors; The casino sector has yet to be subject to effective regulation and supervision; Professional sectors are not regulated or supervised for AML/CFT purposes; There is no effective ongoing monitoring for AMLCFT risk for the local real estate sector; The FRC has yet to implement any effective inspections and MIPA is under resourced to carry out other than a cursory monitoring role; and Shortcomings in the current implementation of TCSP monitoring and supervision.
R.25	LC	Section-specific rating would be: <u>PC</u> While the FSC has provided appropriate guidance to the global TCSP sector, there is a lack of any guidance to the other categories of DNFBP. The FSC's Guidance for Management Companies lack specific indicators for FT.

4.4 Other non-financial businesses and professions & Modern-secure transaction techniques (R.20)

4.4.1 Description and Analysis

Other Vulnerable DNFBPs (applying R. 5, 6, 8-11, 13-15, 17 & 21 c. 20.1):

994. The provisions of FIAMLA include a totalisator (pool betting variable odd based betting) and bookmakers (fixed odds betting) in the sectors subject to the STR reporting obligations. However, specific prescription of any CDD, record keeping or internal control requirements is not included in the current AML regulations. The basis for the inclusion is not known, as the assessors are unaware of any assessment conducted to identify and determine the inherent ML/TF risks in these sectors. On the basis of the “should consider” low threshold of this Recommendation, Mauritius has, however, met the standard.

995. The other main gambling activity (gaming houses which provide a form of table games often found in casinos, for example, mahjong) are not subject to any AML/CFT measures. The assessors were advised that the gaming houses (which are operated by private licensees) have taken considerable market share from the casino sector.

996. No risk assessment has been undertaken to identify the relative ML/TF risk and vulnerabilities associated within the financial activities that occur in Mauritius.

997. While cash payments are prohibited, they are accepted by the court for sales of real property by levy. These sales occur each Thursday and are the result of banks initiating foreclosure actions against delinquent mortgagees. The mission was advised that no AML/CFT procedures are in place regarding such sales and it is quite common for large amounts of cash to be brought to the court to settle sale by levy transactions.

Modernization of Conduct of Financial Transactions (c. 20.2):

998. The Mauritian financial sector is quite sophisticated and provides a range of modern banking and value transfer products. Automatic teller machines are prevalent and credit cards are widely used. The prohibition on large cash transactions creates an added disincentive.

999. Large cash payments (made or received) above 500,000 rupees (approximately US\$16,666) are prohibited by FIAMLA s 5, except in certain controlled circumstances involving a customer's established account with a bank or financial institution.³¹

4.4.2 Recommendations and Comments

Undertake an assessment of the ML/TF risks that may currently exist in the Mauritian financial and business sectors. Use known international typology studies and input from both authorities and the affected business sectors.

Consider refining the current FIAMLA occupational based definitions to focus on the underlying financial activities and business processes that present the key risks. Adopt a cost/benefit approach to any proposal to extend the categories.

Review procedures regarding sales by levy of real property.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	C	This Recommendation is fully met.

5 LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANIZATIONS

5.1 Legal Persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and Analysis

Measures to Prevent Unlawful Use of Legal Persons (c. 33.1):

1000. Incorporation registration of Companies is governed by the Companies Act of 2001. This Act allows for the creation of companies limited by shares, companies limited by guarantee, companies limited by shares and guarantee, limited life companies, and unlimited companies. Foreign companies may also be registered with the company registry. They may also be companies continued in Mauritius (those incorporated elsewhere but choosing to redomicile in Mauritius). Domestic companies have different registration obligations than foreign or “continued” companies (see below). All companies must have a name, one or more shares, one or more shareholders and one or more directors. Companies may be incorporated by law practitioners, notaries, accountants, management companies, or by individuals wishing to form their own companies. Companies with global business licenses and companies which operate in the freeports (or free zones) must be created as domestic Mauritian companies and they are then licensed separately by the FSC.

1001. In order to incorporate a Mauritian company, the Registrar requires:

An application to incorporate the company which includes details on the registered address of the company, the full name and address of each applicant, the full name and residential address of every director and of the secretary (if any), the name and residential address of the shareholder, amount paid by the

³¹ The Mauritian definition of financial institution differs from the FATF definition and would include trust and company service providers as represented by management companies and registered agents.

shareholder(s), whether the company is public or private and a declaration by the applicant that the information provided in the application is true (note there is no penalty for incorrect information being listed in the application form).

A notice of reservation of name, if any.

The consent of every secretary of the company (but at time of incorporation, the company is not required to appoint a secretary).

Consent of every shareholder, signed by the shareholder or his/her agent (a company is only required to have a minimum of one shareholder).

If the company has a constitution (formerly known as articles and memorandum), which is not required, a copy must be certified by a law practitioner, barrister, or notary and submitted along with the other above documents.

It is also possible to register societies commercial (used for business purposes) and societies civil (used to hold real property or other assets), societies en participation, and societies de fait which can be created under the civil code of Mauritius. These societies may be created in one of three ways: individuals can retain a notary to prepare the deed; the individuals may create the deed themselves or individuals can create a society commercial de fait where there is no document but the arrangement exists in practice. Whichever form of creation is chosen, all can be registered with the company registry so that the deed or interest is registered and recognized publicly. The societies are much less regulated than companies in that much less information is required to be disclosed. No shareholder or beneficial information need be disclosed.

1002. Joint ventures, consortiums, foreign societies or partnerships may also be registered by the registrar but there is no legal requirement for them to register. In all cases, no shareholders, beneficial owners or beneficiaries, as may be applicable, needs to be disclosed to the registrar.

1003. As at the end of August 2007, there were 31,325 domestic companies registered with the Company Registrar, and 188 foreign companies. There were 8,732 Global Business License One companies and 20,268 Global Business License Two companies. In total there were 61,039 companies registered in Mauritius as of the end of August 2007.

1004. Corporate services providers in Mauritius are known as management companies. Prior to the mission, management companies were licensed by the FSC under section 24 of the Financial Services Development Act to set up and manage global business companies and to provide nominee and other services to the global business companies. As at May 30, 2007, the FSC had licensed 79 corporate service providers. These service providers had to meet a fit and proper test before they were licensed and, once licensed, must meet the Code on the Prevention of Money Laundering and Terrorist Financing intended for Management Companies. Management companies are subject to a number of licensing conditions, which include the requirement for the company to adopt, enforce, and re-assess an AML/CFT framework on an annual basis. This requirement is in addition to the preventive measures that a management company must implement under the FIAMLA. For the purposes of the FIAMLA, a management company is subject to the same AML/CFT requirements that apply to a financial institution.

1005. Management companies which are corporate service providers have been subject to on-site inspections by the global business team of the FSC. These inspections have assessed whether beneficial ownership and controller information is available in accordance with the Code.

1006. The FSC has also had the responsibility under the Financial Services Development Act for the administration of global business licenses. Under Section 20 of the law, no person was permitted to conduct any global business unless the person was a corporation and held a category 1 global business license. A private company which wished to conduct any qualified global business could apply for a category 2 global business license. Most global business companies are incorporated or registered under the Companies Act 2001 and are thus subject to the requirements of the Companies Act.

1007. At the time of an application for a category 1 global business company, details of the beneficial owners must be disclosed to the FSC. In addition, the licensing conditions of a company holding a category 1 global business license includes the requirement to notify the FSC of any change in shareholding whenever a person acquires 20 percent or more of the voting rights in a licensee. In requiring details of the beneficial ownership, the FSC looks through any trust arrangements in the ownership of the company. Onsite inspections to the management companies verify whether the information on the beneficial ownership for category 1 global business companies held by the FSC is up to date.

1008. There is no requirement to disclose the beneficial owners of a category 2 global business license to the FSC at the time of application for a license. The registered agent (the corporate service provider licensed by the FSC) through whom an application for a category 2 global business license is submitted to the FSC, is required to confirm it has satisfactorily undertaken verification of the identities of the beneficial owners of the company. The holding of this information is verified by the FSC during on-site inspections to management companies.

1009. Provisions on the licensing of global business companies are now contained in Sections 71 onwards of the new Financial Services Act. Licensing of management companies is covered under Part IV of the Financial Services Act.

1010. Under Section 91 of the Companies Act 2001, a global business company is required to maintain a share register which must record, amongst other information:

- (i) the names and the last known address of each person who is or has within the last seven years been a shareholder; and
- (ii) the date of any transfer of shares and the name of the person to or from whom the shares were transferred.

1011. A company holding a category 1 global business license must at all times have a director resident in Mauritius. Corporate directors are not allowed. A company holding a category 2 global business license is not required to have a resident director and may appoint a corporate director. All global business companies must keep a register of directors containing:

- (i) the names and addresses of the persons who are directors of the company;
- (ii) the date on which each person whose name is entered on the register was appointed as a director of the company; and
- (iii) the date on which each person named as a director ceased to be a director.

1012. Any change in the directors of a company must be notified to the Registrar of Companies. A global business company must at all times have a registered office in Mauritius.

1013. A company holding a category 2 global business license must at all times have a registered agent (a corporate service provider licensed in Mauritius) in Mauritius. The registered agent is responsible for providing such services as the company may require in Mauritius and include the receiving and forwarding of any communication from and to the FSC or the Registrar of Companies.

1014. In order to ensure and monitor compliance with the Acts that it administers or with any regulations, directions, rules, codes, or guidance notes made or to carry out its general powers of supervision under those Acts, the FSC was able to use its powers under Section 26 of the Financial Services Development Act, to require any management company to furnish information and produce records or documents such as customer due diligence information relating to the companies under administration. These powers have been used successfully by the FSC. Under Section 75 of the new Financial Services Act, the FSC is able to require a corporation holding a global business license to furnish all such information and produce such documents as may be required by the FSC in order to ensure and monitor compliance with any relevant enactment. Section 42 of the new Act contains a provision requiring every licensee to furnish to the FSC all such information and to produce all such records or documents at such time and place as may be required of him by the Chief Executive.

1015. As discussed in Recommendation 5, the Bank of Mauritius Guidance Notes on AML/CFT and the Codes (including the Code for management companies) issued by the FSC, contain comprehensive information on account opening for institutions and the requirement to obtain beneficial ownership information.

Access to Information on Beneficial Owners of Legal Persons (c. 33.2):

1016. Incorporation information for domestic companies (as listed above) is available to the public at the Registrar of Companies office and is also available online. The public may view this information at the Company registry pursuant to section 14 of the Companies Act 2001. This section does not apply to private companies holding a Global Business License Category One or a Global Business License Category Two.

1017. Pursuant to S.276 and S.296 of the Companies Act 2001 respectively, foreign corporations and corporations continued in Mauritius do not need to register shareholder information with the Company Registrar. As they are incorporated elsewhere, information on their shareholders may be available in the jurisdiction of incorporation. Information on shareholders is disclosed for companies which are continued in Mauritius pursuant to S. 23 of the Companies Act 2001. Domestic corporations created for the purpose of obtaining a Global Business License Category One or a Global business License Category Two from the FSC need to register with the Company Registrar through a local management company. In practice, the local management company can register the company using itself as the director and applicant. The management company should send an update to the Registrar of Companies when the directors, secretary and shareholders of the company change. This information will not, however, be publicly available.

1018. The FSC requires licensed management companies in Mauritius who incorporate or manage Global Business Category One and Two companies to satisfy themselves as to the beneficial ownership in both cases. For Global Business Category One companies, the information on beneficial ownership must be provided to the FSC and the FSC also conducts its own CDD check at the time of licensing. For Global Business Category Two companies, the FSC requires the management companies to maintain records to be able to demonstrate to the FSC on-site inspectors that the management company can demonstrate how it verified the beneficial owners of Global Business Category Two companies. Management companies are required to hold relevant transaction and verification records. The information is available to FSC inspectors under the FSC's inspection powers and to law enforcement through a court order arranged through DPP.

1019. Also, companies are required to file annual returns which include information on shareholders but companies limited by guarantee do not need to list shareholder information in their return. Continued corporations with a Global Business License One or Global Business License Two do not need to file annual returns with the Registrar of Companies. Global Business License One and Global Business License Two Corporations also do not need to keep accounting records. Global Business License Two Corporations do not need to appoint an auditor.

1020. In the case of foreign companies or domestic companies who hold Category One or Category Two Global Business Licenses, information on beneficial ownership which is not publicly available from the Registrar of Companies must be applied for through the Director of Public Prosecutions by a competent authority as a court order is required to access such information from the management companies. The application process can take two to three weeks according to staff at the Director of Public Prosecution's Office. The application may then take two weeks to be heard by the relevant Court in urgent cases. Only then will a court order be granted. In most cases, the court order would be executed against both the Company Registrar (for non-public information held there) and the management company responsible for the Category One or Category Two licensed company.

1021. For joint ventures, consortiums, foreign societies or partnerships entities which have been created by notaries, legal practitioners or management companies, access to beneficial ownership may be obtained though these entities only with a court order (see process above). Where the vehicles have been created by individuals, this information is not available without a court order.

1022. Where the Company Registrar wishes to ascertain if a company is complying with the Companies Act, the Registrar may call for the production or inspect the books required to be kept by any company on giving 72 hours written notice. This section is usually triggered by the failure to file a required report or the filing of an incomplete report by a company.

1023. The FSC has the authority under Section 42 of the FSA to require management companies to provide information in connection with the FSA, FIAMLA, or the Prevention of Terrorism Act 2002 to other regulatory authorities. This would include information on the beneficial ownership of a company where the management company is acting for the company as a formation agent or a manager. Section 43 authorizes the FSC to conduct onsite inspections of its members. The FSC does not believe that it has received any such requests from foreign regulatory bodies so the system has not been tested.

1024. It should be noted that there is a case currently pending before the courts in a European country where Mauritian global business companies are suspected of having been implicated in a large international money laundering operation. The Mauritian FSC informed the mission that, further to a disclosure order made by the Court under the Mutual Legal Assistance in Criminal and Related Matters Act in 2003, assistance was provided to the foreign authorities from the FSC's files. The (defunct) Economic Crime Office was the authority responsible for investigating money laundering cases which is now replaced by ICAC.

1025. As discussed in Recommendation 5, the Bank of Mauritius Guidance Notes on AML/CFT and the Codes (including the Code for management companies) issued by the FSC, contain comprehensive information on account opening for institutions and the requirement to obtain beneficial ownership information.

Prevention of Misuse of Bearer Shares (c. 33.3):

1026. Bearer shares are not permissible in Mauritius. Section 91(3) of the Companies Act 2001 requires that all companies keep a share register with respect to each class of shares and that the name of each person who

holds shares be registered in the share register. The share register is prima facie evidence of legal title pursuant to Section 93.

1027. Under the International Companies Act, Mauritius did allow the creation of corporate vehicles with bearer shares. S.141 of the International Companies Act was, however, amended in 2000 and prohibited the issue of bearer shares in international companies at that time. Companies which had bearer shares were required to convert those shares to fully registered shares by December 2001. The office of the Registrar issued a communiqué at that time to inform companies that any company which did not comply with this requirement would be struck off the register by the Registrar of Companies.

5.1.2 Recommendations and Comments

Access to beneficial ownership and control for all legal persons should be available in a timely fashion for all companies, not only those who are required to have publicly available information at the Company Registrar's Office.

5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	LC	Timely access to beneficial ownership and control information is not available for category one and category two global business license holders through law enforcement as court orders may take up to four weeks to obtain in an urgent case.

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and Analysis

1028. Measures to Prevent Unlawful Use of Legal Arrangements (c. 34.1): The creation of trusts is governed by the Trusts Act 2001. This act allows for the creation of a number of different kinds of trust including protective or spendthrift trusts (Section 18), charitable trusts (section 20), and purpose trusts (section 19). These trusts are required to have a written trust instrument which states the name of the trustee, the intention of the settler to create a trust; or the declaration of the trustee that he holds the property in trust; the object of the trust, the beneficiaries or class of beneficiaries; the property held or transferred in trust; and the duration of the trust (section 6).

1029. Section 28(1) of the 2001 Trust Law requires each Mauritius trust to have at least one qualifying trustee. Each qualifying trustee must be licensed by the FSC as a management company or be approved by the FSC under section 28 of the law. Only two trustees have received such approval to date and these approvals have related to low risk, major pension fund arrangements.

1030. Trust services providers in Mauritius are a form of management company. Prior to the mission, management companies were licensed by the FSC under Section 24 of the Financial Services Development Act to act as corporate trustee. These service providers had to meet a fit and proper test before they were licensed and, once licensed, must meet the Code on the Prevention of Money Laundering and Terrorist Financing intended for Management Companies. Management companies are subject to a number of licensing conditions, which include the requirement for the company to adopt, enforce and re-assess an AML/CFT framework on an annual basis. This requirement is in addition to the preventive measures that a management company must implement under the FIAMLA. For the purposes of the FIAMLA, a management company is subject to the

same AML/CFT requirements that apply to a financial institution. Under section 2 of the FIAMLA the qualifying trustee is responsible for AML/CFT in respect of a trust. The vast majority of corporate trustees servicing the global market are affiliated with management companies. The FSC advised that as part of its inspection process, it includes affiliated trustees as part of the same inspection of the management company group.

1031. Management companies which are trust service providers have been subject to on-site inspections by the global business team of the FSC to the extent that the trusts have been part of company structures reviewed. In addition, the inspections have reviewed the AML/CFT policies, procedures, and controls of trust service providers—these controls have applied to trust as well as company structures reviewed. Inspections have assessed whether beneficial ownership and controller information (e.g., information on settlors, providers of funds and beneficiaries) is available in accordance with the Code. The FSC has adopted this approach in order to target its resources. Currently only one management company provides trust but not company services. The trust business generally will be subject to closer scrutiny during 2008.

1032. The requirements for a management license are set out in Section 77 of the new FSA. Provisions on the licensing process of management companies are contained in Part IV of the FSA. The section provides that a company whose main activity is to act as a corporate trustee or qualified trustee under the Trusts Act 2001 must apply to the FSC for a management license.

1033. In order to ensure and monitor compliance with the Acts that it administers or with any regulations, directions, rules, codes or guidance notes made or to carry out its general powers of supervision under those Acts, the FSC was able to use its powers under section 26 of the Financial Services Development Act, to require any management company to furnish information and produce records or documents such as customer due diligence information relating to the companies under administration. These powers have been used successfully by the FSC. Section 42 of the new Financial Services Act contains a provision requiring every licensee to furnish to the FSC all such information and to produce all such records or documents at such time and place as may be required of him by the Chief Executive.

1034. Access to Information on Beneficial Owners of Legal Arrangements (c. 34.2): While trusts may be registered with the Registrar of Companies, this is not a requirement in Mauritius. Trusts are usually created by management companies who also act as trustee. To act as trustee, one must have a management company license issued by the FSC. The FSC has the authority under section 42 of the FSA to require management companies to provide information in connection with the FSA, FIAMLA, or the Prevention of Terrorism Act 2002. Section 43 authorizes to conduct onsite inspections of its members. In practice, however, the FSC is not currently reviewing trust files when it is conducting on-site examinations of management companies. The mission welcomes the fact that the FSC plans to begin this work in the near future. It does, however, look at trust information when reviewing company structures which may involve trusts. In addition, the FSC has advised the mission that the policies, procedures and controls in place at management companies providing services to trust and company vehicles apply equally to legal persons and legal arrangements. There are only three trust service providers in Mauritius. In practice, the FSC does not believe that it has received any requests from foreign regulatory bodies regarding the settlor or beneficiary of a trust so the system has not been tested.

1035. Each purpose trust must also have an enforcer whose role it is to ensure that the intentions and obligations set out in the trust instrument are being met by the trustee. In order to act as an enforcer, the enforcer must obtain the approval of the FSC. The FSC has advised the mission that in order to approve such an application, they would expect the enforcer to provide a copy of the trust instrument which would show the names of the settlor, the trustee, and the beneficiary or beneficiaries. While there would be no formal oversight

in this arrangement over the enforcer by the FSC, the FSC would have broad oversight over the enforcer if there were any complaints lodged in relation to the trust.

1036. If evidence regarding trusts is required, authorities must apply to the Director of Public Prosecutions for a court order to access the information held by the relevant management company. The application process can take two to three weeks according to staff at the Director of Public Prosecution's Office. The application may then take two weeks to be heard by the relevant Court in urgent cases. Only then will a court order be granted.

5.2.2 Recommendations and Comments

Access to beneficial ownership and control for all legal arrangements should be available in a timely fashion for all companies.

The FSC should action their plans to conduct on site reviews of trust files during their inspections of management companies.

5.2.3 Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	LC	Timely access to beneficial ownership and control information is not available for all legal persons through law enforcement as court orders may take up to four weeks to obtain in an urgent case; regarding on site inspections, the FSC is not reviewing information on trusts held by management companies in certain circumstances.

5.3 Non-profit organisations (SR.VIII)

5.3.1 Description and Analysis

1037. Review of Adequacy of Laws & Regulations of NPOs (c. VIII.1): NPOs are governed by the Registration of Associations Act (1979) (the "Registration of Associations Act"). The Registrar of Associations registers associations, trade unions, and superannuation funds, all of whom have a legal obligation to submit annual returns which include their statement of accounts as well as their balance sheets. All NPOs are associations in Mauritius. The Registrar of Associations has not conducted a review of the adequacy of the laws and regulations that relate to nonprofit organizations. While the Registry of Associations staff conduct reviews of the eight thousand NPOs in Mauritius, there has been no systematic gathering of information regarding the risk of misuse of NPOs for terrorist financing.

1038. NPOs have many purposes. These NPOs are unlikely to collect or raise much money locally nor are they likely to send money abroad. An association must be formed where seven or more persons have a common purpose. Many associations, therefore, have small numbers of persons whom they represent. Mutual Aid associations, on the other hand, have large numbers of members and raise money which they then loan to members locally. When some members have paid back some or all of their loan, the money is then offered to other members. Again, the money remains within Mauritius. Similarly, other mutual aid associations collect money from their members on a monthly basis. They will then pay out a small death benefit to the family of recently-deceased members. Sports associations obtain money from the Government of Mauritius for the furtherance of their sport in the country and to attend competitions internationally. Over a quarter of the NPOs in Mauritius are religious charities.

1039. While the Act provides for the registration of foreign associations, the Registrar registers all such organizations as local NPOs since they have a presence in Mauritius. Charitable trusts also exist in Mauritius but they do not fall under the purview of the Registrar of Associations, rather the trustees are registered by the FSC and must hold a management company license.

Outreach to the NPO sector to protect it from terrorist financing abuse (c. VIII.2):

1040. The Registrar of Associations has not conducted outreach for the NPO sector with a view to protecting the sector from terrorist financing abuse, nor is there any systematic outreach for promoting transparency, integrity, accountability or public confidence in the sector. The Registrar would welcome receiving training himself and he would welcome training for the sector in all of these areas.

Supervision or monitoring of NPOs that account for significant share of the sector's resources or international activities (c. VIII.3):

1041. While no risk approach regarding terrorist financing has been applied for the frequency of on site visits, there is a checklist for priority NPOs to be subject to inspections. The priority NPOs to receive inspections are: (1) when a complaint is received on a charity; (2) when annual returns have not been submitted for two years; (3) when the annual accounts have not been correct for the last three years; (4) mutual aid associations given the amount of money that many of them hold (some of them hold 15–20 million rupees on behalf of members); (5) associations experiencing repeated problems (accounting, member disputes, or complaints); and (6) religious and sports associations, many of whom experience repeated difficulties.

1042. Common matters to be resolved for the above NPOs are irregularities with the election of management boards, complaints of unfairness in treatment between members, failure to file proper reports and some irregularities with accounting for funds. While the above methodology can claim to account for a significant portion of the financial resources under the control of the sector, the staff of the registry of associations have no way of knowing which NPOs may be conducting international activities. While the NPOs are required by Section 23(1)(d) of the Registration of Associations Law to update the registry with details of changes to their rules as part of the annual reporting process, this does not always occur. While on site inspections include a review of the type of NPO, for example, that it is still a sports association, no more detailed review is undertaken in the half-day inspection.

Information maintained by NPOs and availability to the public thereof (c. VIII.3.1):

1043. Copies of the rules of NPOs, a list of the management committee of each NPO and a copy of the annual return for the last year are available to the public at the office of the Registry of Associations.

Measures in place to sanction violations of oversight rules by NPOs (c. VIII.3.2):

1044. There are limited sanctions available to the Registrar. Under Section 32(6) any person who gives false evidence to the Registrar commits an offense and, on conviction, may go to jail for up to six months. The Registrar has the authority under Section 32 of the Registration of Associations Act to inquire into the affairs and conduct of associations. His findings may be forwarded to the Minister of Labour for such action as the Minister sees fit. The Registrar also has the authority to cancel an NPOs registration under Sections 15 and 32(9). Section 15(1) lists five grounds for cancellation of an association's registration including where an association "has engaged or is about to engage in activities likely to cause a serious threat to public safety or public order or has made, is making, or is likely to make available any resources, directly or indirectly, to a terrorist or a terrorist organization or for the purposes of terrorism."

1045. Section 15(2) gives the Registrar the authority to give notice to the association that their license will be cancelled and the reasons for the proposed cancellation. Section 15(4) allows the association a right of

appeal to a judge after a period of not less than twenty-one days. In practice, the Registrar uses these provisions to issue an association with a notice of irregularities which should be remedied within a 30–60 day period if they wish to keep their license. The Registrar does not use any other sanctions against the associations.

Licensing or registration of NPOs and availability of this information (c. VIII.3.3):

1046. In Mauritius, associations are registered with the Registry of Associations and are given a certificate of registration. This information is available to the public at the office of the Registrar of Associations. It is also available to other competent authorities but it is not yet available on line.

Maintenance of records by NPOs, and availability to appropriate authorities (c. VIII. 3.4):

1047. Section 24 of the Registration of Associations Act requires associations to retain all books, statements of account, and auditors reports as well as all registers of members and their payments to the association for a period of three years. These books and documents must be available to the Registrar or by any of the association's members.

1048. Under Section 9(3), a general meeting must approve the disposition, pledging, or mortgage of any property worth over 3,000 rupees (\$100). Further, pursuant to Section 19(2) of the Act, any payment in excess of 1,000 rupees for any one item or any payment in excess of 4,000 rupees in one year must also be previously approved by the general meeting. These are the only financial controls placed on expenditures by NPOs. There is no restriction on the number of bank accounts that a NPO may have and the Registrar relies on the NPO to disclose to him the number and location of bank accounts it holds.

Domestic cooperation, coordination and information sharing on NPOs (c. VIII.4.1):

1049. There are no gateways for the sharing of nonpublic information with other authorities. In practice, the registry does not share information with other authorities. The Registrar may refer a matter to the police if he believes that a criminal offense has been committed. In practice, the Registrar rarely refers such matters to the police.

Access to information on administration and management of NPOs during investigations (c. VIII.4.2):

1050. Under Sections 31 and 32 of the Registration of Associations Act, the Registrar has access to all books of an association as well as bank and cash book records. The Registrar also has the authority to summon witnesses and examine them under oath. Failure to produce books and records or to give evidence is a criminal offense pursuant to section 32(4).

Sharing of information, preventative actions and investigative expertise and capability, with respect NPOs suspected of being exploited for terrorist financing purposes (c. VIII.4.3):

1051. Preventative and investigative actions are not being taken yet regarding the prevention of terrorist financing.

Responding to international requests regarding NPOs - points of contacts and procedures (c. VIII.5):

1052. The Ministry of Foreign Affairs is the contact point for international requests. On occasion, the Ministry has forwarded such requests to the Registrar and he has provided information to the Ministry of Foreign Affairs. These requests have not been related to money laundering or terrorist financing in the Registrar's opinion.

5.3.2 Recommendations and Comments

1053. The Registry of Associations should:

ask for training to learn about anti-money laundering and combating the financing of terrorism procedures, typologies, and monitoring/supervision techniques;

conduct a review of the adequacy of the laws on NPOs to ensure that NPOs are not being misused for terrorist financing by virtue of their activities;

conduct outreach to the NPOs in order to educate NPOs about the risk of terrorist financing;

more systematically apply sanctions for failure to comply with the provisions of the Registration of Associations Act;

request a change in the record-keeping provisions of the Registration of Associations Act so that records will be required to be kept for five years instead of three; and,

request legal gateways in the Registration of Associations Act to allow for information sharing both domestically and internationally.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	NC	No review of adequacy of laws to ensure that NPOs are not being misused for terrorist financing by virtue of their activities; no outreach conducted to NPOs; no sanctions applied to NPOs for failure to comply with the provisions of the relevant laws; record-keeping requirements is for a period of three years only; no gateways for sharing nonpublic information with domestic ministries and authorities.

6 NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National cooperation and coordination (R.31)

6.1.1 Description and Analysis

Legal Framework:

Mechanisms for Domestic Cooperation and Coordination in AML/CFT (c. 31.1):

1054. The National Committee for Anti-Money Laundering and Combating the Financing of Terrorism, which was established under the FIAMLA, is responsible for promoting coordination 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.

1055. FIAMLA S13(2), S21 and S22 provides a framework for the FIU and the designated supervisory authorities (BOM and FSC) to share information, both in respect to STRs suspected of ML, otherwise suspicious transactions, and on matters regarding issues of possible noncompliance with reporting requirements or of regulatory interest. The FIU also uses the wider discretion provided by Section 30(2) to provide strategic intelligence style reports (as distinct from the operational disseminations of statutory reports) to a range of authorities, including tax, and various ministries.

1056. The FIU has formal written MOUs with the Revenue Authority (which includes Customs), the FSC, and the Registrar of Companies. The Police do not require an MOU. In practice, the BOM restricts its

information sharing with the FIU to issues involving STRs and information considered consistent with S22. The FIU is a member of the AML/CFT Committee.

1057. The FIU's contact with the professional bodies has generally been limited to annual awareness raising seminars involving a range of sectors.

1058. In February 2004, the Banking Committee chaired by the Governor of the Bank and comprising Chief Executive Officers of banks formerly holding a Category 1 Banking License, set up a committee comprising the Bank of Mauritius and the compliance officers of those banks to serve as a platform for interaction on AML/CFT issues. The committee met regularly until August 2005, at which time the Banking Committee decided to extend the membership of the committee to include compliance officers of banks formerly holding a Category 2 Banking License. In addition, the mandate of the committee, which had been restricted to AML/CFT issues, was extended to include other aspects of compliance. It was apparent to the mission that the banking sector welcomed and had very positive support for this committee.

1059. In 2002, the Bank of Mauritius and the FSC signed an MoU setting out the framework of their cooperation in common pursuit to maintain a safe, efficient, and stable financial system in Mauritius. The MoU covers objectives, responsibilities, the establishment of a joint coordination committee, sharing of information, unsolicited assistance, collection of statistical information, threats to financial system stability, on-site reviews and consultations, sharing of services, and international representation. This MoU was followed by a joint protocol between the Bank of Mauritius and the FSC. Under the protocol, the Joint Coordination Committee considers and addresses the extent of the two bodies' responsibilities with respect to institutions which fall under the regulatory authority of both bodies. Monthly meetings under this protocol commenced in August 2007. One of the objectives of the two regulatory bodies is a joint approach to leasing companies in respect of which the Bank of Mauritius supervises their deposit-taking activity, while the FSC supervises their leasing activity. This initiative is considered to be a very positive move by the leasing companies.

1060. All the investigative and prosecutorial authorities are part of the National Committee on AML/CFT and meet on a regular basis. However, operational cooperation and communication between them is made difficult by stringent confidentiality requirements. Section 81 of the POCA, in particular, prohibits the ICAC from exchanging any information with the other relevant authorities, such as the FIU and the Police. This considerably hampers their respective investigations as no formal communication is possible.

Additional Element - Mechanisms for Consultation between Competent Authorities and Regulated Institutions (c. 31.2):

6.1.2 Recommendations and Comments

6.1.3

FIU to engage in more bilateral and outreach meetings with the professional bodies.

FIU to consider implementing a standing forum for supervisory, professional oversight and law enforcement authorities to focus on operational issues that would fall outside the work of the AMLCFT committee.

Ensure that ICAC may communicate and exchange information with other relevant authorities for the purposes of their respective investigations by amending Section 81 of the POCA.

6.1.4 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	PC	Formal communication and exchange of information between ICAC and the other

		relevant authorities is prohibited; lack of regular engagement by the FIU with the appropriate supervisory or professional bodies other than the FSC and BOM.
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6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

6.2.1 Description and Analysis

1061. The usual practice in Mauritius is to sign a Convention, implement its provisions into domestic law, and ratify the Convention only after the necessary changes have been made under domestic law.

1062. Mauritius ratified the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) on February 19, 2001. It implemented most of the relevant articles under the Convention with the adoption of the 2001 Dangerous Drugs Act but some shortcomings remain as far as Article 3 of the Convention is concerned (see write up under Recommendation 1).

1063. It also ratified the UN Convention Against Transnational Organized Crime (Palermo Convention) on April 21, 2003. However, no specific measures seem to have been taken in order to implement fully the various provisions of the Convention. The association of malefactors is criminalized under Section 188 of the Criminal Code, but it is not implemented (see write up under Recommendation 1).

1064. Measures were taken in implementation of both Conventions to enable the seizing or freezing of assets and their confiscation as well as cooperation with other countries, but they lack the necessary level of detail to be fully in line with the requirements set out in the Conventions (see write up for Recommendation 3 and 36-40).

1065. Mauritius ratified the International Convention for the Suppression of Financing of Terrorism on December 14, 2004. It enacted the Convention for the Suppression of Financing of Terrorism Act in 2003 and, under Section 3 of the Act, gave force of law to the Convention in its entirety. The Prime Minister issued two further regulations which partly deal with the practical aspects of the Convention and the relevant UNSC resolutions. However, UNSCR 1267 is not implemented in a satisfactory manner. UNSCR 1373 has not been implemented so far because no request was made under that resolution. The procedures in place (for both resolutions) do not fully comply with the standard (see write up under SR III).

(c. 35.2):

1066. Mauritius is also a party to the following multilateral and bilateral agreements:

Organization of African Unity Convention on the Prevention and Combating of Terrorism (accession February 21, 2003).

Bilateral Agreement with India for setting up a joint Working Group on Combating International Terrorism (signed March 30, 2005).

Memorandum of Intent with the United States of America to deter and counter terrorism (signed January 31, 2003).

6.2.2 Recommendations and Comments

All three Conventions have been ratified but further work is needed in order to implement them fully into Mauritian laws.

The authorities are recommended to implement fully the Vienna and Palermo Conventions in line with the recommendations made under Recommendations 1 and 3, the ICSFT, and UNSCRs 1267 and 1373 in line with the recommendations made under Special Recommendation II and III.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	PC	The relevant provisions of the Vienna and Palermo Conventions have not been fully implemented.
SR.I	PC	The ICSFT has only been partly implemented. The procedures in place for UNSCR 1267 and 1373 are not fully in line with the standard and UNSCR 1267 is not implemented in a satisfactory manner.

6.3 Mutual Legal Assistance (R.36-38, SR.V)

6.3.1 Description and Analysis

Legal Framework:

1067. Mauritius has enacted the Mutual Assistance in Criminal and Related Matters Act 2003 (MACRM Act), which makes provision for mutual assistance between the Republic of Mauritius and a foreign state or an international tribunal in relation to “serious offenses” which it defined as an offense against a law of Mauritius or a foreign state for maximum penalty is imprisonment or other deprivation of liberty for a period of not less than 12 months and includes offenses that fall under the jurisdiction of international criminal tribunal. The legislation makes it possible for Mauritius to provide assistance in the absence of bilateral or multilateral agreements. With the adoption of the MACRM Act and the adoption (and amendments to) the FIAMLA, the gateways for international cooperation and the respective roles of the various authorities has been considerably clarified in comparison to the situation assessed in 2002. The Attorney General’s office (AGO) is the central authority for the processing of requests received from a foreign state, as well as for requests to be made to a foreign state (Section 2 of the Act, definition of Central authority). Four AGO staff members are designated to deal with mutual assistance. However, this is done on a rotational basis and no officials specifically trained on mutual assistance are designated to deal with the implementation of MACRM Act.

1068. Mauritius is a party to the following relevant multilateral Conventions:-

- i) UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic substances;
- ii) UN Convention Against Transnational Organized Crime;
- iii) UN Convention Against Corruption; and
- iv) International Convention for the Suppression of the Financing of Terrorism.

1069. The authorities were not able to provide a list of bilateral mutual assistance treaties entered into by Mauritius when asked by the mission.

1070. The Act also allows for Mauritius to provide informal assistance and continued informal assistance to other States (section 3(4)).

Widest Possible Range of Mutual Assistance (c. 36.1):

1071. The MACRM Act (Section (6) enables the Mauritian authorities to provide assistance to requesting states for evidence gathering purposes. Evidence-gathering includes (Section 4(6) making a record from data or making a copy of a record, attending before the Master and Registrar to give evidence, producing any article or document to the Judge in Chambers and questioning a named person. Mutual assistance to a foreign state also includes obtaining an order from a Judge in Chambers for a warrant for the search of a person or premises and removal or seizure of any document or article (section 6(1). Other assistance that Mauritius is able to provide include:

virtual evidence-gathering orders (Section 7);

consensual transfer of detained persons from Mauritius (Section 10);

restraining orders (Section 11);

enforcement of foreign restraining orders or confiscation (Section 12); and

location of the proceeds of crime (Section 15).

1072. The Act does not specifically allow for effecting service of judicial documents. The authorities have indicated that this could still be done through an evidence gathering order.

1073. Mauritius is able to request assistance from a foreign state in respect of, among others, having evidence (including evidence taken by means of technology that permits virtual presence), statements or information obtained; obtaining and executing a search warrant for an article believed to be located in a foreign state and seizing it; locating or restraining property believed to be proceeds of a serious offense; confiscating property believed to be located in a foreign state and transmitting the property or proceeds realized to Mauritius; effecting service of documents and examining, locating and identifying persons.

Provision of Assistance in Timely, Constructive and Effective Manner (c. 36.1.1):

1074. Section 5(2)(a) of the MACRM Act makes provision for the central authority, namely the AGO, to “promptly” grant a request from a foreign state. Informal requests are handled by correspondence, most commonly through e-mail. It was indicated that requests are dealt with on average within two weeks of receipt of request. In practice, the processing of formal requests may involve, firstly reverting to the requesting state for further information. Thereafter and where court orders are necessary, court papers are prepared and the matter is heard before a Judge in Chambers. It was indicated that complying with a formal request could take between a few weeks to several months, depending on the nature of the request.

No Unreasonable or Unduly Restrictive Conditions on Mutual Assistance (c. 36.2):

1075. The MACRM Act makes provision under Section (5)(2)(b) for a request to be refused on certain grounds. These include:

- a) the compliance with the request being contrary to the Constitution of the Republic of Mauritius;
- b) prejudice to the sovereignty or security of Mauritius;
- c) where granting the request would require a Court of Mauritius making an order in respect of a conduct that does not constitute an offense nor give rise to confiscation or restraining order in Mauritius;

- d) the request being to prosecute a person on account of that person's race, sex, religion, nationality, ethnic origin, or political opinion,
- e) the request relating to military law which would not be an offense under criminal law, a political offense or an offense of political character or if prosecuted in a foreign state, it would be incompatible with laws of Mauritius or double jeopardy or might prejudice the conduct of proceedings in Mauritius

1076. These grounds for refusal of legal assistance do not appear to be unduly prohibitive and, overall, the assistance that Mauritius may render is not subject to unreasonable, disproportionate, or unduly restrictive conditions.

Efficiency of Processes (c. 36.3):

1077. Although the primary authority responsible for the processing of requests made by foreign states is the AGO, in practice, requests for mutual legal assistance are received by the Ministry of Foreign Affairs, which then forwards them to the AGO. Once the request has been dealt with, it is transmitted back to the Ministry of Foreign Affairs for forwarding to the requesting State. It was indicated that it can take up to two weeks to obtain a judge's order and that once the order is obtained it is generally executed within two weeks of the order being granted. It was indicated, further, that informal requests could take about two weeks to process.

Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 36.4):

1078. The fact that the offense is also considered to involve fiscal matters is not one of the grounds for refusal listed under the MACRM Act. The authorities confirmed that, in practice, fiscal matters do not constitute an obstacle to the provision of the assistance requested. .

Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 36.5):

1079. The MACRM Act provides (Section 6(9)) that, despite the laws relating to confidentiality contained in the Bank of Mauritius Act and the Financial Services Development Act,³² a judge may grant an evidence-gathering order or search warrant against the Bank of Mauritius, a bank, or financial institution if he is satisfied that the information is material and necessary for the proceedings in a foreign state or the law in the foreign state permits the disclosure of information to foreign states in circumstances similar to the one relating to the request. In terms of the Act (Section 15(2)) a judge may order, despite banking laws relating to confidentiality, that information relevant to identifying or locating property be delivered to the central authority.

Availability of Powers of Competent Authorities (applying R.28, c. 36.6):

1080. According to the authorities, law enforcement authorities may, on obtaining an order from a judge, use the powers vested upon them to compel the production of, search persons or premises, for and seize and obtain transaction records and other information held by financial institutions or else, for the purposes of rendering assistance to another country.

Avoiding Conflicts of Jurisdiction (c. 36.7):

1081. The MACRM Act does not specifically make provision for avoiding conflicts of jurisdiction by being able to determine the best venue for the prosecution of a defendant in the interests of justice and in cases that are subject to prosecution in more than one country.

Additional Element – Availability of Powers of Competent Authorities Required under R28 (c. 36.8):

³² At the time of the on-site mission a new Financial Services Act was proclaimed which provides for similar provisions relating to confidentiality (section 83).

1082. The MACRM Act makes provision for law enforcement officers to be able to assist a law enforcement authority of a foreign jurisdiction. In terms of the Act (s3(4)) nothing in the Act prevents informal assistance and continued informal assistance between Mauritius and any other state. In practice, requests to the police from their foreign counterparts are dealt with through the Interpol channels.

International Cooperation under SR V (applying c. 36.1-36.6 in R. 36, c. V.1):

1083. The Convention for the Suppression of the Financing of Terrorism Act 2003 which gives effect to the International Convention for the Suppression of the Financing of Terrorism makes it possible for Mauritius to afford other state parties to the Convention the greatest measure of assistance in connection with criminal investigations or extradition proceedings in respect of offenses relating to terrorist financing. However, the Act does not specifically set out the procedure or details on how the assistance may be rendered. The authorities indicated that the provisions of MACRM Act apply in relation to offenses relating to terrorist financing. The write up on criteria 36.1 to 36.6, therefore, apply to this paragraph.

Additional Element under SR V (applying c. 36.7 & 36.8 in R.36, c. V.6):

1084. See write up on V.1

Dual Criminality and Mutual Assistance (c. 37.1 & 37.2):

1085. The MACRM Act provides that Mauritius may render assistance in relation to “serious offenses” which it defines as an offense against a law of Mauritius or of a foreign state where the maximum penalty is imprisonment or other deprivation of liberty for a period of not less than 12 months and includes offenses that fall under the jurisdiction of international criminal tribunals (Section 2 under Interpretation of serious offense). The definition of serious offense is broad and covers any offense punishable, either in Mauritius or in the requesting state, by imprisonment (or penal servitude) for a period of not less than 12 months. In terms of the MACRM Act (Section 5(2)(b)(iv)), however, the AGO may refuse a request from a foreign state on the ground of absence of dual criminality where the granting of the request would require a Mauritius court to make an order in respect of a conduct which does not constitute an offense nor gives rise to a confiscation or restraining order in Mauritius. It would appear that although dual criminality is not a requirement in terms of the definition of serious offense, the absence of dual criminality could be a ground for refusal of a request. This may be an issue where certain designated categories of predicate offenses are not predicates in Mauritius or because confiscation could not be ordered on the basis of the AML framework. The ground for refusal based on the absence of dual criminality is discretionary. The authorities advised the mission that no request was refused due to lack of dual criminality since the coming into operation of the MACRM Act.

1086. The authorities indicated that technical differences between the laws in the requesting state and Mauritius would not be a ground for refusal of a request for assistance.

International Cooperation under SR V (applying c. 37.1-37.2 in R. 37, c. V.2):

1087. The Convention for the Suppression of the Financing of Terrorism Act 2003, which gives effect to the International Convention for the Suppression of the Financing of Terrorism, makes it possible for Mauritius to afford other state parties to the Convention the greatest measure of assistance in connection with criminal investigations or extradition proceedings in respect of offenses relating to terrorist financing. However, the Act does not specifically set out the procedure or details on how the assistance may be rendered. The authorities indicated that the provisions of MACRM Act apply in relation to offenses relating to terrorist financing. The write up on criteria 37.1 and 37.2, therefore, apply to this paragraph.

Timeliness to Requests for Provisional Measures Including Confiscation (c. 38.1):

1088. The MACRM Act sets out the procedure for processing a foreign request for a restraining order where the proceeds of crime are believed to be located in Mauritius (Section 11). The MACRM Act also sets out the procedure where a foreign request is received for the enforcement of a foreign restraining order or confiscation (Section 12) and for assistance in locating any proceeds of crime (Section 15). Instrumentalities are covered by the domestic confiscation framework and, according to the authorities, Mauritius could render assistance with respect to instrumentalities used in or intended to be used in the commission of the ML offense.

Property of Corresponding Value (c. 38.2):

1089. The MACRM Act defines the ‘proceeds of crime’ as any property derived or realized, directly or indirectly from a serious offense and includes, on a proportional basis, property into which any property derived or realized directly from the offense was later converted, transformed, or intermingled (Section 2). The definition explicitly refers to income, capital or other economic gains derived or realized from the property at any time since the offense.

Coordination of Seizure and Confiscation Actions (c. 38.3):

1090. There are no formal arrangements for co-coordinating seizure and confiscation actions with other countries. However, Mauritius has ratified the Convention against Transnational Organized Crime and is thus able to enter into bilateral arrangements to enhance the effectiveness of international cooperation. The authorities were not able to provide a list of bilateral agreements relating to mutual assistance in criminal matters.

International Cooperation under SR V (applying c. 38.1-38.3 in R. 38, c. V.3):

1091. According to authorities, Mauritius is able to apply the provisions of MACRM Act in respect of offenses relating to the financing of terrorism, including in relation to the processing of foreign restraining order or confiscation (S12) and for assistance in locating any proceeds of crime (S15).

1092. The MACRM Act defines the ‘proceeds of crime’ as any property derived or realized, directly or indirectly from a serious offense and includes, on a proportional basis, property into which any property derived or realized directly from the offense was later converted, transformed or intermingled. The definition extends to income, capital, or other economic gains derived or realized from the property at any time since the offense (section 2).

1093. The Convention for the Suppression of the Financing of Terrorism Act 2003 which gives effect to the International Convention for the Suppression of the Financing of Terrorism makes it possible for Mauritius to afford other state parties to the Convention the greatest measure of assistance in connection with criminal investigations or extradition proceedings in respect of offenses relating to terrorist financing. This, however, does not necessarily provide for actual arrangements and procedures.

Asset Forfeiture Fund (c. 38.4):

1094. Mauritius has not established an asset forfeiture fund into which the confiscated property will be deposited.

Sharing of Confiscated Assets (c. 38.5):

1095. The MACRM Act (S19) provides for the reciprocal sharing with a state of property realized in a foreign state and of property realized in Mauritius. Section 19 states that the central authority may enter into an arrangement with a competent authority of a foreign state for the reciprocal sharing of property realized in terms of the Act either in a foreign state or in Mauritius. Authorities indicated that these arrangements are usually conducted informally between the two states and no specific arrangements were in place.

Additional Element (R 38) – Recognition of Foreign Orders for a) Confiscation of assets from organizations principally criminal in nature; b) Civil forfeiture; and, c) Confiscation of Property which Reverses Burden of Proof (applying c. 3.7 in R.3, c. 38.6):

1096. In terms of the MACRM Act, 'proceedings' is defined as proceedings conducted by or under the supervision of a judge, magistrate, or judicial officer in relation to a proved offense, any property derived from such offense or any related proceedings. Proceedings include any inquiry or investigation into a serious offense or preliminary or final determination of facts relating to a serious offense whether or not conducted by or under the supervision of a judge, magistrate or judicial officer. The definition is broad and would include civil forfeiture and confiscation of property orders.

Additional Element under SR V (applying c. 38.4-38.6 in R. 38, c V.7):

1097. Mauritius has not established an asset forfeiture fund into which the confiscated property will be deposited.

1098. The MACRM Act (S19) provides for the reciprocal sharing with a State of property realized in a foreign State and of property realized in Mauritius. Section 19 states that the central authority may enter into an arrangement with a competent authority of a foreign state for the reciprocal sharing of property realized in terms of the Act either in a foreign state or in Mauritius. Authorities indicated that these arrangements are usually conducted informally between the two states and no specific arrangements were in place. Authorities indicated that these arrangements are usually conducted informally between the two states and no specific arrangements were in place.

Statistics (applying R.32):

Table 26. Incoming Requests

Types of incoming requests	2004/2005	2006/2007
Confiscation Proceedings	1	
Tax Evasion	2	
Money Laundering	1	1
Miscellaneous	4	9
Kidnapping	1	
Embezzlement	1	
Diamond Smuggling	1	
Trafficking of Human Beings/Children		2
Execution of Warrant of Arrest		1
Corruption		1
Disclosure of bank accounts		3
Terrorism		1

Implementation and Analysis:

1099. Mauritius has broad legal provisions to facilitate requests for mutual legal assistance which came into operation in 2003. There are no unduly restrictive measures placed on the provision of assistance.

1100. The MACRM Act, however, does not specifically make provision for avoiding conflicts of jurisdiction by being able to determine the best venue for the prosecution of a defendant in the interests of justice and in cases that are subject to prosecution in more than one country.

1101. It would appear that although dual criminality is not a requirement in terms of the definition of serious offense, the absence of dual criminality could be a ground for refusal of a request. This may be an issue where certain designated categories of predicate offenses are not predicates in Mauritius because confiscation could not be ordered on the basis of the AML framework.

1102. Three to four officials dealing with mutual assistance are allocated on a rotational basis. The authorities maintain that officials who have experience in mutual assistance will normally, in most cases, be designated to handle these files. According to the authorities, these officials have not been specifically trained in mutual assistance but training is done on an ad hoc basis. There are concerns about the ability of the Mauritian authorities to handle mutual legal assistance requests in a timely and effective manner as no officials specifically trained on mutual assistance are designated to deal with the implementation of MACRM Act. Although the authorities maintain that there have not been many requests for assistance regarding terrorist financing, there is a concern about the ability of the Mauritian authorities to handle such requests in a timely and effective manner as staff are not specifically trained on this aspect.

1103. There are also concerns on the efficiency of processes, particularly with regard to the time needed to obtain, where relevant, the necessary judge's order. The authorities have indicated that there are processes to deal with urgent cases that require a Judges Order. However the mere fact that the Judges Order is required in certain instances impedes the efficiency of processes in dealing with requests. In particular, this may impede the process where the request from the foreign State requires the assistance urgently.

6.3.2 Recommendations and Comments

The authorities should ensure that mutual legal assistance is rendered in a timely fashion;

Mauritius should consider establishing an asset forfeiture fund into which confiscated property under the MACRM Act could be deposited; and

Mauritius should amend its legislation to provide for instances of conflicts of jurisdiction.

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	LC	There are concerns that Mauritian authorities have not appointed dedicated staff that are appropriately trained in AML/CFT issues to specifically handle mutual legal assistance requests. There are concerns on the efficiency of processes, particularly with regard to the time needed to obtain, where relevant, the necessary judge's order where a country requires the assistance urgently. No provision for avoiding conflict of jurisdiction.
R.37	PC	Although dual criminality is not a requirement in terms of the definition of serious offense, the absence of dual criminality can be a ground for refusal of a request. This may be an issue where certain designated categories of predicate offenses are not predicates in Mauritius because confiscation could not be ordered on the basis of the AML framework.
R.38	LC	No provision for the establishment of an Asset Forfeiture Fund.
SR.V	LC	Although there have not been many requests for assistance in this regard there is a concern about the ability of the Mauritian authorities to handle requests relating to the financing of terrorism in a timely and effective manner.

6.4 Extradition (R.37, 39, SR.V)

6.4.1 Description and Analysis

1104. Extradition is governed by the Extradition Act 1970 which sets out the procedure for extraditing offenders to or from a foreign state. The extradition crime should, in the case of a non-Commonwealth country, amount to one of the offenses specified in an extradition treaty. In the case of a Commonwealth country, the sentence for an extradition crime should not be less than 12 months. The Act (Section 7) sets out certain restrictions on the surrender of persons. A person may not be surrendered in the following instances:

- i) if the offense is one of a political character or if the surrender has been made with a view to trying to punish the offender for an offense of a political character;
- ii) unless there is an undertaking that the offender will be tried for the offense for which he is surrendered;
- iii) an offender who is already being held in custody in Mauritius for offenses committed in Mauritius may not be surrendered unless the offender has been discharged from custody;
- iv) if the person has been acquitted or pardoned for the offense by a competent tribunal or authority in any country or has undergone the punishment provided by the law for the offense;
- v) if there are reasonable grounds for believing that the request for person's surrender is made for purposes of punishing the person on account of or may be prejudiced at the trial or be punished by reason of that person's race, caste, place of origin, nationality, political opinions, color, or creed; or
- vi) if the offense is trivial, the accusation against the offender is not made in good faith or in the interests of justice or there has been a passage of time since the offense is alleged to have been committed and, taking all the circumstances into account, it would be unjust, oppressive, or too severe a punishment to surrender the offender.

1105. The Minister of Foreign Affairs is responsible for determining whether any of the above restrictions apply.

Dual Criminality and Mutual Assistance (c. 37.1 & 37.2):

1106. Although not specifically mentioned in the law, dual criminality is required for purposes of extradition as the Extradition Act defines an 'extradition crime' as an offense against the law of a foreign state, the act which would constitute an offense if it took place in Mauritius.

1107. Authorities have indicated that technical differences between the laws in the requesting state and Mauritius would not be a ground for refusal of a request for extradition.

Money Laundering as Extraditable Offense (c. 39.1):

1108. Under Section 29 of FIAMLA any money laundering offense is an extradition crime for which extradition may be granted under the Extradition Act. The definition of extradition crime (Section 2 of Extradition Act), however, includes a reference to a crime as described in the First Schedule to the Extradition Act. The list contains 28 offenses and includes crimes such as murder, manslaughter, rape, trafficking in women, kidnapping, bribery, and arson. Money laundering and offenses relating to terrorist financing are deemed extraditable offenses in other pieces of legislation and are not specifically mentioned in the First

Schedule. Authorities have confirmed that an extension of the list of crimes is possible if crimes are deemed extraditable in other pieces of legislation.

Extradition of Nationals (c. 39.2):

1109. Under Section 6 of the Extradition Act, “every offender from [the requesting] state who is in Mauritius” can be arrested and surrendered. An offender is defined as a person accused or convicted of an extradition crime committed within the jurisdiction of a foreign state. The wording of the law is not entirely clear in the sense that “any offender from that state” can be interpreted to mean either the person who committed the offense in the requesting state or a national from that State or both. According to the authorities, it includes both and there are no obstacles to the extradition of Mauritian nationals. This is supported by the fact that the Extradition Act does not specifically prohibit the extradition of Mauritian nationals. Authorities have confirmed that Mauritius has, indeed, extradited Mauritian nationals in the past.

Cooperation for Prosecution of Nationals (applying c. 39.2(b), c. 39.3):

1110. Mauritius is able to extradite its own nationals so criterion 39.3 does not apply.

Efficiency of Extradition Process (c. 39.4):

1111. An extradition request is received by the Ministry of Foreign Affairs. If the Ministry is satisfied, in terms of Section 7, that the person is able to be surrendered, the request will be transmitted to the Attorney General’s office to be processed. The Attorney General’s office verifies that the request can be processed in terms of the Extradition Act, for example, that the request is for a crime provided under the Extradition Act. If the Attorney General is of the opinion that the offender is not liable to be surrendered, he may decide not to proceed with the process of obtaining a warrant of arrest. If the Attorney General’s office decides to proceed with the extradition he will inform a magistrate that a request for the surrender of an offender has been made and authorizes the magistrate to issue a warrant of arrest for the offender. The magistrate may either remand the offender in custody or release him on bail. The magistrate will hold a hearing on extradition request where the authenticated foreign warrant in respect of the offender must be produced as well as proof of sufficient evidence to satisfy the magistrate that the person has been convicted of the extradition crime. The magistrate will also hear any evidence tendered by the offender. If the magistrate is satisfied that the offender is liable to be surrendered, he will make an order committing the offender to prison until he is surrendered to the foreign state. The offender may not be surrendered before the expiration of 15 days after the order for committal was granted and he may, during that time, apply for the issue of a writ of habeas corpus. Depending on the ruling of the Supreme Court on the writ of habeas corpus, the offender will either be extradited or discharged from custody.

1112. The process itself is lengthy and takes several months to finalize. It was indicated that one request for extradition was received in 2006. This request had not yet been finalized. Two to three staff members are designated to deal with extradition requests on a rotational basis. Considering the low number of requests for extradition, it may not be practical to have dedicated trained staff dealing only with extradition requests.

Additional Element (R.39)—Existence of Simplified Procedures relating to Extradition (c. 39.5):

1113. The Act (Section 8(b)) makes provision for requests for surrender to be transmitted in a way that is specified in the extradition treaty or, in the case of a Commonwealth country, as may be agreed between the two countries. There is no provision in the legislation prohibiting an extradition request that is based on warrants of arrest or judgments. The Act does not allow for a simplified procedure of extradition of consenting persons who waive formal extradition proceedings.

Additional Element under SR V (applying c. 39.5 in R. 39, c V.8)

1114. Under the Convention for the Suppression of the Financing of Terrorism Act 2003 (CSFT Act), the offenses relating to the financing of terrorism is an extraditable offense under the Extradition Act. The CSFT Act provides further, that any extradition agreement entered into by Mauritius is deemed to include provision for extradition for the offenses relating to the financing of terrorism. Where there is no agreement, the Minister of Foreign Affairs may treat the International Convention for the Suppression of the Financing of Terrorism as an extradition agreement between Mauritius and the Convention State. It specifically provides that despite the provisions of the Extradition Act, the offenses relating to the financing of terrorism is deemed not to be a fiscal offense or an offense of a political character or an offense connected with a political offense or an offense inspired by political motives (Section 8(5) of CSFT Act).

1115. As mentioned above, Mauritius may extradite its own nationals.

1116. The Extradition Act (S8(b)) makes provision for requests for surrender to be transmitted in a way that is specified in the extradition treaty or, in the case of a Commonwealth country, as may be agreed between the two countries. There is no provision in the legislation prohibiting an extradition request that is based on warrants of arrest or judgments. The Extradition Act does not allow for a simplified procedure of extradition of consenting persons who waive formal extradition proceedings.

Statistics (applying R.32):

1117. Mauritius has received three requests for extradition during the period 2004 to 2007. Two requests made in 2005 were granted while the one request made in 2006 is still pending.

1118. The authorities were unable to provide a list of Extradition treaties entered into by Mauritius.

Implementation and Analysis:

1119. Money laundering and offenses relating to terrorist financing are deemed extraditable offenses in other pieces of legislation and are not specifically mentioned in the First Schedule. Although authorities have confirmed that an extension of the list of crimes is possible if crimes are deemed extraditable in other pieces of legislation, for the sake of completeness, Mauritius should consider amending the First Schedule to include money laundering and terrorist financing.

1120. Although there have not been any requests for extradition regarding money laundering and terrorist financing, there is a concern about the ability of the Mauritian authorities to handle such requests in a timely and effective manner.

6.4.2 Recommendations and Comments

The offenses of money laundering and terrorist financing should be specifically mentioned in the First Schedule.

6.4.3 Compliance with Recommendations 37 & 39, and Special Recommendation V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	LC	There are concerns about the ability of the Mauritian authorities to handle extradition requests in a timely and effective manner.
R.37	LC	It is recommended that money laundering and offenses relating to terrorist financing be specifically mentioned in the First Schedule.
SR.V	LC	Although there have not been any requests for extradition regarding terrorist financing, there is a concern about the ability of the Mauritian authorities to handle such requests in a timely and effective manner.

6.5 Other Forms of International Co-operation (R.40 & SR.V)

6.5.1 Description and Analysis

Widest Range of International Cooperation (c. 40.1)

1121. In addition to exchanging information with the Financial Intelligence Unit, the Bank of Mauritius has entered into several Memoranda of Understanding with other regulatory bodies.

1122. It has entered into six MoUs with the following institutions for the sharing of supervisory information, including information on money laundering and terrorist financing:

The Commission Bancaire of France;

The Jersey Financial Services Commission;

The State Bank of Pakistan;

The Bank of Mozambique;

The South African Reserve Bank; and

The Central Bank of Seychelles.

1123. In addition, the Bank of Mauritius has signed an informal agreement with the Reserve Bank of India for the sharing of AML/CFT information.

1124. The Bank of Mauritius has approached another foreign supervisory authority to sign an MoU.

1125. Section 64(14) of the Banking Act 2004 states that nothing in Section 64 shall preclude the disclosure of information by the central bank, under conditions of confidentiality, to a central bank or any other entity or agency, by whatever name called, which performs the functions of 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. This provision allows the Bank of Mauritius to provide information to international banking supervisors, whether or not the supervisor is a central bank.

1126. Prior to the mission, the FSC was able to disclose information under section 33 of the Financial Services Development Act. The FSC has entered into a number of bilateral MOUs with foreign supervisory bodies, including:

- (1) the Securities and Exchange Board of India in relation to Assistance and Mutual Cooperation;
- (2) the Malta Financial Services Authority on the Exchange of Information for Mutual Assistance and Co-operation in the Administration and Enforcement of Securities and Insurance Laws;
- (3) the Committee of Insurance, Securities and Non-bank Financial Authorities (CISNA) on exchange of information for surveillance and supervision (MMOU);
- (4) the Financial Services Board of South Africa on exchange of information for co-operation and consultation;
- (5) the Pensions and Insurance Authority of Zambia on exchange of information for cooperation and consultation;
- (6) the Capital Markets Authority of Uganda on exchange of information for cooperation and consultation;
- (7) the Namibia Financial Institutions Supervisory Authority on exchange of information for cooperation and consultation;
- (8) the Securities and Exchange Commission of Zambia on exchange of information for cooperation and consultation;
- (9) the Insurance Supervisory Department of Tanzania on exchange of information for cooperation and consultation;
- (10) the Financial Intelligence Unit of Mauritius on exchange of information;
- (11) the Bank of Mauritius;
- (12) the Jersey Financial Services Commission;
- (13) the Isle of Man Financial Supervision Commission;
- (14) the Reserve Bank of Malawi;
- (15) the Central Bank of Lesotho;
- (16) the South Asian Securities Regulators Forum.

1127. The FSC is a member of the International Organization for Securities Commissions and represents Mauritius on the Emerging Markets Committee. Mauritius has applied to become a signatory to IOSCO's Multilateral Memorandum of Understanding.

1128. Under section 87 of the new Financial Services Act 2007, the FSC may exchange information with a supervisory body relevant to the enforcement of the regulatory legislation in Mauritius. Any information provided may be given subject to conditions specified by the FSC including conditions restricting the use and disclosure of the information imparted.

1129. The FIU in Mauritius may exchange financial intelligence either proactively or upon request from other overseas FIUs or comparable bodies on the basis of reciprocity and mutual agreement, pursuant to Section 20 of FIAMLA. Comparable bodies are defined as an overseas government agency with functions similar to those of the FIU. The FIU may exchange information without a memorandum of understanding, subject to the consent of its Board to countries in the SADC or members of the ESAAMLG, where law enforcement agencies may be operating as a quasi FIU. The FIU may also request information from Interpol either through the police in Mauritius or through overseas FIUs. The FIU is also able to proactively disseminate information to overseas FIUs or comparable bodies through the discretion provided by FIAMLA S30(2).

1130. The FIU has entered into 11 MOUs (details are provided in assessment of Rec 26.10 at Section 2.5.1). Statistics on the FIU's information exchanges with overseas counterparties is included at rec 26.8)

1131. The FIU is able to provide information it holds, regardless of whether it is related to ML/TF. Where the information (other than an STR) was provided in confidence from an authority in Mauritius, the FIU must obtain the prior consent of that body (S20(5) refers). Consistent with S 20(4), the FIU requires any overseas FIU to obtain the prior consent of the Mauritian FIU should it wish to further provide the information to other authorities.

1132. In terms of process, requests received by the FIU are dealt with spontaneously where the nature of the request is for the FIU to confirm whether the subject is known in the FIU's internal databases. If the request is to gather information from public sources, the request is completed within a period of two weeks. The FIU also provides law enforcement information to its counterparts (for example, criminal conviction, immigration details and customs details). This information is provided within two weeks of the receipt of a request. If the information is to trace financial information from reporting institutions, the request will be considered, subject to background information received from the requesting FIU. Information will be disseminated within a period of three weeks after consent of the Board of the FIU.

1133. In responding to requests from overseas authorities, the FIU will pass on any information that it holds or that is available from commercial information sources. Where information it holds has been provided by an authority, the prior consent of that authority is sought. The FIU is not empowered under the FIAMLA to request information from a bank, cash dealer, financial institution, or member of relevant profession or occupation pursuant to a request made by an overseas FIU in relation to a STR filed to that overseas FIU. The FIU may only seek the assistance of law officers, the police and other government agencies and persons representing banks, financial institutions, cash dealers, and members of the relevant professions or occupations under Section 11 (2) of the FIAML Act. There are no legal obligation for these authorities to provide assistance to the FIU.

6.5.2 Recommendations and Comments

Provide the FIU with specific power to access information, not already held by the FIU, in relation to requests from overseas FIUs regardless of whether the request related to STR filings in the overseas country.

6.5.3 Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	LC	No information provided by the criminal justice area.
SR.V	LC	Although there have not been many requests for assistance in this regard, there is a concern about the ability of the Mauritian authorities to handle requests relating to the financing of terrorism in a timely and effective manner.

7 OTHER ISSUES

7.1 Resources and statistics

1134. The FIU produces a good range of statistical information on the STRs and information it receives and disseminates. Examples of the statistics that the FIU is able to produce are provided in the assessment of the FIU (Section 2.5.1).

1135. The FIU has a staffing complement of 25. At the time of mission seven positions were vacant and interviews were in process. The FIU's structure is appropriate to the functions it undertakes and is described more fully in Section 2.5.1. The staff profile displays a good level of qualifications and experience. Structured on-the-job training is also used. The FIU provided considerable details of relevant training courses attended by FIU staff. Advertising material for the current vacancies highlighted appropriate selection criteria. Like all authorities in Mauritius, the FIU currently has difficulty in retaining and attracting staff due to considerably higher remuneration available in the growing financial services sector.

1136. Staff of the FIU are subjected to a rigorous interview and selection process and provide detailed financial statements and take an Oath of Confidentiality for which breaches are an offense. Skill levels are maintained through a combination of in-house training and access to external courses.

1137. While all the Police, ICAC, DPP, and judges do have some knowledge of AML/CFT issues, the level of expertise varies greatly from one institution to the other as well as within each institution from one person to the other (see write-up under Recommendation 27 for details on their staff). Further training and specialization on AML/CFT measures as well as on money laundering trends and typologies is essential for all the authorities involved to enable Mauritius to fight more effectively against money laundering and terrorist financing. Training is needed at all stages of the investigation, prosecution (in particular when the prosecution is delegated by the DPP to the police and the ICAC) and trial of money laundering cases. Training is particularly important for the ICAC, not only because it is the primary authority responsible for the investigation of money laundering cases, but also because most of the staff has recently joined the ICAC. It is also worth mentioning that the ICAC's current focus is mainly on corruption, rather than on money laundering. Considering the central role played by the ICAC in the overall AML framework, additional focus on money laundering cases is highly recommended. Overall, the backlog in money laundering investigations, in particular within the ADSU, and the length of time of the proceedings (from the investigative stage to sentencing) would also tend to indicate that current resources are not entirely adequate.

1138. The police and the ICAC maintain clear statistics of money laundering cases but the DPP does not.

	Rating	Summary of factors relevant to Recommendations 30 and 32 and underlying overall rating
R.30	PC	Once the Bank of Mauritius has completed its current restructuring, its staff complement will be complete.

		<p>Further training on Mauritius's AML/CFT framework and on money laundering as well as terrorist financing trends and typologies should be provided to all authorities involved in the fight against money laundering and terrorist financing.</p> <p>Compliant for the FIU.</p> <p>Partially compliant for the police, ICAC, prosecution and judges—need for further training on ML and TF trends and typologies and on AML/CFT measures and for further requirements on integrity and ethics for ICAC, prosecution and judges.</p>
R.32	LC	<p>Compliant for the FIU.</p> <p>Compliant for the police and ICAC.</p> <p>Non-compliant for the DPP</p>

7.2 Other relevant AML/CFT measures or issues

7.3 General framework for AML/CFT system

(see also section 1.1)

Table 1. Ratings of Compliance with FATF Recommendations

Forty Recommendations	Rating	Summary of factors underlying rating ³³
Legal systems		
1. ML offense	PC	<ul style="list-style-type: none"> Some of the relevant requirements of the Vienna and Palermo Conventions have not been implemented in the FIAMLA nor in the DDA (concealment and disguise of the “true nature, source, location, disposition, movement or ownership of, or rights with respect to proceeds”); 8 out the 20 categories of designated offenses are not predicate offenses in Mauritius: Trafficking in adult human beings and adult migrant smuggling; Sexual exploitation of adults; Illicit arm trafficking; Illicit trafficking in stolen goods and other goods; Counterfeiting and piracy of products; Environmental crime; Theft; Piracy; Smuggling; Insider trading and market manipulation; A conviction for the ML offense under the DDA requires prior conviction for the predicate; Lack of effective implementation.
2. ML offense—mental element and corporate liability	LC	<ul style="list-style-type: none"> Effective implementation was not established.
3. Confiscation and provisional measures	PC	<ul style="list-style-type: none"> No provisions were made in the DDA and the Acts dealing with the fight against terrorism and terrorist financing for the confiscation of property of corresponding value; Unclear whether instrumentalities and property derived from an offense may be confiscated; No provision was made under the FIAMLA to enable the confiscation of property owned by third parties; No provision was made under the DDA to enable the confiscation of property owned by third parties who are not family members of the convicted person; There are no measures in the DDA to ensure the protection of the rights of bona fide third parties; Lack of effectiveness (no assets forfeited so far).
Preventive measures		
4. Secrecy laws consistent with the	C	<ul style="list-style-type: none"> This recommendation is fully met.

³³ These factors are only required to be set out when the rating is less than Compliant.

Recommendations		
5. Customer due diligence	PC	<ul style="list-style-type: none"> • Not all financial institutions are covered, some institutions regulated by FSC have not implemented the Codes fully; • Some elements are not included in law or regulation (some provisions on when to undertake CDD, verifying the beneficial owner, determining the natural persons who ultimately own or control the customer, ongoing due diligence); • The Guidance Notes/Codes do not require CDD information to be kept up to date and relevant or require consideration of whether an STR should be made if an institution cannot obtain CDD information. The Guidance Notes/Codes do not limit delay to the verification of identity when this is essential not to interrupt the normal course of business and do not require consideration to be given to making a suspicious transaction report when CDD requirements cannot be complied with.
6. Politically exposed persons	PC	<ul style="list-style-type: none"> • Not all financial institutions are covered, some institutions regulated by FSC have not implemented the Codes fully; • The Guidance Notes do not apply the definition of PEPs in all circumstances (e.g. family and associates in all circumstances beneficial owners and obtaining their source of wealth and funds of beneficial owners) and do not require senior management approval for persons who become a PEP after the commencement of a relationship; • The Codes do not cover close associates and beneficial owners – including obtaining their source of wealth and funds.
7. Correspondent banking	PC	<ul style="list-style-type: none"> • The Guidance Notes contain do not require financial institutions to determine the respondent's reputation from publicly available information; to gather information on whether a respondent has been subject to an investigation or regulatory action; senior management approval to be obtained for new correspondent relationships; for the respective AML/CFT responsibilities of the correspondent and respondent to be documented for institutions in payable – through accounts to satisfy themselves adequate CDD obligations have been performed on customers with direct access to the accounts of the correspondent financial institution.
8. New technologies & non face-to-face business	PC	<ul style="list-style-type: none"> • Not all financial institutions are covered, some institutions regulated by FSC have not

		<ul style="list-style-type: none"> implemented the Codes fully; The Guidance Notes and Codes do not require institutions to have policies in place to prevent the misuse of technological developments.
9. Third parties and introducers	LC	<ul style="list-style-type: none"> Not all financial institutions are covered, some institutions regulated by FSC have not implemented the Codes fully; The Guidance Notes and Codes do not require the necessary information to be obtained by financial institutions; or that all introducers should be regulated and supervised and subject to the relevant FATF Recommendations.
10. Record-keeping	LC	<ul style="list-style-type: none"> Not all financial institutions are covered, some institutions regulated by FSC have not implemented the Codes fully. The provisions on record keeping in law or regulation and the Guidance Notes and Codes do not contain points of detail across a number of the Criteria. Law or regulation does not require the necessary records for institutions other than those regulated by the Bank of Mauritius to be kept by all financial institutions for longer than five years if requested by a competent authority, account files or business correspondence, are not required to be maintained; there is no requirement for the timely basis in respect of which all customer and transaction records are available.
11. Unusual transactions	PC	<ul style="list-style-type: none"> Not all financial institutions are covered, some institutions regulated by FSC have not implemented the Codes fully; The regulations, Guidance Notes and Codes contain provisions on complex, unusual large transactions, but the Guidance Notes do not include the need to examine the background and purpose of such transactions, and neither the Guidance Notes nor the Codes require findings to be available for competent authorities and auditors for five years.
12. DNFBP–R.5, 6, 8–11	NC	<ul style="list-style-type: none"> Unlike the situation with banks and financial institutions (which include FSC supervised TCSPs) FIAMLA's general measures to prevent ML or FT , customer identification and record keeping have not been given any specificity and hence lack practical effect in the FIAMLA Regulations or other regulatory requirements; Prescribed obligations for CDD, PEPs, non face to face transactions, risks associated

		<p>with new technology, use of intermediaries/introducers, documentation of review of complex or unusual transactions, and record keeping obligations in FIAMLA do not extend beyond the management companies and qualified trustees licensed and supervised by the FSC;</p> <ul style="list-style-type: none"> • The shortcomings identified in the legal CDD requirements placed on the FSC's licensees in the Insurance and Securities sectors equally apply to Management Companies and Qualified Trustees (refer recs 5,6, 8-11 in Section 3); • Local real estate agents, including IRS developers selling high value property to overseas purchasers, are not subject to sufficient legal obligation to undertake appropriate CDD or record keeping requirements; • Casinos' record keeping provisions to not meet the standard as they do not enable individual customer transactions to be recreated or held for the 5 year period; • The GRA has yet to issue any Regulatory Guidance on AML/CFT obligations, pursuant to its rule making powers;
13. Suspicious transaction reporting	PC	<ul style="list-style-type: none"> • Not all categories of FI are subject to STR reporting obligation; • Concerns regarding the low level of reporting and delays in reporting to the FIU; • Unclear that the FIMALA reporting obligation extends to individuals, in their capacity of director, employee, agent or other legal representatives of a reporting institution
14. Protection & no tipping-off	C	<ul style="list-style-type: none"> • This Recommendation is fully met.
15. Internal controls, compliance & audit	PC	<ul style="list-style-type: none"> • Not all financial institutions are covered, some institutions regulated by FSC have not implemented the Codes fully; • The Guidance Notes and Codes provide strong elements on internal control; • The Guidance Notes and Codes do not contain requirements on ongoing training on ML/FT techniques, methods and trends or on screening procedures when hiring new employees;
16. DNFBP–R.13–15 & 21	PC	<ul style="list-style-type: none"> • The reporting obligation does not extend to real estate agents, including promoters involved in development and selling of high value properties to foreign buyers; • The shortcomings for the Codes for the Insurance and Securities sectors – requirements for on going training,

		<p>recruitment and audit equally apply to the FSC's codes for management companies (Section 3.8.3 refers)</p> <ul style="list-style-type: none"> • Shortcomings in the CDD requirements for non FSC supervised DNFBPs weaken the capacity of such businesses /professions to identify potentially suspicious transactions; • The FIU's statistics indicate a possible level of under-reporting of STRs; • Unclear that the FIMALA reporting obligation extends to individuals, in their capacity of director, employee, agent or other legal representatives of a reporting institution • Except for the FSC's Codes that apply to the TCSP sector, no AML/CFT Guidance has been issued to assist the remaining DNFBP categories of the requirements for internal controls, audit or staff screening and training; • Except for the FSC's role with TCSPs, there is no designated authority or mechanism to advise DNFBPs of high risk jurisdictions. • Auditing profession concerns regarding tipping off
17. Sanctions	LC	<ul style="list-style-type: none"> • Breaches of the FSC's Codes have been subject, until mid way through the assessment, to a narrow range of sanctions (directions and revocations). There were some implementation issues at financial institutions visited by the mission. Until mid way through the mission, the whole the sanctions framework in respect of the Codes is not effective, proportionate and dissuasive, and they are not broad and proportionate to the severity of a situation; the new framework which came into effect mid way through the mission, could not be judged for effectiveness.
18. Shell banks	C	<ul style="list-style-type: none"> • This Recommendation is fully met.
19. Other forms of reporting	C	<ul style="list-style-type: none"> • This Recommendation is fully met.
20. Other NFBP & secure transaction techniques	C	<ul style="list-style-type: none"> • This Recommendation is fully met..
21. Special attention for higher risk countries	PC	<ul style="list-style-type: none"> • Not all financial institutions are covered, some institutions regulated by FSC have not implemented the Codes fully; • The regulations, Guidance Notes and Codes contain strong provisions on enhanced due diligence and non-equivalent jurisdictions, but there is no requirement to examine the background and purpose of transactions that have no apparent or lawful purpose, and for written findings to be available to competent authorities.

22. Foreign branches & subsidiaries	NC	<ul style="list-style-type: none"> • Not all financial institutions are covered. • The Codes contain no provisions on the application of AML/CFT standards to branches and subsidiaries of Mauritius institutions; • Despite a very positive approach to consolidated supervision by the Bank of Mauritius, the requirements of Recommendation are not met by law, regulation or other enforceable means.
23. Regulation, supervision and monitoring	PC	<ul style="list-style-type: none"> • Insurance intermediaries, have not been subject to on-site inspections sanction available to the FSC and the lack of application of these powers means that the non-banking/cash dealer framework is not effectively implemented; • Providers of money transfer services and money or currency changing services are licensed and subject to on-site inspections but the provisions are not explicit and the legal framework does not include providers of value transfer services; • Some types of financial activity covered in the FATF definition, such as lending and financial leasing business, are not covered in the AML/CFT framework by law, regulation or other enforceable means, while other institutions are not subject to either AML/CFT or regulatory oversight (such as credit cooperatives).
24. DNFBP—regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> • Lack of designated supervisory or monitoring authority for AML/CFT purposes for the non FSC and GRA supervised sectors • The casino sector has yet to be subject to effective regulation and supervision; • Professional sectors are not regulated or supervised for AML/CFT purposes; • There is no effective on-going monitoring for AMLCFT risk for the local real estate sector; • The FRC has yet to implement any effective inspections and MIPA is under resourced to carry out other than a cursory monitoring role. • Shortcomings in the current implementation of TCSP monitoring and supervision.
25. Guidelines & Feedback	LC	<ul style="list-style-type: none"> • Whilst the FSC has provided appropriate guidance to the global TCSP sector, there is a lack of any guidance to the other categories of DNFBP. • The FSC's Guidance for Management Companies lack specific indicators for FT. • The FIU 's provides limited, value added

		<p>feedback to the reporting sectors on the STRs it receives, in part because of the limited feedback it receives from the investigatory authorities, in particular ICAC which considers itself constrained by the confidentiality provisions of POCA.</p>
Institutional and other measures		<ul style="list-style-type: none">
26. The FIU	LC	<ul style="list-style-type: none"> Concern exists over FIAMLA's legal framework that potentially limits the Director's operational autonomy to disseminate because of the way in which it prescribes the respective roles of the Board and Director. Similar concern over the documentation of the Board's arrangements and role in appointing staff to the FIU. In terms of practice no evidence of undue external influence was noted. The FIU's written guidance to reporting institutions to fulfill their reporting obligations needs to be updated to reflect all the categories of institutions, businesses and professions that are subject to the FIAMLA reporting obligation. The FIAMLA s10(2) is currently interpreted to limit the scope of the FIU to provide guidance on ML/FT indicators. Accordingly reporting institutions not subject to monitoring by a designated AML/CFT supervisory authority such as the BOM or FSC, do not have assistance on ML/FT indicators specific to their sectors. (For assessment of AML/CFT Guidance provided by non-FIU authorities see R.25.1) Statistics indicate under reporting from various sectors and general tardiness in reports being provided to the FIU – this limits its access to timely financial information. Lack of on-line access to many data sources and relatively lengthy process in obtaining information from Police and some other authorities. Lack of feedback from Police plus lack of legal gateway with ICAC limits the FIUs access to useful feedback as to the value of their cases and work – and to this potential source of information. No gateway for disclosure of Customs Currency Disclosure information to the FIU Legal obstacles prevent the FIU from obtaining further information with respect to non STR related requests from the authorities Current practice re dissemination on ML split

		between ICAC and Police appears to cause a level of confusion and demarcation and possible potential duplication between the investigatory authorities.
27. Law enforcement authorities	LC	<ul style="list-style-type: none"> The role of the Fiscal Unit (Central CID) is not entirely clear and the relevance of the Unit in the AML framework was not established.
28. Powers of competent authorities	LC	<ul style="list-style-type: none"> The process by which the investigative authorities may be granted orders for disclosure seem unnecessarily lengthy. The timing of attachment measures does not always seem to be appropriate, with orders for attachment being requested or being granted too late.
29. Supervisors	PC	<ul style="list-style-type: none"> The Bank of Mauritius has powers to monitor and ensure compliance but the on-site inspection and sanctions powers available to the FSC were narrow until part way through the onsite visit; The FSC did not have adequate powers of enforcement and sanction until part way through the onsite visit; the new framework which came into effect mid way through the mission, could not be judged for effectiveness. Not all financial institutions are regulated for AML/CFT purposes and subject to onsite inspections
30. Resources, integrity, and training	PC	<ul style="list-style-type: none"> Once the Bank of Mauritius has completed its current restructuring its staff complement will be complete. Further training on the Mauritius' AML/CFT framework and on money laundering as well as terrorist financing trends and typologies should be provided to all authorities involved in the fight against money laundering and terrorist financing. Compliant for the FIU. Partially compliant for the police, ICAC, prosecution and judges – need for further training on ML and TF trends and typologies and on AML/CFT measures and for further requirements on integrity and ethics for ICAC, prosecution and judges.
31. National co-operation	PC	<ul style="list-style-type: none"> Formal communication and exchange of information between ICAC and the other relevant authorities is prohibited; lack of regular engagement by the FIU with the appropriate supervisory or professional bodies other than the FSC and BOM.
32. Statistics	LC	<ul style="list-style-type: none"> No statistics available from the DPP

33. Legal persons–beneficial owners	LC	<ul style="list-style-type: none"> Timely access to beneficial ownership and control information is not available for category one and category two global business license holders through law enforcement as court orders may take up to four weeks to obtain in an urgent case.
34. Legal arrangements – beneficial owners	LC	<ul style="list-style-type: none"> Timely access to beneficial ownership and control information is not available for all legal persons through law enforcement as court orders may take up to four weeks to obtain in an urgent case; on onsite inspections, the FSC is not reviewing information on trusts held by management companies in certain circumstances.
International Cooperation		<ul style="list-style-type: none">
35. Conventions	PC	<ul style="list-style-type: none"> The relevant provisions of the Vienna and Palermo Conventions have not been fully implemented.
36. Mutual legal assistance (MLA)	LC	<ul style="list-style-type: none"> There are concerns that Mauritian authorities have not appointed dedicated staff that are appropriately trained in AML/CFT issues to specifically handle mutual legal assistance requests. There are concerns on the efficiency of processes, particularly with regard to the time needed to obtain, where relevant, the necessary judge's order where a country requires the assistance urgently. No provision for avoiding conflict of jurisdiction.
37. Dual criminality	LC	<ul style="list-style-type: none"> It is recommended that money laundering and offenses relating to terrorist financing be specifically mentioned in the First Schedule.
38. MLA on confiscation and freezing	LC	<ul style="list-style-type: none"> No provision for the establishment of a Asset Forfeiture Fund.
39. Extradition	LC	<ul style="list-style-type: none"> There are concerns about the ability of the Mauritian authorities to handle extradition requests in a timely and effective manner
40. Other forms of co-operation	LC	<ul style="list-style-type: none"> No information provided by the criminal justice area
Nine Special Recommendations		<ul style="list-style-type: none">
SR.I Implement UN instruments	PC	<ul style="list-style-type: none"> The ICSFT has only been partly implemented. The procedures in place for UNSCR 1267 and 1373 are not fully in line with the standard and UNSCR 1267 is not implemented in a satisfactory manner.
SR.II Criminalize terrorist financing	LC	<ul style="list-style-type: none"> The TF offense is broad, however: Not all the relevant UN Conventions have been ratified and fully implemented; The YF offense does not cover funding of

		<ul style="list-style-type: none"> individual terrorists; A link with the specific terrorist act seems necessary to apply the TF offense; Overall effectiveness was not established.
SR.III Freeze and confiscate terrorist assets	NC	<ul style="list-style-type: none"> The procedures in place are not effective and would not enable the freezing without delay funds and other assets of persons designated under UNSCR 1267. Dissemination to the financial institutions may take up to a few weeks upon amendment of the UNSC consolidated list; There are no effective procedures in place to freeze without delay terrorist funds or other assets of persons designated in the context of UNSCR 1373; There are no effective procedures in place to examine and, if appropriate, give effect to freezing actions initiated by other jurisdictions; There are no effective systems for communicating actions taken under UNSCR 1373 and actions initiated by other jurisdictions; Lack of clear guidance; There are no effective and publicly-known procedures for considering de-listing requests; There are no effective and publicly-known procedures for unfreezing; There are no effective procedures in place to ensure the protection of the rights of bona fide third parties; No dissemination mechanism under UNSCR 1373; Lack of overall effectiveness.
SR.IV Suspicious transaction reporting	PC	<ul style="list-style-type: none"> Not all categories of FI are subject to STR reporting obligation Unclear that the FIMALA reporting obligation extends to individuals, in their capacity of director, employee, agent or other legal representatives of a reporting institution.
SR.V International cooperation	LC	<ul style="list-style-type: none"> Although there have not been many requests for assistance in this regard there is a concern about the ability of the Mauritian authorities to handle requests relating to the financing of terrorism in a timely and effective manner. Although there have not been any requests for extradition regarding terrorist financing, there is a concern about the ability of the Mauritian authorities to handle such requests in a timely and effective manner.

SR.VI AML/CFT requirements for money/value transfer services	NC	<ul style="list-style-type: none"> Banks and cash dealers are regulated by the Bank of Mauritius and subject to on-site inspections but the legal provisions covering money transfer services are not explicit and the legislation does not cover value transfer service providers: The Bank of Mauritius Guidance Notes require some enhancements; The sanctions framework needs to unambiguously apply to MVT service operators.
SR.VII Wire transfer rules	PC	<ul style="list-style-type: none"> While the Bank of Mauritius has implemented the legislative framework to cover wire transfers to date, this legislative framework does not explicitly cover all non-banks or the ability to sanction. The Guidance Notes do not include a requirement that, in some cases, the beneficiary financial institution should consider restricting or terminating its business relationship with financial institutions that fail to meet SR.VII standards.
SR.VIII Nonprofit organizations	NC	<ul style="list-style-type: none"> No review of adequacy of laws to ensure that NPOs are not being misused for terrorist financing by virtue of their activities; no outreach conducted to NPOs; no sanctions applied to NPOs for failure to comply with the provisions of the relevant laws; record keeping requirements is for a period of three years only; no gateways for sharing non-public information with domestic ministries and authorities.
SR.IX Cross Border Declaration & Disclosure	PC	<ul style="list-style-type: none"> Very limited outbound disclosure system; no gateways for disclosure of information to the FIU or to foreign customs services; currently no ability to check passengers against the UN 1267 lists.

Table 2. Recommended Action Plan to Improve the AML/CFT System

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
1. General	
2. Legal System and Related Institutional Measures	
Criminalization of Money Laundering (R.1, 2, & 32)	<ul style="list-style-type: none"> • Ensure that all the material elements of the money laundering offense listed in the Vienna and Palermo Convention are covered by including the concealment or disguise of “true nature, source, location, disposition, movement or ownership of or rights with respect to proceeds;” • Ensure that the crime of money laundering apply to all serious crimes and that the following acts and activities constitute predicate offenses to money laundering: Trafficking in adult human beings and adult migrant smuggling; Sexual exploitation; Illicit arm trafficking; Illicit trafficking in stolen goods and other goods; Counterfeiting and piracy of products; Environmental crime; Theft; Piracy; Smuggling; Insider trading and market manipulation; • Although the notion of “fraud” under the standard is adequately covered under Mauritian law by the swindling crime, it is recommended that the authorities also include embezzlement as a predicate offense for money laundering at least where it constitutes a serious offense due to the large amounts of funds involved; • Ensure that Section 188 of the Criminal Code is applied as and when appropriate and reconsider the implementation of the Palermo Convention; • For the sake of clarity, amend the text of the DDA and explicitly specify that the property covered by the money laundering offense under the DDA covers all assets of every kind, whether corporeal or incorporeal, moveable or immoveable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in such assets; • Ensure that conviction for money laundering under the DDA may also be secured in the absence of prior conviction for the predicate offense; • Consider lowering the level of proof required under the DDA in order to bring in line with the FIAMLA and ensure that prosecutions under the DDA are not rendered unnecessarily cumbersome; • Ensure that all authorities involved in the investigation, prosecution and trial of money laundering cases are fully

	educated and trained on the specificities of the offense.
Criminalization of Terrorist Financing (SR.II & R.32)	<ul style="list-style-type: none"> • Ratify and implement the Convention on the Physical Protection of Nuclear Material of March 3, 1980, the Convention on the Marking of Plastic Explosives for the Purpose of Detection of March 1, 1991 and the International Convention for the Suppression of Acts of Nuclear Terrorism • Ensure that the terrorist financing offense also applies to the direct or indirect provision or collections of funds by any means with the unlawful intention that they be should be used or in the knowledge that they are to be used in full or in part by an individual terrorist; • Ensure that the terrorist financing offense does not require that the funds be linked to a specific terrorist act;
Confiscation, freezing, and seizing of proceeds of crime (R.3 & 32)	<ul style="list-style-type: none"> • Provide for the confiscation of property of corresponding value when forfeiture under the DDA and the POTA when the property subject to confiscation under the DDA and the POTA is not available; • Ensure that instrumentalities and property derived from the offense may be forfeited; • Enable confiscation under FIAMLA to take place even when the property subject to confiscation is owned by a third parties; • Enable confiscation under the DDA to take place even when the property subject to confiscation in owned by third parties who are not family members; • Provide protection for the rights of bona fide third parties who may be affected by a forfeiture measure under the DDA, in a way which is consistent with the requirements of the Palermo Convention • For the sake of clarity, amend Section 52 POCA with respect to the premises and business places that ICAC may search, and the material that ICAC may seize;
Freezing of funds used for terrorist financing (SR.III & R.32)	<ul style="list-style-type: none"> • Reconsider the mechanisms set out to implement UNSCR 1267; • Ensure that all financial institutions under the purview of the FSC are immediately informed of all changes to the consolidated list of terrorists under UNSCR 1267;

	<ul style="list-style-type: none"> • Ensure that all persons and entities designated by the UN SC 1267 Committee are considered as terrorists and their funds and other assets are immediately frozen upon identification; • Establish clear mechanisms for the implementation of UNSCR 1373; • Establish clear mechanisms to examine and, where appropriate, give effect to the actions initiated under the freezing procedures of other jurisdictions; • Ensure effective communication of all actions taken under the freezing mechanism to all the financial sector, including in cases other than the circulation of the 1267 lists; • Provide adequate guidance to the financial institutions and other persons or entities that may be holding targeted funds or other assets concerning their obligations under the freezing mechanisms; • Set out effective procedures for considering de-listing request and make the public; • Set out procedures for unfreezing in a timely manner the funds or other assets inadvertently affected by the freezing measures and make the public; • Set out procedures for access to funds in accordance with UNSCR 1452; • Set out procedures to challenge freezing measures; • Take measures to ensure protection of the rights of bona fide third parties; • Ensure effective monitoring of compliance with the obligations under SR III;
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	<ul style="list-style-type: none"> • Address the current administrative role of the Board so that the Director has the ultimate authority to undertake all actions in the exercise of all the functions provided to him under the FIAMLA, including final authority to appoint staff and make disseminations in all cases. Possibilities to consider include: amending FIAMLA to remove the consent provisions and replace this role to advisory, or making the Board a formal part of the FIU answerable to or appointed by the Director, or permanently delegating the Board's 'consent' role to the Director. The working

	<p>arrangements of the Board should be documented.</p> <ul style="list-style-type: none"> • Review and amend, where necessary, s. 81 of POCA to allow ICAC to provide feedback to the FIU on the value of disseminations in a manner that does not compromise ICAC investigations. • Clarify whether the scope of FIAMLA s10(2)(c) legally provides for the FIU to issue guidance on indicators of suspicious transactions to assist financial institutions and DNFBPs to meet their reporting obligations. The ability of the FIU to provide such guidance should be seen as complementing, rather than replacing, guidance issued by the FSC, BOM or GRA. In the absence of supervisory or monitoring authority being assigned for the remaining DNFBP sectors, the FIU should be assigned the responsibility for providing guidance on indicators and typologies as part of its responsibility in providing guidance on the manner of reporting. • Provide all reporting sectors with more specific indicators of ML/TF based on sector and Mauritian characteristics. This will require close co-operation between the FIU and relevant authorities designated to provide such guidance to the financial and DNFBP sectors. This encompasses the BOM, FSC, GRA and any authority(s) or SROs designated in future to provide AML/CFT Guidance to the non-FSC supervised DNFBP businesses and professions. • Implement ways to improve the FIU's access to timely information by providing outreach in order to improve the reporting performance of reporting institutions in those sectors and institutions considered to be under reporting or displaying poor reporting performance. This should include providing feedback to the disciplinary bodies referred to in s. 18(4) of FIAMLA and requiring them to take a more proactive role, in partnership with the FIU, to monitor and act on issues of non-compliance. • The FIU should seek to provide information to reporting institutions when it makes a dissemination based on a STR(s). • Clarify the legal position on the admissibility of STRs in court proceedings, including the adequacy of the provisions to protect the identity of persons who report STRs to the FIU in good faith. • Encourage further use of appropriate tactical enforcement, regulatory or disciplinary action by supervisory authorities and police. Cases of long term systemic and unresolved reporting performance should be brought to the attention of the AML/CFT committee to encourage appropriate
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	<p>action.</p> <ul style="list-style-type: none"> • Determine and make known the extent to which legal privilege applies for the law practitioners. • Develop more appropriate gateways for the FIU to have on-line, real time access to information from databases, where possible and cost efficient.. • Clarify the current FIAMLA s11(2) “consult powers and seek assistance” power are sufficient to enable the Director to obtain further information from other authorities in those cases where the suspected suspicion of ML/TF has arisen from disclosures made by the investigatory or supervisory authorities. • For the wider efficiency perspective, consider providing FIU with an administrative power to block transactions and accounts suspected of ML/TF provide the Mauritian AML/CFT system with a more responsive framework. • Provide the FIU with access to the disclosures of cash and monetary instrument disclosures received by Customs.
<p>Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)</p>	<ul style="list-style-type: none"> • The authorities are recommended to reconsider the division of money laundering cases (other than drug-related cases) within the Central CID and, if the division is maintained, ensure that the respective roles, functions and powers of both units are clearly defined; • They are further recommended to ensure that attachments orders may be provided on a timely basis; • In order to facilitate the investigations of money laundering cases initiated on the basis of an STR, it is recommended that the authorities ensure that all the relevant authorities involved in the investigation, prosecution and trial of money laundering cases have a common understanding of the purpose and the use of the FIU reports as intelligence (as opposed to evidence) which should provide sufficient grounds to initiate and focus subsequent investigations, as well as to obtain the necessary court orders for disclosure of any necessary records, including bank records. • It is also recommended that further training on the Mauritius’ AML/CFT framework and on money laundering as well as terrorist financing trends and typologies is provided to all authorities involved in the fight against money laundering and terrorist financing. • On a minor point and in order to avoid any confusion as to

	the initiation of ICAC-led investigations into money laundering cases, is also recommended that the authorities bring the wording of Section 19(1) (0) of the POCA in line with the possibilities offered by Sections 45(2) (a) and 46(1) (a) of that same act
3. Preventive Measures–Financial Institutions	
Risk of money laundering or terrorist financing	•
Customer due diligence, including enhanced or reduced measures (R.5–8)	<ul style="list-style-type: none"> • The AML/CFT framework should be extended to cover the full range of financial institutions (including cooperative credit unions) defined as such by the FATF; • Law or regulation should be amended to state that customer due diligence is required when there is suspicion of money laundering in connection with non-occasional transactions and where the institution has doubts about the veracity or adequacy of previously obtained customer identification documentation; • Law or regulation should be amended to require financial institutions to verify the identity of the beneficial owner; • Law or regulation should be amended, so that for customers that are legal persons or legal arrangements, financial institutions should be required to determine the natural persons who exercise ultimate effective control; • Law or regulation should be amended to require financial institutions to conduct ongoing due diligence on the business relationship; • Enhance the implicit language of the Guidance Notes to make it explicit that for legal persons and legal arrangements financial institutions should take reasonable measures to understand the ownership and control structure of the customer; • Amend the Guidance Notes and Codes to require financial institutions to ensure that documents, data or information collected under the CDD process is kept up to date and relevant by undertaking reviews of existing records, particularly for higher risk categories; • Amend the regulations made under FIAMLA to introduce reduced or simplified measures for the life insurance policies specified, or provide justifiable reasons for retaining the provisions; • Amend the Guidance Notes and Codes to allow verification of identity to be delayed provided that, inter alia, this is essential not to interrupt the normal course of

	<p>business;</p> <ul style="list-style-type: none"> • Amend the Guidance Notes and Codes so that where a financial institution is unable to comply with the CDD requirements it should consider making a suspicious transaction report; • In the circumstances specified in Criterion 5.16 require financial institutions to terminate the business relationship and consider making a suspicious transaction report; • The FSC should consider how to introduce an enforceable obligation on financial institutions on the CDD requirements for existing customers; • The Bank of Mauritius and the FSC should consider enhancing the Guidance Notes and the Codes respectively to use one form of language for enforceable measures and one form of language for guidance; • Amend the Guidance Notes to extend the definition of PEPs to include family and associates in all circumstances, to extend the provisions to beneficial owners who are PEPs (including obtaining source of wealth and funds) and to require senior management approval when a person becomes a PEP after the establishment of the relationship; • Amend the Codes so that close associates of PEPs and beneficial owners who are PEPs are covered (including obtaining source of funds and of wealth), and to require senior management approval when a person becomes a PEP after the establishment of the relationship; • Amend the Guidance Notes so that financial institutions determine the respondent's reputation from publicly available information and gather information on whether a respondent has been subject to an investigation or regulatory action; so that senior management approval is obtained for new correspondent relationships; so that the respective AML/CFT responsibilities of the correspondent and respondent are documented so that financial institutions in relationships involving payable – through accounts are satisfied that the respondent has performed all the normal CDD obligations in Recommendation 5 on customers with direct access to the accounts of the correspondent financial institution • Amend the Guidance Notes and Codes to require institutions to have policies in place to prevent the misuse of technological developments, and amend the Guidance Notes to include ongoing due diligence to address the specific risks of non-face to face business.
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Third parties and introduced business (R.9)	<ul style="list-style-type: none"> • The Guidance Notes and Codes should be amended so that financial institutions obtain all rather than some of the necessary information from third parties; the Codes should be amended to refer to the requirements of the necessary information. • The Guidance Notes and Codes should be amended so that all introducers are regulated and supervised and subject to the relevant FATF Recommendations.
Financial institution secrecy or confidentiality (R.4)	
Record keeping and wire transfer rules (R.10 & SR.VII)	<ul style="list-style-type: none"> • Law or regulations should be amended so that institutions not regulated by the Bank of Mauritius are required to maintain transaction records for longer than five years if requested by a competent authority; • Law or regulation should be amended to require the maintenance of account files and business correspondence following the termination of an account or business relationship; and to require that customer and transaction records are available on a timely basis; • The banking legislation should be amended to include explicit provisions on wire transfers providers into legislation, which allow sanctions to be beyond question; • The Guidance Notes should be amended to include a requirement that, in some cases, the beneficiary financial institution should consider restricting or terminating its business relationship with financial institutions that fail to meet SR. VII standards.
Monitoring of transactions and relationships (R.11 & 21)	<ul style="list-style-type: none"> • The Guidance Notes should be amended to require institutions to examine as far as possible the background and purpose of complex, unusual large transactions and to set forth their findings in writing; • The Guidance Notes and Codes should be amended to require institutions to keep their examination findings available for competent authorities and auditors for at least five years; • The Guidance Notes and Codes should be amended to require institutions to, as far as possible, examine the background and purpose of transactions that have no apparent economic or lawful purpose and keep written findings available to assist competent authorities.

<p>Suspicious transaction reports and other reporting (R.13, 14, 19, 25, & SR.IV)</p>	<ul style="list-style-type: none"> • The STR reporting obligation should apply to all categories of businesses that currently undertake financial activity, consistent with FATF definition of financial institution; • At a minimum, seek legal or legislative remedy to remove any discretion where STRs are to be evidenced in Court proceedings, the names and identification details of staff members of reporting institutions are excluded. Given industry concerns, consider total exemption of STRs from court proceedings • Revise FIAMLA section 14(1) to include reference to individuals in their role of acting as director(s), agent, employee or other legal representative of any bank, financial institution, cash dealer or member of a relevant profession or occupation (for avoidance of doubt) • The AML/CFT Committee should consider ways to improve the overall framework to enable the FIU to receive timely knowledge on the overall value of its disseminations. • The FIU's Guidance Notes should be updated to include: reference to a more immediate timeframe for reporting of STRs and a more contemporary and wider range of indicators and typologies. In the current absence of meaningful local cases, the FIU could reference available material from publications such as the various FATF and FSRB typology reports. • The FIU should seek to improve the quality of STR reporting by engaging more with the professional associations and the gambling industry. A standing forum involving the FIU and representatives from the various sector supervisory bodies should be considered as one means of improving the flow and sharing of information.
<p>Cross Border Declaration or disclosure (SR IX)</p>	<ul style="list-style-type: none"> • Apply the disclosure system to outbound cross-border transport of currency; • Adopt a coordinated approach to passenger profiling using an intelligence led model in conjunction with other law enforcement agencies and develop better intelligence through implementation of Advance Passenger Information; • Revise the Customs law or regulations in order to provide legal gateways for information sharing with the FIU and international customs authorities

	<ul style="list-style-type: none"> • Add “transit passengers” within the ambit of Section 131 of the Customs Law to cover this specific risk; • Ensure there are proper legal gateways for coordination with the FIU and with other enforcement agencies at both the local and international levels and implement such coordination.
Internal controls, compliance, audit and foreign branches (R.15 & 22)	<ul style="list-style-type: none"> • The Codes should be amended to provide that institutions should be required to maintain an adequately resourced audit function; • In addition to the existing provisions on training, the Guidance Notes and Codes should be amended to require institutions to provide ongoing employee training on ML and FT techniques, methods and trends; • The Guidance Notes and Codes should be amended to require institutions to put in place screening procedures to ensure high standards when hiring employees; • The Codes should be amended to include provisions on the application of AML/CFT measures to branches and subsidiaries of Mauritius financial institutions in accordance with Recommendation 22.
Shell banks (R.18)	<ul style="list-style-type: none"> •
<p>The supervisory and oversight system—competent authorities and SROs</p> <p>Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 25, & 32)</p>	<ul style="list-style-type: none"> • The FSC should maintain awareness of the legal locus for sanctions and the wider powers of sanction available to the FSC under the new Financial Services Act should be used to demonstrate the enforceability of the Codes and that the powers are strong, proportionate and effective; • The Bank of Mauritius should consider whether its range of sanctions is sufficiently broad and, if necessary add to them or change existing sanctions, in order to complete its array of sanctions in the context of the local business environment; • The FSC should enforce the new Financial Services Act and the insurance and securities legislation, in particular the enhanced provisions on fitness and propriety and be able to object to controllers, shareholders, directors and senior managers before rather than after the event; • Persons providing value transfer services should be licensed or registered and subject to effective systems for monitoring and ensuring compliance with the national requirements to combat ML and FT; • The types of financial institution in the FATF definition not

	<p>covered by the FIAMLA, underlying regulations and Codes, such as lenders and financial leasing institutions, should be brought into the framework and subject to law, regulation and other enforceable means as appropriate;</p> <ul style="list-style-type: none"> • The FSC should continue with its on-site inspection program, using the improved provisions for inspections in the new Financial Services Act; • The FSC should use more detailed inspection guides/questionnaires in order to help structure the inspections and to comprehensively implement the framework it administers; • The Bank of Mauritius should continue with its plans to recruit more staff and the FSC should consider whether more staff and additional training are necessary in order to administer the Financial Services Act appropriately. • The Stock Exchange of Mauritius should continue with its plans to continue investigatory capacity and the FSC should seek to ensure that this capacity is in place during its monitoring of the exchange. • The two supervisory bodies should maintain statistics routinely on on-site inspections, sanctions and formal requests for assistance.
Money value transfer services (SR.VI)	<ul style="list-style-type: none"> • The banking legislation should be amended to include money and value service providers; • MVT service operators should be required by enforceable means to maintain a list of agents; • The Guidance Notes on AML/CFT issued by the Bank of Mauritius should be enhanced in the manner suggested in section 3 of this report; • The recommendation on the sanctions framework recommended in respect of Recommendation 17 should be undertaken.
4.Preventive Measures– Nonfinancial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	<ul style="list-style-type: none"> • Undertake a co-coordinated and inclusive risk assessment to identify and agree the ML/TF risks and vulnerabilities that Mauritius faces and, as a result of this, consider qualifying the activities that are to be subject to the standard; • CDD and record keeping provisions of the current

	<p>AML/CFT regulations be extended to all the DNFBP categories currently defined in the FIAMLA definition of "member of the relevant profession or occupation;"</p> <ul style="list-style-type: none"> • Real estate agents should be included in the FIAMLA definition; • The risks associated with IRS related resales need to be addressed, possibly through inclusion of IRS developers/sales agents in the FIAMLA. • Shortcomings identified in the CDD provisions that apply to financial institutions (Recs 5, 6, 8 -11 in Section 3) should be considered and remedied, where relevant to the TCSP business regulated by the TCSP. • Grandfathered casino licensees should be provided with the necessary AML/CFT directions and conditions placed on licenses re: possible revocation or suspension for non compliance. • Appropriate and timely outreach educational programs be conducted should the recommended enhancements be made to CDD measures placed on the sectors not supervised by the FSC.
Suspicious transaction reporting (R.16)	<ul style="list-style-type: none"> • The categories of DNFBP sector not supervised by the FSC should have rules laid down covering elements of training, policy and procedures, recruitment and internal controls. The level and degree of internal controls needs to be appropriate to the resources and risk level. • Prescribe specific CDD requirements for the non TCSP categories of the DNFBP sector to reinforce the capacity for such businesses to identify potential suspicious transactions; • Amend FIAMLA s3 to include reference to FT. • Clarify, define and educate relevant professional categories as to the application of legal privilege as it applies to the obligation to provide STRs to the FIU; • Review and address the situation raised by the auditing sector regarding the potential tipping off implications following removal from audit following reporting of an STR; • Address the shortcomings in the FSC Codes identified in Section 3; • Extend the STR reporting obligation to the real estate

	<p>sector;</p> <ul style="list-style-type: none"> • Designate a competent authority(s) to provide guidance on internal controls to the non-TCSP and casino sectors; • Designate an authority to have responsibility for maintaining and distributing the list of equivalent jurisdictions to the DNFBPs not supervised by the FSC; • Seek common understanding on the possible gaps in reporting levels and the delay in the timing of disclosures to the FIU with private sector representatives and authorities represented on the AML/CFT Committee. • Institute appropriate mechanisms so that the FIU may share information regarding reporting performance with the various professional bodies; The FIU should provide designated sector supervisory authorities and relevant industry associations or professional bodies with a more contemporary and wider range of indicators and typologies. In the current absence of meaningful local cases, the FIU could reference available material from publications such as the various FATF and FSRB typology reports; • Disciplinary authorities referenced in FIAMLA s18(4) should be expanded to cover the DNFBP sector and then develop an appropriate outreach program for each category of DNFBP; • The GRA should issue directions to its licensees regarding AMLCFT relevant controls, audit and staff training and screening requirements, • The downward trend in the reporting levels from MCs should be reviewed as part of the future FSC risk based supervision program.
Regulation, supervision, monitoring, and sanctions (R.17, 24, & 25)	<ul style="list-style-type: none"> • Supervision and Monitoring (R.24) • Clarify the role of the various professional bodies with respect to FIAMLA s18(4) and consider how such bodies can monitor and supervise their respective members' adherence to the AML/CFT requirements. • Ensure that all persons conducting activities to be caught by the standard are properly licensed (for example real estate agents and persons performing accounting services); • Designate an authority or body to oversee AML/CFT matters with respect to the other categories of DNFBPs,

	<p>namely real estate agents and dealers in precious metal and stones (jewelers). Determination of the appropriate body and the level of oversight or monitoring should follow an assessment of the relative risks of ML/TF in the business practice, transactions and customer profile of the respective underlying activities and the extent to which such risks are already mitigated through other means.</p> <ul style="list-style-type: none"> • Consider expanding the role of the FIU with respect to any DNFBP sector where an existing body is not willing or resourced to perform such a monitoring or oversight role. • The GRA Board, when constituted, should give priority to integrating specific AML/CFT requirements into its licenses and fully staff its inspectorate function. • The GRA should review, as a matter of priority, the “fit and proper” status of all relevant senior managers in all casinos. • Guidance (R. 25): • Designate an appropriate authority(s) to develop and provide guidance on AML/CFT requirements to the DNFBP sectors not regulated by the FSC. • Consider expanding the function of the FIU to enable it to either undertake issuing guidance for all DNFBP sectors or in conjunction with designated professional bodies. • Enhance Appendix VI of the FSC’s Codes for Management Companies to include: indicators of terrorist financing and indicators that take account of the sector’s context and jargon: products, processes and customer profile; • Consider providing a level of administrative sanction power to the disciplinary authorities described in FIAMLA s18(4) for failure to comply with any guidance issued by the appropriate authorities designated to issue such guidance. • The GRA should give priority to issuing appropriate AML/CFT guidance under its new powers, including the development of industry specific indicators (the FIU should be consulted in this process)
Other designated non-financial businesses and professions (R.20)	<ul style="list-style-type: none"> • Undertake an assessment of the ML/TF risks that may currently exist in the Mauritian financial and business sectors. Use known international typology studies and input from both authorities and the affected business sectors.

	<ul style="list-style-type: none"> Consider refining the current FIAMLA occupational based definitions to focus on the underlying financial activities and business processes that present the key risks. Adopt a cost/benefit approach to any proposal to extend the categories. Review procedures regarding sales by levy of real property.
5. Legal Persons and Arrangements & Nonprofit Organizations	
Legal Persons—Access to beneficial ownership and control information (R.33)	<ul style="list-style-type: none"> Access to beneficial ownership and control for all legal persons should be available in a timely fashion for all companies, not only those who are required to have publicly available information at the Company Registrar's Office.
Legal Arrangements—Access to beneficial ownership and control information (R.34)	<ul style="list-style-type: none"> Access to beneficial ownership and control for all legal arrangements should be available in a timely fashion for all companies. The FSC should action their plans to conduct onsite reviews of trust files during their inspections of management companies.
Nonprofit organizations (SR.VIII)	<ul style="list-style-type: none"> ask for training to learn about anti-money laundering and combating the financing of terrorism procedures, typologies and monitoring/supervision techniques; conduct a review of the adequacy of the laws on NPOs to ensure that NPOs are not being misused for terrorist financing by virtue of their activities; conduct outreach to the NPOs in order to educate NPOs about the risk of terrorist financing; more systematically apply sanctions for failure to comply with the provisions of the Registration of Associations Act; request a change in the record keeping provisions of the Registration of Associations Act so that records will be required to be kept for five years instead of three; and, request legal gateways in the Registration of Associations Act to allow for information sharing both domestically and internationally.
6. National and International Cooperation	<ul style="list-style-type: none">

National cooperation and coordination (R.31 & 32)	<ul style="list-style-type: none"> • FIU to engage in more bilateral and outreach meetings with the professional bodies. • FIU to consider implementing a standing forum for supervisory, professional oversight and law enforcement authorities to focus on operational issues that would fall outside the work of the AMLCFT committee. • Ensure that ICAC may communicate and exchange information with other relevant authorities for the purposes of their respective investigations by amending Section 81 of the POCA.
The Conventions and UN Special Resolutions (R.35 & SR.I)	<ul style="list-style-type: none"> • All three Conventions have been ratified but further work is needed in order to implement them fully into Mauritian laws. • The authorities are recommended to implement fully the Vienna and Palermo Conventions in line with the recommendations made under Recommendations 1 and 3, the ICSFT and UNSCR 1267 and 1373 in line with the recommendations made under Special Recommendation II and III.
Mutual Legal Assistance (R.36, 37, 38, SR.V & 32)	<ul style="list-style-type: none"> • The authorities should ensure that mutual legal assistance is rendered in a timely fashion; • Mauritius should consider establishing an asset forfeiture fund into which confiscated property under the MACRM Act could be deposited. • Mauritius should amend its legislation to provide for instances of conflicts of jurisdiction.
Extradition (R. 39, 37, SR.V & R.32)	<ul style="list-style-type: none"> • The offenses of money laundering and terrorist financing should be specifically mentioned in the First Schedule.
Other Forms of Cooperation (R. 40, SR.V & R.32)	<ul style="list-style-type: none"> • Provide the FIU with specific power to access information, not already held by the FIU, in relation to requests from overseas FIUs regardless of whether the request related to STR filings in the overseas country.
7. Other Issues	
Other relevant AML/CFT measures or issues	

Annex 1. Details of all Bodies Met on the on-site Mission

**Ministries, other government authorities or bodies,
Private Sector Institutions and others.****Ministries**

- Solicitor General's Office
- Ministry of Foreign Affairs
- Police – CID (fiscal unit)
- Mauritius Revenue Authority – Customs Department
- Ministry of Foreign Affairs
- Prime Minister's Office
- Ministry of Finance and Economic Development

Other Government Authorities

- National Committee for AML/CFT
- Financial Intelligence Unit
- Financial Services Commission
- Registrar of Associations
- Bank of Mauritius
- Registrar of Companies
- Drug Assets Forfeiture Office
- Gaming Regulatory Authority/Gaming Control Board (transition team)
- Financial Reporting Council
- State Law Office
- Independent Commission Against Corruption
- State Investment Corporation
- National Security Service
- Registrar of Cooperatives
- Board of Investment

Private Sector Institutions and Others

- Mauritius Institute of Professional Accountants
- Chamber of Notaries
- Ecocredit Finance Ltd.
- Law Society
- Stock Exchange of Mauritius
- Bar Council
- HSBC
- Banque des Mascareignes Ltee.

- Real Estate Association
- Mauritius Bankers' Association
- Mauritius Commercial Bank
- IFS Ltd.
- Standard Chartered Bank (Mauritius) Limited
- IMM Ltd.
- Thomas Cook (Mauritius) Operations Company Limited
- Capital Asset Management Ltd.
- De Chazal du Mee (acctg./auditing)
- Appleby Hunter
- MCB Stockbrokers
- CIM Stockbrokers
- Swan Insurance
- Mauritius Leasing
- CIM factors
- Mauritius Institute of Professional Accountants
- Institute of Chartered Secretaries & Administrators (Mauritius Branch)
- Alexander Forbes (Mauritius) Ltd.

Annex II: List of all laws, regulations and other material received

**MAURITIUS STATUTES, REPORTS AND GUIDELINES DEALING WITH AML/CFT
TABLE OF CONTENTS****1. CODES**

- 1.1. The Criminal Procedure Act 1853
- 1.2. The Criminal Code 1838
- 1.3. The Criminal Code (Amendment) Act 2003

2. Criminal (including AML/CFT) Laws

- 2.1. The Financial Intelligence and Anti Money Laundering (Amendment) Regulations 2006
- 2.2. The Prevention of Corruption Amendment Act 2006
- 2.3. The Convention for the Suppression of the Financing of Terrorism Act 2003
- 2.4. The Financial Intelligence and Anti Money Laundering Regulations 2003
- 2.5. The Mutual Assistance in Criminal and Related Matters Act 2003
- 2.6. The Prevention of Terrorism Regulations 2003
- 2.7. The Financial Intelligence and Anti Money Laundering Act 2002
- 2.8. The Prevention of Corruption Act 2002
- 2.9. The Prevention of Terrorism Act 2002

3. Commercial Laws

- 3.1. The Finance Act 2007
- 3.2. The Companies (Amendment) Regulations 2006
- 3.3. The Customs (Amendment) (No. 2) Regulations 2006
- 3.4. The Freeport Act (2004)
- 3.5. The Financial Services Development (Amendment) Act 2005
- 3.6. The Financial Services Act (2007)
- 3.7. The Insurance Act 2005
- 3.8. The Protected Cell Company Act 2005
- 3.9. The Summary of the Insurance Act
- 3.10. The Securities Act 2005
- 3.11. The Summary of the Securities Act 2005
- 3.12. The Banking Act 2004
- 3.13. The Bank of Mauritius Act 2004
- 3.14. The Companies Act 2001
- 3.15. The Financial Reporting Act 2004
- 3.16. The Industrial Relations (Amendment) Act 2003
- 3.17. The Financial Services Development Act 2001
- 3.18. The Income Tax Act 1995
- 3.19. The Declaration Assets Act 1991
- 3.20. Registration of Association Act (not yet received)
- 3.21. Employees Superannuation Fund Act (not yet received)

4. Laws Relating to DNFBPs

- 4.1. The Gambling Regulatory Authority Bill 2007
- 4.2. Mauritius Law Society Act 2005
- 4.3. The Gaming Act 2004

- 4.4. The Mauritius National Lotteries Act 2004
- 4.5. The Horse Racing Board Act 2003
- 4.6. The Dangerous Drugs Act 2000
- 4.7. Law Practitioners Act 1985
- 4.8. Mauritius Bar Association Act 1982
- 4.9. Notaries Act 1942
- 4.10. The Jewellery Act (2007)
- 4.11. The Investment Promotion Act (Consolidated version August, 2007)

5. Regulations and Guidelines

- 5.1. Bank of Mauritius Guidance Notes on Anti-Money Laundering and Combating the Financing of Terrorism for Financial Institutions 2005
- 5.2. Code on the Prevention of Money laundering & Terrorist Financing intended for Investment Businesses (15th July 2005)
- 5.3. Code on the Prevention of Money laundering & Terrorist Financing intended for Insurance Entities (15th July 2005)
- 5.4. Code on the Prevention of Money laundering & Terrorist Financing intended for Management Companies (15th July 2005)
- 5.5. FIU Guidance Note 1 Suspicious Transaction Report 2003
- 5.6. Financial Service Commission Guide to Compliance Global Business Companies 2003
- 5.7. The Financial Services Development Regulations 2001
- 5.8. The Financial Services Development (Amendment of Schedules) Regulations 2001
- 5.9. The Income Tax (Foreign Tax Credit) Regulations 1996
- 5.10. Investment Promotion (Integrated Resort Scheme) Regulations 2002 & (Amendment) Regulations 2005

6. Various

- 6.1. Brief on AML/CFT June 2007
- 6.2. Organizational structure of FIU June 2007
- 6.3. Report on the Setting up of the Mauritius Institute of Directors 2006
- 6.4. The Risks, Extent and Trend of Money Laundering and Financing of Terrorism in Mauritius, National Survey Report May 2006
- 6.5. Mauritius FIU Annual Report
- 6.6. Mauritius National Anti-Money Laundering and Combating the Financing of Terrorism Framework
- 6.7. SADC Protocol against Corruption
- 6.8. The Report on Corporate Governance for Mauritius

Annex III: Copies of Key Laws, Regulations and Other Measures

Note: Only extracts from the Dangerous Drugs Act and FIAMLA 2002 are enclosed due to space constraints.

1. THE DANGEROUS DRUGS ACT (extract)

39. Money laundering

Every person who unlawfully -

(a) converts or transfers resources or goods derived from any of the offences specified in sections 30, 33, 35, 36 and 38 with the aim either of concealing or disguising the illicit origin of the said goods or resources or of aiding any person involved in the commission of one of those offences to evade the legal consequences of his actions;

(b) renders assistance for concealing or disguising the genuine nature, origin, location, disposition, movement or ownership of the resources, goods or rights thereto derived from one of the offences under this Part;

(c) acquires, possesses or uses goods and resources, knowing that they are derived from one of the offences under 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 20 years.

2. FIAMLA 2002

LEGAL SUPPLEMENT to the Government Gazette of Mauritius No. 34 of 25th March 2002**THE FINANCIAL INTELLIGENCE AND
ANTI-MONEY LAUNDERING ACT 2002**

Act No. 6 of 2002

I assent

27 February 2002

K.A. OFFMANN
President of the Republic

- a) Proclaimed by [Proclamation No. 31 of 2002] c.i.o. 10th June 2002
- b) Amended by *The Horse Racing Board Act 2003* [No. 23 of 2003] [c.i.o. 10th October 2003: P 25/03]
- c) Amended by *The Anti-Money Laundering (Miscellaneous Provisions) Act 2003* [No. 34 of 2003 published in Govt. Gazette No. 94 of 27th September 2003]
- d) Amended by *The Mutual Assistance in Criminal and Related Matters Act 2003* [No. 35 of 2003] [c.i.o. 15th November 2003: P 29/03]
- e) Amended by *The Finance Act 2005* [No 14 of 2005] c.i.o 10th November 2004
- f) Amended by *The Financial Intelligence and Anti-Money Laundering (Amendment of schedule) Regulations 2004*. [G.N. 48 of 2004 published in the Govt. Gazette of Mauritius No. 36 of 17 April 2004.]
- g) Amended by *The Finance Act 2006* [No 15 of 2006 published in Govt. Gazette No 71 of 7 August 2006]

ARRANGEMENT OF SECTIONS**Section****PART I - PRELIMINARY**

- 1. Short title
- 2. Interpretation

PART II - MONEY LAUNDERING OFFENCES

- 3. Money Laundering
- 4. Conspiracy to commit the offence of money laundering
- 5. Limitation of payment in cash
- 6. Procedure
- 7. Jurisdiction
- 8. Penalty

PART III - THE FINANCIAL INTELLIGENCE UNIT

- 9. Establishment of the FIU
- 10. Functions of the FIU
- 11. Exercise of functions of the FIU

12. ~~The Review Committee~~ **The Board** Deleted and Replaced by [\[A 3\(c\) \(i\) 34/2003\]](#)
 13. Dissemination of information to 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
 15. Lodging of reports of suspicious transactions
 16. Legal consequences of reporting
 17. Other measures to combat money laundering
 18. Regulatory action in the event of non-compliance
 19. Offences relating to obligation to report and keep records and to disclosure of information prejudicial to a request

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

- 19A Establishment of National Committee
 19B Functions of the National Committee
 19C Meetings of the National Committee

Added by [\[A 3\(h\)/34/2003\]](#)

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
 21. Provision of information to investigatory or supervisory authorities
 22. Reference of information by the supervisory authorities

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

Deleted by [\[A 25\(2\)\(a\)/35/2003\]](#)

23. ~~Providing assistance to overseas countries~~
 24. ~~Obtaining assistance from overseas countries~~
 25. ~~Requests~~
 26. ~~Request not to be invalidated~~
 27. ~~Evidence pursuant to a request~~
 28. ~~Relationship with Letters of Request Rules~~

Repealed by [\[A 25\(2\)\(b\)/35/2003\]](#)

29. Money laundering offence to be extraditable

PART VII - MISCELLANEOUS

30. Confidentiality
 31. Declaration of assets
 32. Immunity
 33. Funding
 34. Annual Report

- 35. Regulations
- 36. Consequential amendments
- 37. Commencement

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 authorised to do so under that Act; and~~

~~(b) any person carrying on any business or activity regulated by the Bank of Mauritius;~~

Deleted and replaced by [\[A 13\(a\)\(i\)/14/2005\]](#)

~~“bank” –~~

~~(a) has the same meaning as in the *Banking Act 2004*; and~~

~~(b) includes any person licensed under the *Banking Act 2004* to carry deposit taking business~~

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

Deleted and replaced by [\[A 13\(a\)\(i\)/14/2005\]](#)

~~“Bank of Mauritius” means the Bank of Mauritius established under the *Bank of Mauritius Act 2004*;~~

"Board" means the Board of the Financial Intelligence Unit constituted under section 12;

Added by [\[A 3\(a\)\(iii\)/34/2003\]](#)

"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 authorised under the *Foreign Exchange Dealers Act* to carry on the business of foreign-exchange-dealer or money-changer;~~

Deleted and replaced by [\[A 13\(a\)\(i\)/14/2005\]](#)

"cash dealer" has the same meaning as in the *Banking Act 2004*;

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

"comparable body" means an overseas Government agency with functions similar to those of the FIU;

Added by [\[A 3\(a\)\(iii\)/34/2003\]](#)

"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;

"Director" means the Director of the FIU appointed under section 9;

Added by [\[A 3\(a\)\(iii\)/34/2003\]](#)

"exempt transaction" means 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*;

"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;~~ **a casino under the Gaming Act and a bookmaker or an operator of a totalisator under the Horse Racing Board Act 2003.**

Deleted and replaced by [A 54(2)/23/2003]
c.i.o 10 October 2003: P 25/03

"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;

"National Committee" means the **National Committee for Anti-Money Laundering and Combating the Financing of Terrorism established under section 19A;**

Added by [A 3(a)(iii)/34/2003]

"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 immoveable, 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 Banking Act 2004**, ~~the Bank of Mauritius Act~~, **the Bank of Mauritius Act 2004**, ~~the Financial Services Development Act 2001~~ and ~~the Prevention of Corruption Act 2002~~;

Deleted and replaced by [\[A13 \(a\)\(ii\)/14/2005\]](#)

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

Deleted by [\[A 3\(a\)\(ii\)/34/2003\]](#)

"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;~~

Deleted and replaced by [\[A 3\(a\)\(i\)/34/2003\]](#)

- (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.**
- (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~~ **500,000 rupees** or an equivalent amount in foreign currency, or such amount as may be prescribed, shall commit an offence.

Deleted and replaced by [\[A 11\(a\)/15/2006\]](#)

- (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.~~

Deleted by [A 3(b)(i)/34/2003]

- (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 Commissioner appointed under section 45(8) of the Dangerous Drugs Act** and the investigatory and supervisory authorities;

Added by [A 3(b)(ii)(A)/34/2003]

- ~~(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~~

Deleted and replaced by [A 3(b)(ii)(B)/34/2003]

(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);

~~(f) provide assistance in the investigation or prosecution of money laundering offences to overseas countries.~~

Deleted and replaced by [\[A 3\(b\)\(ii\)\(C\)/34/2003\]](#)

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

(g) undertake, and assist in, research projects in order to identify the causes of money laundering and terrorist financing and its consequences.

Added by [\[A 11\(b\)/15/2006\]](#)

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~~

12. The Board

Deleted and replaced by [\[A 3\(c\)\(i\)/34/2003\]](#)

- (1) ~~There is established for the purposes of this Act a Review Committee~~ The FIU shall be administered by a Board which shall consist of –

Deleted and replaced by [\[A 3\(c\)\(iii\)/34/2003\]](#)

- (a) a Chairperson, who shall be a person who has -
 - (i) served as a Judge of the Supreme Court; or
 - (i) 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~~¹ **Board** 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~~¹ **Board** 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~~¹ **Board** may act notwithstanding the absence of one of its members.
- (5) Subject to subsection (4), the ~~Review Committee~~¹ **Board** shall determine its own procedure.

¹ Deleted and replaced by [\[A 3\(c\)\(ii\)/34/2003\]](#)

13. Dissemination of information to investigatory or supervisory authorities

- (1) Where the ~~FIU~~¹ **Director** considers that information on any matter should be disseminated to the investigatory or supervisory authorities, ~~it shall refer~~² **he shall refer** the information to the ~~Review Committee~~¹ **Board** which shall consider the information and either -
 - (a) consent to the ~~FIU~~¹ **Director** referring the information to such of the investigatory or supervisory authorities as may be specified by the ~~Review Committee~~¹ **Board** 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~~¹ **Director** 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.

¹ Deleted and replaced by [\[A 3\(d\)\(i\)/34/2003\]](#)

² Deleted and replaced by [\[A 3\(d\)\(ii\)/34/2003\]](#)

- 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.**

Added by [\[A 3\(d\)\(iii\)/34/2003\]](#)

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 unauthorised 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.~~

Deleted and replaced by [A 3(e)/34/2003]

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 unauthorized 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 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.

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) (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).

Added by [\[A 3\(f\)/34/2003\]](#)

(1)(2) 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.~~

Repealed and replaced by [\[A 13\(b\)/14/2005\]](#)

- (a) in the case of a bank, proceed against it under sections 11 and 17 of the Banking Act 2004 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 cash dealer or a person's licensed to carry on deposit taking business, proceed against him under sections 16 and 17 of the Banking Act 2004 on the ground that he is carrying on business in a manner which is contrary to the interest of the public.

(2)(3) 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)(4) 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, **supply any information requested by the FIU under section 13(2)** verify, identify or keep records, registers or documents, as required under section 17;
Added by [A 3(g)(i)/34/2003]
 - (b) destroys or removes any record, register or document which is required under this Act or any regulations;
 - (c) warns **or informs** 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
Added by [A 3(g)(ii)/34/2003]
 - (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 under the Mutual Assistance in Criminal and Related Matters Act 2003**; or
Deleted and replaced by [A 11(c)/15/2006]
 - (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 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~~ a Deputy Governor of the Bank of Mauritius or his representative;

Deleted and replaced by [A 11(d)/15/2006]

 - (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.

Added by [A 3(h)/34/2003]

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 **or comparable body**,² it may, ~~with the consent of the Review Committee~~,¹ offer to pass on that information to the overseas financial intelligence unit **or comparable body**³ on terms of confidentiality requiring the consent of the FIU prior to the information being passed on to any other person.

¹ Deleted by [A 3(i)(i)(A)/34/2003]

² Added by [A 3(i)(i)(B)/34/2003]

³ Added by [A 3(i)(i)(C)/34/2003]

- (4) Subject to subsection (5), where a request for information is received from and 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.

Added by [A 3(i)(ii)/34/2003]

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, by itself or at the request of the supervisory authorities, subject to subsection (4),~~ pass on the information to the relevant supervisory authority.
Deleted and replaced by [A 3(i)(i)/34/2003]
- (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.
Deleted by [A 3(i)(ii)/34/2003]
- (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.
Deleted by [A 3(i)(iii)/34/2003]
- (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, Notwithstanding any other enactment, where~~¹ 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),~~² forthwith pass on that information to the FIU.
¹ Deleted and replaced by [A 3(k)(i)(A)/34/2003]
² Deleted by [A 3(k)(i)(B)/34/2003]
- (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.~~
Repealed by [A 3(k)(ii)/34/2003]
- (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

Deleted by [\[A 25\(2\)/35/2003\]](#)

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.

Repealed by [\[A 25\(2\)\(b\)/35/2003\]](#)

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 VII - MISCELLANEOUS

30. Confidentiality

- (1) The Director, every officer of the FIU, and the Chairperson and members of the **Review Committee Board** 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.

Deleted and replaced by [A 3(l)(i)/34/2003]
- (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.

Deleted by [A 3(l)(ii)/34/2003]
- (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, every officer of the FIU, and the Chairperson and members of the **Review Committee Board** 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.

Deleted and replaced by [A 3(m)/34/2003]
- (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**,¹ **Board** 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~~, ^{1. Board} 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.

^{1.} Deleted and replaced by [A 3(n)/34/2003]

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.
- (4) **Regulations made under subsection (1) may provide for the amendment of the First Schedule.**

Added by [A 3(o)/34/2003]

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" 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 Money Laundering Act 2000" and replacing them by the words ", terrorism under the 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

FIRST SCHEDULE —(section 2) OVERSEAS FINANCIAL INTELLIGENCE UNITS	
-	
1.	Aruba
2.	Australia
3.	Austria
4.	Bahamas
5.	Belgium
6.	Bermuda
7.	Bolivia
8.	Brazil
9.	British Virgin Islands
10.	Bulgaria
11.	Cayman Islands
12.	Chile
13.	Colombia
14.	Costa Rica
15.	Croatia
16.	Cyprus
17.	Czech Republic

18. Denmark
19. Dominican Republic
20. El Salvador
21. Estonia
22. Finland
23. France
24. Greece
25. Guernsey
26. Hong Kong, China
27. Hungary
28. Iceland
29. Ireland
30. Isle of Man
31. Italy
32. Japan
33. Jersey
34. Latvia
35. Liechtenstein
36. Lithuania
37. Luxembourg
38. Mexico
39. Monaco
40. Netherlands
41. Netherlands Antilles
42. New Zealand
43. Norway
44. Panama
45. Paraguay
46. Portugal
47. Romania
48. Slovakia
49. Slovenia
50. Spain
51. Sweden
52. Switzerland
53. Taiwan
54. Thailand
55. Turkey
56. United Kingdom
57. United States
58. Venezuela

Repealed and replaced by [G.N. No. 48 of 2004
Published in the Govt. Gazette of Mauritius
No. 36 of 17 April 2004]

FIRST SCHEDULE (section 2)

OVERSEAS FINANCIAL INTELLIGENCE UNITS

Albania
Andorra
Anguilla
Antigua and Barbuda
Argentina
Aruba

Australia
Austria
Bahamas
Bahrain
Barbados
Belgium
Bermuda
Bolivia
Brazil
British Virgin Islands
Bulgaria
Canada
Cayman Islands
Chile
Colombia
Costa Rica
Croatia
Cyprus
Czech Republic
Denmark
Dominica
Dominican Republic
El Salvador
Estonia
Finland
France
Germany
Greece
Guatemala
Guernsey
Hong Kong, China
Hungary
Iceland
Ireland
Isle of Man
Israel
Italy
Japan
Jersey
Korea (Republic of)
Latvia
Lebanon
Liechtenstein
Lithuania
Luxembourg
Malaysia
Malta
Marshall Islands
Mexico

Monaco
 Netherlands
 Netherlands Antilles
 New Zealand
 Norway
 Panama
 Paraguay
 Poland
 Portugal
 Romania
 Russia
 Serbia
 Singapore
 Slovakia
 Slovenia
 South Africa
 Spain
 St Vincent & the Grenadines
 Sweden
 Switzerland
 Taiwan
 Thailand
 Turkey
 United Arab Emirates
 United Kingdom
 United States
 Vanuatu
 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
 - (i) 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

Annex IV. Selected Statistics
CRIMES REPORTED FOR PERIOD 2003 TO 2006

OFFENCES	2003	2004	2005	2006
Crimes Against Persons				
Murder	26	28	28	32
Manslaughter		2	-	2
(Other crimes against person)	41	35	48	44
Total	67	65	76	78
Crimes Against Property				
Larceny Night Breaking	778	1071	1336	1283
Larceny Day Breaking	718	826	977	912
Larceny Scaling	73	66	78	83
Larceny False Key	14	15	32	17
Larceny with violence	704	758	975	875
Larceny Violence by night breaking	27	30	30	27
Larceny armed with Offensive Weapon	92	202	276	177
Larceny with Wounding	23	44	49	22
Larceny with other aggravating circumstances	68	105	117	103
Larceny by persons in receipt of wages	148	169	140	181
Other crimes against property	87	97	110	89
Total	2732	3383	4120	3769
Crimes involving Fraud and Dishonesty				
Currency Offences including coinage	31	35	16	35
Forgery and making use of forged documents	169	191	174	207
Swindling	324	379	316	316
Iss. Cheque w/o provision	374	428	387	436
Embezzlement by public servant, persons	41	48	68	41
Officer with public body accepting bribes	3	5	5	1
Bribing public functionary	15	5	2	9
Extortion	2	6	6	5
Total	959	1097	974	1050
Crimes against morality				
Rape	50	36	33	57
Sodomy	33	30	35	51
Sexual intercourse with female under 16	115	111	107	141
Attempt upon chastity	81	98	107	143
Total	279	275	282	392
Crimes against lawful authorities (assault against public functionary, sedition, perjury, others)	86	74	75	76
Crimes not otherwise classified	149	272	309	355
GRAND TOTAL	4274	5166	5836	5720

MISDEMEANORS REPORTED FOR THE PERIOD 2003 TO 2006

OFFENCES	2003	2004	2005	2006
Misdemeanors Against Persons				
Involuntary homicide	43	48	38	42
Other misdemeanors against persons	12826	13253	13315	13119
Total	12869	13301	13353	13161
Misdemeanors Against Property				
Larceny involving bicycles, vans, heavy vehicles, m/vehicles, cellular phones, others	4213	5379	5450	4698
Other simple larcenies	6970	8561	8654	8643
Attempt at larceny	385	577	612	609
Receiving and possession of stolen property	133	187	184	196
Total	11701	14704	14900	14146
Misdemeanors involving Fraud and Dishonesty				
Simple embezzlement	654	709	642	651
Other offences	8	9	16	10
Total	662	718	658	661
Other Misdemeanors not classified above	7555	7997	8996	9731
GRAND TOTAL	32787	36720	37907	37700